ppi 201502ZU4645
Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185Depósito legal pp 197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

Vol.39 *Nº 69*

Julio
Diciembre
2021

Cuestiones Políticas Vol. 39, Nº 69 (Julio - Diciembre) 2021, 296-316
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The Franchise Agreement in International Trade: its Advantages and Disadvantages

DOI: https://doi.org/10.46398/cuestpol.3969.17

Mohammad Mehdipour [*]
Parviz Bagheri [**]

Abstract

The aim of the article is to analyze the implications of the franchise agreement in international trade. One of the contracts that is usually registered after the appearance and registration of property rights, and especially after the development of trademark rights, is the franchise agreement. A franchise agreement is a contract entered into between the franchisor and the franchisee as the owner of the intellectual property rights. In other words, the franchisee often uses trademark rights and intellectual property rights owned by the franchisor, which have a limited duration. It is concluded that, in franchise agreement, there is a right to enforce the franchisor's business method, which is implemented within the network (this method includes the use of intellectual property rights and know-how). This contract has detailed terms and is closely related to intellectual property rights and competition rights. The franchise must be distinguished from the distribution contract, the concessionaire, and the license. Under this agreement, the franchisee enters the franchise network and agrees to use the franchisor's method of negotiation and pay royalty-free payments instead.

Keywords: franchise agreement; franchisor; franchisee; franchise network; trademark.

[*] Assist. Prof, Department of Law, Ilam Branch, Islamic Azad University, Ilam, Iran (Corresponding author). ORCID ID: https://orcid.org/0000-0002-4815-0935. Email: Mehdipour78@yahoo.com

[**] Assist. Prof. Department of Law, Ilam University, Ilam. Iran. ORCID ID: https://orcid.org/0000-0002-3114-7609. Email: P.bagheri@ilam.ac.ir

Recibido el 12/12/2021 Aceptado el 21/06/2021

El contrato de franquicia en el comercio internacional: sus ventajas y desventajas

Resumen

El objetivo del artículo es analizar las implicaciones del contrato de franquicia en el comercio internacional. Uno de los contratos que se suele registrar después de la aparición y registro de los derechos de propiedad, y especialmente después del desarrollo de los derechos de marca, es el contrato de franquicia. Un acuerdo de franquicia es un contrato celebrado entre el franquiciador y el franquiciado como propietario de los derechos de propiedad intelectual. En otras palabras, el franquiciado suele utilizar derechos de marca y derechos de propiedad intelectual que pertenecen al franquiciador, que tienen una duración limitada. Se concluye que, en un contrato de franquicia, existe el derecho de hacer cumplir el método comercial del franquiciador, que se implementa dentro de la red (este método incluye el uso de derechos de propiedad intelectual y conocimientos técnicos). Este contrato tiene términos detallados y está estrechamente relacionado con los derechos de propiedad intelectual y los derechos de competencia. La franquicia debe distinguirse del contrato de distribución, el concesionario y la licencia. Según este acuerdo, el franquiciado ingresa a la red de franquicias y se compromete a utilizar el método de negociación del franquiciador y pagar en su lugar, pagos libres de regalías.

Palabras clave: acuerdo de franquicia; franquiciador; franquiciado; red de franquicias; marca registrada.

Introduction

International trade law is a set of rules and regulations that govern international trade relations, which are inherent in private law and relate to various countries (Carr and Stone, 2013). In general, business activities that can be done in the form of international trade relations are divided into six categories: First, the sale and purchase of goods, the second group the sale and purchase of services, (Carr and Stone, 2013) the third group the insurance transportation, the fourth group the financial activities, the fifth group the contracts related to the concession of the use of intellectual property and the sixth group the investment and partnerships. Intellectual property contracts either transfer ownership of these rights or, while retaining ownership, allow the holder to use these rights for the recipient's license, the second group of which is known as bachelor's contracts or operating licenses. The franchise usually includes a bachelor's degree, but the bachelor's degree in intellectual property law has been used and has been successful. One of the goals of the transferee of intellectual property rights,

from the conclusion of these contracts, can be the transfer of technology. Therefore, in this article, we will first study the relationship between franchise and intellectual property rights, then the transfer of technology with franchise, and finally the impact of franchise on competition law. This paper examines the advantages and disadvantages of a franchise agreement in international trade.

1. Speech 1: The relationship between franchise and intellectual property rights

Intellectual property rights refer to those privileges and powers that a person claims in respect of the results of his or her intellectual activities in various fields of industry, commerce, science, and literature and art. Intellectual property is divided into two categories; industrial and commercial property and liberty and artistic property. Liberty and artistic property create rights for the creator simply by creating the work, but industrial and commercial property is not created by the creation of the work, but by registration by public authorities and the issuance of a government certificate.

