31st Annual IBA/IFA Joint Conference May 5-6, 2015
Chicago Marriott Downtown Magnificent Mile • Chicago, IL, USA

New Frontiers in International Franchising
The New Civil Code from Argentina and the Franchise Chapter

- Specific chapter enters in force solely in August, 2015;

- Interesting **concept definitions**, such as *franchising*, master or *wholesale franchise*, *business system*, *franchise developer*, *substantial information*;

- Prohibition for a franchisor to **directly or indirectly control** the franchisee's legal entity;

- Definition of “pure” franchising: intends to establish **legal and business independence of both parties**;

- Article 1520 *b* states that franchisor would **not be construed liable** for labor obligations of the franchisee, except for fraud.
Franchisor’s and Franchisee’s Obligations

- Article 1514 a: Disclosure Requirements? “... economic and financial information on the evolution, for two years, of a similar franchised unit, in Argentina or abroad” seems to be vague;

- Parties could mutually waive such undetermined commitment.

- Article 1514 stipulates obligations of franchisor:
  - Communicate the technical knowledge, capable of producing the results of the franchisee system;
  - Deliver an operation manual with useful specifications;
  - Provide technical assistance;
Franchisor’s and Franchisee’s Obligations

- If the franchise includes the provision of goods or services by franchisor, ensure that is made in adequate quantities and at reasonable prices;

- Defend and protect the franchisee’s use of all rights: franchisor to provide the franchisee documentation and other necessary elements, when the defense is contractually borne by franchisee;

- Franchisee is empowered to intervene in defense of those rights in administrative or judicial procedures;
Franchisee’s Obligations

- Article 1515 stipulates **minimum franchisee’s obligations**:

- **Effectively develop** the activity within the franchise;

- **Provide information** reasonably requested by the franchisor and **facilitate inspections**;

- **Refrain** from acts that could **jeopardize** the identification or the prestige of franchise system and cooperate in protecting those rights;
Franchisee’s Obligations

- **Maintain confidentiality** of proprietary information, which integrates the technical knowledge and **ensure confidentiality of any individuals**;

- Confidentiality obligation survives the expiration of the agreement and is **not limited in time**;

- Comply with its obligations including **contribution for the market or technologies development**.
The term of the Franchise Agreement

- **Minimum term** of the franchise agreement must be 3 (three) years, franchise/area developer, the minimum term granted must be 5 (five) years;

- **Shorter term** may be agreed upon under special circumstances, such as trade fairs or conferences;

- On the expiring date, the agreement is construed tacitly extended for successive periods of 1 (one) year, except expressly terminated by one of the parties thirty days in advance;

- **Second renewal**, the term of the agreement becomes indefinite;
Exclusivity

- Article 1517:
- Exclusivity applies for both parties;
- Parties allowed to limit or exclude exclusivity;
- Franchisor cannot authorize another franchise unit to operate in the same territory, except with the consent of the franchisee;
- Franchisee must perform the activities at the premises specified within the territory or in the area of influence;
- Concept of area of influence is not defined;
Other clauses

- Article 1518 determines:

- Franchisee may **not** assign its contractual position and the rights while the agreement is in force, except for **monetary obligations**;

- The mentioned provision does not apply for master franchises: master franchisee must **obtain the prior approval of franchisor to grant subfranchises**;

- The parties must agree otherwise to allow the operation and the **results** of an international master franchise arrangement;

- **Franchisor may not directly sale to third parties goods or services** under the franchise **within the territory** area of influence;

- The **clientele belongs to the franchisor**;
Void Clauses

- Article 1519 determines that the following clauses are **null and void**, preventing the franchisee to:

  - Justifiably **question** the franchisor’s rights (jurisprudence will have a challenge to define what could be construed a “just” reason);

  - **Purchase goods from other franchisees** within the country, provided they meet the **qualities** and contractual **characteristics**;

  - Meet or establish **non economical relationships** with other franchisees (probably referring to Franchisee’s Committee or similar associations);
Liability

- Article 1520 establishes that does not exist any labor relationship between franchisor and franchisee and franchisor would not be construed liable for the labor obligations of the franchisee, except for fraud;

- franchisor does not respond for the franchisee’s profitability;

- Article 1521: franchisor is liable for system defects, which caused proved damages to franchisee, not arising from gross negligence or willful misconduct of the franchisee;
Termination

- Article 1522:
  - Terminated by **death or incapacity** of either party;
  - **Cannot be terminated without cause** within its original term;
  - Agreements for a shorter period of three years are terminated by operation of law upon maturity;
  - **Prior notice** to the other with **one month per year of duration**, up to six months;
  - Contracts negotiated for an **indefinite period**, notice should be sent **at least upon completion of the third year**, invoking just cause is required.
Competition Law

- Article 1523: establishes that franchise agreement by itself, should not be construed as limiting, restricting or distorting competition respecting its complex and specific nature;

- Post-term competition covenants are valid for one (1) year and within a reasonable territory.

- Interesting provisions were inserted in the mentioned chapter, solving common problems and discussions normally brought to Courts in other jurisdictions in connection with franchising.
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Muchas Gracias!
Muito obrigada!
Thank you very much!

Luciana Bassani