2. Clause 1: Rights arising from intellectual property

a) The exclusive right to exploitation and the right of prosecution

After creating two types of rights, intellectual property rights are granted to the holder, firstly, the spiritual or moral right that is non-transferable (Ginsburg, 2002), and secondly, the material right. Spiritual right is related to the character of the creator and supports the right he has. Material rights refer to material and economic benefits that are exclusive to the holder and are referred to as exclusive rights. Material rights can be negative rights, and positive, negative in the sense that it allows the owner to prohibit others from exploitation, which can be interpreted as the right to pursue those who violate these rights. Positive Rights means that it allows him to use it exclusively during the validity period and, for example, in the case of the owner's trademark, the exclusive right to insert the mark on the product and its packaging is used. It has a token for promoting products 5. Topics in the field of industrial and commercial property include Patents, industrial designs, trademarks, geographical indications, traditional knowledge, biotechnology, brand reputation, trade secrets. Liberty and artistic property is divided into two categories: copyright and related rights or related rights.

b) The right to transfer and grant permission to exploit intellectual property rights

Intellectual property has found its place in economic and legal life. The importance of intellectual property is so great that it is commonly referred to as the money of the modern economy, and as a financial right with economic value (Singer, 1982), it can be transferred under a contract according to the transferable financial rights. Contracts are usually concluded on the three axes of goods, services, and capital, and intellectual property can be considered as a commodity or capital, given its role in development. The expectations of intellectual property contracts are usually of four types:

3. Transfer of these rights

2. Providing the possibility of use while maintaining ownership (granting the license to exploit these rights)

3. Provide the possibility of use while maintaining ownership, provided that it has been used before and has been successful (franchise agreement). The establishment is represented by an authoritative connection between the franchisor (businessperson) and franchisee. Franchisees are answerable for spreading the franchisor's business thought all through the market (Calderon-Monge, 2018).

Article 141 of the Regulations of the Patent Law, Industrial Designs and Trademarks stipulates: "The owner of a mark may grant permission to another person to use the registered mark in any legal form" (Duffy, 2002: 682). In a competitive economy based on competition, having a monopoly backed by the law puts the firm in a special competitive position over other competitors, and it enables him to supply, produce and distribute better or more up-to-date goods or services that are desirable to the consumer. If these goods or services are offered with a mark or brand, the consumer will be able to check the quality of the product without difficulty and make the decision to buy based on the mark. That is why the use of a similar sign and misleading the buyer is considered illegal competition and the law has come to support it.

One of the things that creates a legal monopoly for an enterprise is having the industrial property right over the technology or design or sign on which the goods or services are offered. The unique situation may arise if there is no legal protection, with the secret and unknown technology to the public. The intellectual property owner to increase the benefits and business development and to meet the demand of consumers in accordance with the rights recognized by law for him, it can use its right to grant a license to operate a trading system, technical knowledge, trademark, and

give the license to others. On the other hand, third parties are encouraged to obtain permission to exploit the holder of this intellectual property by assessing their financial ability and considering the amount of demand for the goods or services of an enterprise that enjoys intellectual property, such as a mark or invention. A contract for the use of intellectual property licenses may be in the form of a bachelor's degree or a franchise agreement. In addition to granting an operating license, the holder can transfer his material rights to others, in which case the owner's relationship with the subject of intellectual property is severed and becomes the ownership of the transferee, and there are various motives that are beyond the scope of this study.

4. Clause 2: Franchise and technology transfer

a) The concept of technology

The use of new technologies and the introduction of new products is one of the measures that creates a high advantage for manufacturers. People who acquire certain technology before others can use it to offer a large share of the market by offering new products and simply surpassing competitors. Technology may take a new form and make it possible to do certain things that were impossible before technology was introduced. Technology often does not emerge as emerging technology, but has evolved and, by changing methods, increases the quality and quantity of products and reduces costs. Therefore, technology is known as the most expensive product, and activists in the fields of industry and services are looking to use new technologies to increase the quantity and quality of products and provide better services, and thus increase revenue, and the customer's desire to use high quality services and products made with modern technology. Technology is the equivalent of the word technology. Of course, technology will have a different definition in each field, but in the general definition and in the dictionary, technology means the scientific equipment and methods that are used in a certain field. In the field of production and supply of goods and services, a dynamic set of knowledge, skills and experience that is used to produce goods, use processes, provide services and research and development activities is called. Therefore, technology can be a method or a tool or a skill and a method of applying knowledge or doing something (Ameri, 2010). Hence, technology is not just knowledge, but also an aspect of that knowledge that is in the form of technical knowledge. In fact, technology is different from science because science examines and analyzes data. While technology uses scientific and experimental relationships. International trade organizations have also come up with definitions of technology that address the practical and applied nature of technology.

From the perspective of the United Nations Conference on Trade and Development, technology has defined the equivalent of organized methods and knowledge, specialized skills and technical knowledge that are used in the process of producing and improving the quality of products.

From the perspective of the United Nations Industrial Development Organization, technology is a system of technical knowledge, skills, expertise, and organization that is used to produce, commercialize, and use products and services that meet economic and social needs.

b) Technology transfer with franchise

The transfer of technology itself has a separate meaning that cannot be discussed. However, briefly, technology transfer is a process and not just a transfer of technology by its owner. Rather, part of the process is technology transfer and, in fact, prerequisites. Because the transfer may take place, but the technology has not been transferred. In other words, the transferee has not been able to absorb it. Therefore, when it comes to technology transfer, it means that the transferee can recognize the components of technology and their role in the whole (shaping technology). In such a way that to benefit from it, it does not have to use the same technology and has the ability to design and improve. In other words, it has localized technology

Technology transfer can take place at the enterprise level or at the country level or from one industry to another. The transfer of technology from one country to another in the last century has been one of the concerns of countries that, in spite of the adoption of international conventions of developed countries, are practically reluctant to transfer technology. Most of these technologies have been in the hands of a limited number of firms, and other firms tend to enter into contracts with technology owners to gain access to technology or to use the technology to improve their market position.

Technology transfer methods are divided into commercial and non-commercial methods. Non-commercial methods are mainly based on the exposure of the person to information. Non-commercial methods can be divided into formal and informal categories. For example, reverse engineering is one of the informal ways. Sending students or staff to study at technology-leading centers is the formal training of staff in the industries of developed countries, the creation of circles and scientific and technical associations through official channels. Non-commercial methods are often used to transfer technology across countries. The business method is done by concluding a contract, which is mainly divided into legal and commercial contracts. Legal contracts are contracts that transfer technology, and commercial use of technology is a top priority. In contrast, trade agreements are a priority, technology transfer may be a business issue, and a franchise

agreement falls into this category. The business method is used both at the corporate level and at the national level.

In one division, technology can be divided into upstream or downstream: Upstream technology is like the technology of using nuclear energy, building aircraft or building giant ships or advanced drilling rigs. The downstream technology is the same as the automotive and electronics manufacturing technology. The issue of franchising will not be advanced technology and is often done at the level of private enterprises. Of course, when it comes to technology transfer in the franchise, it will be more in line with the type of industry (industrial franchise), because the granting of manufacturing and production points will be accompanied by the granting of technology. For example, car manufacturing or electronics industries. Section B and H of Paragraph 1 of Article 1 of Regulation No. 2004/772 of April 2004 of the European Commission (Burns, 2004), in expressing the concept of technology, enumerated examples of it, including:

> Inventions, patent declarations, utility models, industrial designs, rights derived from new plant species, integrated circuit construction projects, supplementary protection rights for pharmaceutical products and other products that are subject to supplementary protection, copyright of software Computer and technical knowledge are part of the concept of technology (Burns, 2004: 11).

Therefore, the technology may be registered and supported in the form of industrial property or in the form of technical and experimental knowledge or trade secrets in secret with the holder. In franchising, the use of trademarks and trademarks is usually associated with technical knowledge, information, and assistance, which are examples of technology that link franchising to technology transfer. If the word technology includes any practical knowledge and techniques of execution, franchising will not be franchise without technology.

5. Second speech: franchise and competition law

In addition to complying with the general conditions governing contracts, licensing contracts for the exploitation of intellectual property rights must also comply with competition law (Kioussi, 2008). Competition law is a set of regulations aimed at increasing consumer welfare by increasing economic efficiency in trade and industry and combating the legal means of creating illegal monopolies and competitions that serve the interests of firms. Establishment arrangements depend on the standards of legally binding opportunity set out in Article 1338 of the Civil Code (Act, 1995). Nonetheless, the execution on this premise needs to focus on the prerequisites referenced in Article 1320 of the Civil Code, which is about the legitimate states of an understanding. One of the reasons for issues in the

Franchise Agreement is the presence of a standard agreement or standard agreement dependent on opportunity of agreement contained in the Civil Code (Triasih and Muryati, 2020)

Full competition has been a form of commercial competition. In full competition, the best products are provided to customers at the lowest prices. The existence of such a market is ideal, and in practice, there is no such thing as incomplete competition. In the case of imperfect competition, firms have some control over the price of the product. The most extreme is the monopoly, which is only the producer or supplier of goods or services, and it includes the highest profit, it is not possible to enter this market.

One of the factors that leads to the formation of a monopoly is the legal factor; this means that sometimes-legal privileges are granted to some firms that have exclusive power. One of these rights is intellectual property. Enforcing the interests of the technology owner and encouraging firms to invest in technology production and dissemination requires the imposition of certain restrictions. To this end, the legislature grants such a monopoly to the holder. So, at first glance, it seems that competition rights, which aim to control the business power of firms and monopolies in the public interest and increase economic efficiency and consumer welfare, there is a contradiction with intellectual property rights, which is the protection of the owner of the work against others through the granting of exclusive rights. However, the goal of competition law is not to completely deny monopoly, and in some cases, it is the monopoly control that is not exclusively abused.

The goods and services of enterprises are introduced by name or mark, which is a kind of intellectual property, and in economic relations, which are very diverse due to competition, goods, and services. The sign or name plays an important role in distinguishing the origin, originality of goods and services, facilitating the right choice, quality and efficiency, and price and other items, and facilitating competition. On the other hand, in order to increase its reputation (mark or name), the company tries to improve the quality and offer it at a low price. Obviously, because the use of the mark also carries the responsibility for the production defect, and in order to prevent fraud and create a healthy competitive environment, the use of the mark must be exclusive and supported.

The intellectual property rights holder has the right to delegate the use of the protected property to others. One of these contracts is the franchise. In the franchise agreement, due to the need of one party to the technology and entry into the franchise network and trade and the use of fame, the franchisor is in a superior position and has more bargaining power. As a result, use this situation to increase your profits and reduce your business risk by setting challenging restrictive conditions. Introducing and reviewing one of the most important conditions limiting competition.

6. Clause 1: Tie-in arrangement or condition of purchase of additional goods

Tie-in arrangement occurs when the franchisee is required to purchase the required goods or supplies or intermediate goods from the franchisor or the person designating him. One form of this condition, which is positive, is known as the Tie-in arrangement. However, this condition can have another side; in this case, the franchisee undertakes not to purchase the requirements that specify the franchisor firms (Anderman, 2007). This condition can be called a tie-out condition. Tie-in arrangement is one of the restrictive practices. This condition deals with several basic principles. First, one of the results of the principle of freedom of contract is that everyone is free to choose the party to their transaction (Katouzian, 1980).

On the other hand, with this condition, the franchisor may not have economic and competitive power over the goods that are determined. In this way, it can make its competitive power unrealistic based on the competitive power of the commercial concession that it assigns to the receiving franchise. On the other hand, as mentioned above, in most franchise agreements, due to the use of trademarks, it is a common practice of both parties because in the franchise agreement, the use of the mark will also be responsible for the production defect. In addition, in case of improper performance of the receiver franchise and the production and delivery of low-quality products and services, the franchisor's reputation will be damaged.

These commitments are justified by the fact that they intend to ensure that the goods distributed in the franchise network meet the quality standards of the franchisor network. In fact, controlling and guaranteeing quality depends on the use and purchase of certain franchisor requirements from the point of view of the concessionaire, the requested technology or technology cannot be used profitably without the above goods. In this case, it can be said that these arrangements are in favor of competition

The European Commission said in a statement on 24 December 1962 that the Tie-in arrangement was binding: The criteria relating to the quality or requirement of the consignee to procure certain goods from specific sources shall not be subject to paragraph 1 of Article 81 as long as they are technically and completely necessary for the exploitation of the invention (Burns, 2004).

Such a restriction has negative effects on the recipient's deductible. Especially when the franchisor or a third party designated by him refuses to comply with the order, or has a limited amount, or delays delivery without commercial justification. European regulations reduce such negative effects by the fact that the decision to provide or not to provide is not only at the discretion of the franchisee or a third party.

In some cases, these arrangements are detrimental to competition, and that is where the goal is to block other competitors from entering the market. Especially in the case of tie-out terms, which may be in the form of a vertical or horizontal agreement to eliminate competitors. Of course, it should be noted that the discussion is about a product that is related to the subject of the contract. Otherwise, in accordance with paragraph D of Article 82 of the Treaty of Rome, deferment of the conclusion of a contract is prohibited by the acceptance of the obligations of completion by business partners who are not related to the subject of the contract by nature or commercial custom (Bassiouni, 1999)

Answering these questions can be helpful. Is the product that the franchisee is required to purchase from the franchisor necessary to maintain the quality standards of the network? And in the absence of its use, will the quality or services be low and there is a possibility that the network credit will be damaged? In fact, does the franchisor impose such an obligation in good faith in order to control the quality? Does the franchisor or third party know about the specific quality of a particular quality competing with other manufacturers? In order for the Tie-in condition to be contrary to competition law, there must be three conditions and (at least) two separate products. The grafter has sufficient market power (to determine the price of the graft)

In Iranian law, Article 5 prohibits competition regulations and rules governing the control and prevention of the formation of related monopolies. Paragraphs 8 and 9 of this articles provide examples. 1 Subject to the sale of goods or the provision of one service to the purchase of another service (paragraph 8) two. Forcing the other party to a transaction with a third party in a way that relates to the supply or demand of another good or service (paragraph 9) (Entessar, 1988).

Article 4 obliges the franchisor to guarantee the supply of the goods and supplies required if the franchisee undertakes to purchase these products from the franchisor or a third party. Even in paragraph 2, the franchisor assumes this obligation if the recipient franchisee is not committed to the purchase and paragraph 3 does not allow the parties to agree otherwise. These principles implicitly consider the condition of purchasing necessities to be in favor of the correct franchisor. Section 1 of Article 81 of the Rome Convention considers co-sale as a condition contrary to competition, which is an additional obligation imposed on the party. According to commercial custom or nature, that obligation has nothing to do with the subject of the contract. Regulation on collective exemption No. 4087/88 regarding the granting of privileges in Article 3 in the list known as white constraints and their inclusion as an authorized condition and for the establishment of identity and reputation of the network is the subject of activity (Ahlstrand, 2000). In paragraphs 1 and 2, the sale or exclusive use of goods that have

the desired qualitative characteristics of the concessionaire, and the sale of goods produced by the concessionaire or the suppliers designated by him, in cases where the nature of the goods is used. Objective and impersonal qualitative characteristics are impractical, provided they are sold together. Establishment arrangements are contracts among districts and utilities that award the utility power to serve clients in the region (Cook, *et al.*, 2021).

7. Third speech: Institutions related to franchising and effective regulations

Clause 1: Institutions

In this section, we will be acquainted with national, regional, and international institutions and associations that are working on and developing regulations on franchising. The importance of this sector is because these institutions have a large share in the formation of standard contracts for franchising. In fact, customs and practices regarding the franchise have been compiled and often have a code of ethics about the franchise. Adapting to these procedures makes the franchise successful. Here are the most important ones:

a) European Franchise Federation

The European Federation of Franchises is a non-profit regional organization founded in 1972. Its members are national franchisees or federations established in Europe. According to the second part of the first part of the ethical code developed by this institute, the objectives of the institute are 12

1. Promoting franchising in Europe.
2. Support the industrial franchise by promoting a code of ethics.
3. Encourage the development of franchising in Europe.
4. Securing the interests of the industrial franchise in an international organization such as the European Commission and the European Parliament.
5. Promoting the European franchise industry and its members worldwide.
6. Exchange of information and documents between federations and national associations in Europe and the world.
7. Serving members of the association.

8. Members must include a franchise chain including franchisor and franchisees.

b) International Franchise Association (IFA)

The largest and most experienced franchise organization in the world is the International Franchise Association. (http://www.franchise.org/aboutifa.aspx/ last visited 2013/.)

Its members are the franchisors, the franchisees are the recipients and producers of the requirements that must declare their adherence to the rules of procedure of this association before joining, and if they violate it, the executive committee will determine the punishment in case of violation, which can be suspension of membership or deterioration of membership.

c) World Franchise Council's home on the World (WFC)

It is a non-profit, non-political organization for national franchisees, organized on April 26, 2005. In February 1994, during the annual meeting of the International Franchise Association in Las Vegas, a group of National Franchise Associations decided to form the Council with the initiative of the International Franchise Association and the European Federation of the United Franchise. Following the meeting, a team led by the British Franchise Association, with representatives from Canada, Brazil, and Mexico, prepared a more detailed draft, which was finally accepted on June 15, 1995 in Lisbon. The World Council of Franchises operates globally and has a distinct role from regional and national federations. The Council's mission is to develop and promote the franchise and to promote public understanding of the best fair and ethical practices of the franchise worldwide. In 2003, he adopted a set of ethical principles. In fact, these principles are a set of the best recommendations for the franchise procedure, with two internal and international descriptions that are collected from the common elements of each member's code about the franchise.

d) Asia-Pacific Franchise Confederation (APFC)

It is a non-political and friendly institution of the National Associations of Franchise in Asia and the Pacific. On September 24, 1998, it was formed between 15 national franchise associations, including Australia, Malaysia, China, India, Korea, and Japan, and was registered on March 30, 2005, in Malaysia. With the goal of being able to share the experiences, information, and technical knowledge of the franchise. Establish better network communication between members, encourage further development of national associations established in Asia and the Pacific to strengthen the regional network industry and present regional information in the franchise and the common views of the national franchise associations in the region

for international institutions Like the World Council of Franchise, it is another goal of the confederation. Membership is free for countries in the region. Meetings are held once a year. The Secretary-General is transferred from one country to other every four years. The official language association of this association is English.

e) International Institute for the Unification of Private Law (UNIDROIT)

The Intergovernmental Organization was first established on October 3, 1924, at the suggestion of the Italian government, as an institution affiliated with the League of Nations. Then, with the destruction of the latter institution in 1940, it was re-established based on an independent multilateral agreement with the accession of 58 countries. The purpose of this institute is to study the needs and methods of modernization and harmonization of private rights, especially commercial law between countries, which is through the formulation of documents, principles and rules of uniformity (Iran since 1343 according to the law of Iran's accession to the institute). Has been a member of this institute). As mentioned, the institute does not operate exclusively on franchising. However, one of the issues that the institute has studied and researched in this regard and then prepared a sample law and principles is the franchise. At the suggestion of Canada, he began studying, and in 1993, the Institute's Advisory Council decided to set up a franchise study group, which is still active.

f) World Intellectual Property Organization (WIPO)

The first and largest international community action to protect industrial property was the ratification of the Paris Convention (March 20, 1883), which led to the formation of the Paris International Union for the Protection of Industrial Property (Seckelmann, 2011). It provided support for industrial creation to citizens of member states of the alliance, and an international office was set up to manage the implementation of this convention. The office was merged in 1893 with the office of the Berne Union, established under the Berne Convention of 1886, and a single international office was established as the International Office for the Protection of Intellectual Property (Ricketson and Ginsburg, 2006). The World Intellectual Property Organization was established under the Stockholm Convention of 14 July 1967, which entered into force on 26 April 1970 (Wirtén, 2010). In addition, it was the responsibility of the United Nations Office for the Coordination of Humanitarian Affairs.

Due to the growth of franchise agreements, the Office of the World Intellectual Property Organization in 1994 developed guidelines using the theories and advice of several prominent jurists to introduce the franchise and its types, comparing it with other contracts and obligations of the parties. The following sections are referenced.

8. Clause 2: Regulations affecting the franchise

The provisions of the regulations adopted by the International and Domestic Authorities for the purpose of directing and regulating the franchise have been adopted. Domestic regulations are mandatory in every country and may be a model for inspiring other countries to pass legislation. International regulations may have a binding aspect or merely a moral one, such as the code of ethics developed by some institutions. These regulations may specifically address the franchise or the general rules that affect the franchise. We will only introduce specific international regulations.

A) International Institute for the Unification of Private Law Guide to International Master Franchise Arrangements. The institute has compiled the most important legal documents on franchising, which includes two documents: Guide to Contracts the main international franchise, developed in Rome in 1988 and revised in 2007. This document contains a high level of information on various issues of the process of concluding, implementing and enforcing franchise agreements and is not limited to mere legal issues. The second and most important document on the subject of sample law is the disclosure of information in the franchise. The franchise issue, along with an explanatory report, is clearly used by domestic lawmakers as a soft law and commercial custom. This sample law was proposed in 1985 by Canada. Preparations for the law began in January 1999. With the draft prepared in December of that year, it was accepted by the Franchise Studies Group. In December 2000, the Working Group completed its work, and an explanatory report was prepared and approved by the Committee of Government Experts, which was finalized in April 2002. In September 2002, a draft sample law and explanatory report were sent to the Institute Council.

a. European Code of Ethics for Franchising (ECE)

The code was developed in 1972 by the European Federation of Franchises and was revised on December 5, 2003 (The European Franchise Federation (EFF), 2016).

Member States may accept and interpret this code in their home country, and the proposed interpretation shall be added by the accepted Members as an amendment to the Code without modification. This code has five sections: In the first part, he explains the introduction, goals and conditions of membership. In the second part, after providing definitions to the guiding principles, which oversees the obligations of the parties to the franchise agreement and how to treat each other, which emphasizes fair behavior and goodwill and resolving disputes with goodwill and negotiation. The third section monitors the recruitment, advertising, and disclosure of information. The fourth section deals with the franchise

agreement and the terms and conditions it must have. The fifth section deals with the applicability of this code to the main franchise agreements, which stipulate that the franchisor and the franchisee do not apply to the main recipient.

b. European Commission collective exemption regulations

The first regulation was No. 240/96, which, due to non-compliance with the European Commission's competitive goals after several years of study, finally adopted Operation Directive 772/2004 in 2004, a guideline for the implementation of which was subsequently adopted (Cini, 1997).

These regulations govern the implementation of Articles 81 and 83 of the Rome Statute (Cassese *et al*., 2002), and the 100 and 102 Lisbon Conventions on collusion and the abuse of monopoly position (Craig, 2010), which may not apply to certain vertical and horizontal relations under certain conditions. If these conditions are met, exemptions, limited in space and time, apply, which can also be covered by the franchise. The most important of these conditions is the lack of control over a part of the market, more than the quorum set in the regulations.

c. Principles of European Law on Commercial Agency, Franchise and Distribution Contracts

These principles are the latest legal text on franchising, distribution of goods and trade representation agreements prepared by the European Civil Rights Study Group (Von Bar, 2002) at the request of the European Commission in 2006 (Nugent and Rhinard, 2015) These principles are not binding and will only be binding on them if the parties to the agreement agree. However, the purpose of these rules is to harmonize the laws of the EU countries in the field of these agreements. It is the result of a comparative study of the working group on the rules and regulations of EU member states and customs, and contains common progressive principles on franchise agreements and has been made available to legislators as a scientific model.

d. Disadvantages of franchise for franchisee

1. The high cost of starting a franchisee is an inconvenient situation for the franchisor. The franchisee must pay the franchisor fees such as franchise fees, license fees, a percentage of advertising revenue, as well as the cost of training human resources, whether monthly or weekly. The royalty paid to the franchisor may be an amount of the transaction volume. Therefore, franchisees who have a lot of activity have to pay more points by increasing their income, and this is more in favor of the franchisor. Because more effort is required, the receiver franchise goes to the franchisor's bag.

2. The restrictions imposed by the franchisor on the franchisee have been defective and restrict the freedom of the franchisee. Among other things, he is required to follow the instructions of the franchisor and even in the case of decorations and consumables, price determination, and so on.

3. The franchisor must operate within the framework set by the franchisor and does not have the freedom to operate a personal business. The franchise, on the other hand, is usually limited to five years. A successful franchisee who has become profitable is sometimes forced to accept the franchisor's demand for more royalties in order to maintain it. Of course, the franchisor can be given the right and option to extend the contract.

9. Disadvantages of franchising for franchisor

1. Continuous communication with customers plays an important role in recognizing the flow of market movement and innovation and quality improvement When a firm franchises its business to implement a business approach, it may lose touch with end customers who are the best source of competitive ideas, and customer feedback on the needs of deficiencies and defects of change should be conveyed to the franchisees and not to the franchisor.

2. In the franchise network, the franchisee of the recipients is engaged in the activity, supply, distribution and production of goods and services with the name and symbol that represents the network. Therefore, the improper performance of one of the franchisee has a negative effect on the franchisor and other franchisee due to the common interests and damages the network. Therefore, franchising with franchising increases the risk of system failure. In addition, disclosure of secrets by the franchisee is a risk to the business.

3. There is a special responsibility in consumer protection laws for the producer of goods, which may be due to the application of the franchisee's franchisee. In this way, because the franchisee offers the franchisor with the name and sign of the franchisor. Therefore, in case of damage caused by franchisor defects, it may be held accountable.18

10. The benefits of franchising for the franchisor

Assigning a franchise has several benefits for the franchisor. Here are some of the most important ones:

1. A business or industrial unit that seeks to expand its field of activity beyond its internal borders. In this way, it seeks to gain more credit and

profit. First, it must overcome barriers to entering the foreign market. Secondly, to have high liquidity for investment and labor supply. Using the franchise agreement avoids the above problems; this is because the franchisor does not enter the foreign market directly and faces relatively few obstacles. It may be possible to benefit from the facilities and incentives due to the investment and cooperation with the domestic industrial unit. Therefore, the development of trade with capital and the activity of the franchisee makes it possible to penetrate markets that could not be accessed without losing control of the system.

2. Franchisors provide goods and raw materials from a single franchisor, which in itself is of great benefit to the franchisor. In fact, uniformity in the quality and shape of the network product and maintaining the name and reputation makes. The franchisor requires the franchisee to purchase raw materials and supplies under certain conditions. In addition to personal activity, it also receives periodic and initial royalties from the franchisee, which is another source of income for the franchisor.

3. Creating an independent business has risks, including that the system is not responsive and does not function as expected. In fact, it is not a guarantee of success. In franchising, the franchisor develops its business with the franchisee's capital. The franchisee also starts with the backing of the franchisor. The result is not a partnership to share the risk, but the risk of business activity is borne by the franchisee, although starting a business with a franchisee greatly reduces the risk. The establishment understanding execution in agreement law viewpoint, and components hindering and supporting the establishment arrangement in the agreement law viewpoint were dissected (Maulidiana, 2017).

11. Advantages of franchising for franchisee

1. The franchisor is established by spending less capital and labor compared to creating an independent economic unit and in a short time to a commercial system. With the least risk of having a mark or name and getting your test back, this will allow for a quick return on investment. In addition, a brand that is valued and respected by the customer and is a primary support and continuous support for this system. The franchisee puts aside the freedom holder who owns an independent business to become a part of a group that will run a business together, and there is no need to worry about effective ways to do business. Because a pre-studied and tested system is provided to the franchisee by the donor.

2. One of the advantages of entering the franchise network is the reputation, receiving assistance, counseling, and training of employees, and it is possible for him to offer a product or service that is known and

trusted from the very beginning. The stipulation that the franchise is a well-established and successful system creates security for the franchisee in the market and reduces the risk. In addition, the franchisee will benefit from a proven successful business system that is the result of years of effort and continuous development by the franchisor and is a job security for the franchisee.

3. The franchisee benefits from a brand and a good image of a brand in the mind of the customer. This is a very significant advantage, because gaining popularity in the eyes of customers is a big challenge for a start-up business. A name or mark for good reputation requires time and money, but using a good, reputation mark has commercial benefits. In addition, the franchisee will have a loyal customer named after starting the activity of the network by starting the activity of the network anywhere, and in other places, the attracted customers will become famous and will go to the newly established enterprise.

4. When the business goes out of its way and becomes part of a larger collection.

In this way, marketing costs will be shared among the businesses covered, this multiplicity of branches has been a form of marketing, and as a result, business will take its place in the mind of the customer.

Conclusion

Fraud legis, such as the voluntary change of the elements of dependence and the specific application of the general theory of abuse of rights, are among the obstacles to the mandatory implementation of foreign law in private international law. It is sufficient that one of the claimants, in order to escape the competent law, fraudulently uses the rule of conflict resolution in order to create fraud in private international law. In most cases, fraud legis is accompanied by the fraudulent selection of a jurisdiction that uses it to enforce a more lucrative substantive law for one of the parties of dispute and is subject to disregard for the applicable law. In this regard, according to Lapradel's theory, one of the French jurists, fraud against the law is a change in the elements of dependence, in order to create an element of unrealistic and imaginary dependence. For example, in the case of Ms Bufferman, she was sentenced by a French court and remained a Frenchman in order to alter the fraudulent nature of her French citizenship along with her German citizenship. In cases where an element of dependence is related to the will of the parties, fraud legis may take place. These elements of dependence that can make it possible for individuals to cheat the law are accommodation and citizenship. The mechanism of fraud legis can raise other elements of dependence. For example, changing the place of

conclusion of a contract when the law of the place where the contract takes place is applicable will lead to the realization of fraud legis. But this legal theory does not agree on changing all the elements of dependence to make it possible to escape the law. According to Pierre Meyer, another French jurist, fraud legis arises as a result of behaviors that change the elements of dependence on the emerging age, and in order for fraud legis to be realized in the strict sense of the word, it is necessary to do it with the independent will of the people and according to their desire and consent; this is without the situation being able to maintain real relations with countries whose laws have been falsely ignored.

Bibliographic References

ACT, CONSUMERS LEGAL REMEDIES. 1995. California Civil Code.

AHLSTRAND, Karin. 2000. Vertical distribution agreements under EC competition law-background and the new Block Exemption Regulation.

AMERI, F. 2010. "Treaties overseeing government cooperation and their role in technology transfer" In: International Legal Journal. No. 43, p. 70.

ANDERMAN, STEVEN D (Ed.). 2007. The interface between intellectual property rights and competition policy. Cambridge University Press. Cambridge, UK.

BASSIOUNI, M. Cherif. 1999. «Negotiating the Treaty of Rome on the establishment of an International Criminal Court» In: Cornell Int'l LJ. Vol. 32, p443.

BURNS, Charlotte. 2004. "Codecision and the European Commission: a study of declining influence?" In: Journal of European Public Policy. Vol. 11, No. 1, pp. 1-18.

CARR, Indira; STONE, Peter. 2013. International trade law. Routledge. London, UK.

CASSESE, Antonio; GAETA, Paola; JONES, John RWD. 2002. The Rome statute of the international criminal court: A commentary. Vol. 1. Oxford University Press. Oxford, UK.

CINI, Michelle. 1997. «Administrative culture in the European Commission: The cases of competition and environment.» In At the Heart of the Union, pp. 71-88. Palgrave Macmillan. London, UK.

COOK, Jeffrey J; AZNAR, Alexandra; GRUNWALD, Bryn; HOLM, Alison. 2021. «Hand me the franchise agreement: municipalities add another policy tool to their clean energy toolbox» In: Solar Energy. Vol. 214, pp. 62-71.

CALDERON-MONGE, Esther. 2018. Personality Traits of the Partners and Performance in the Franchise Agreement. Inside the Mind of the Entrepreneur. Springer, Cham.

CRAIG, Paul. 2010. The Lisbon Treaty: law, politics, and treaty reform. Oxford University Press. Oxford, UK.

ENTESSAR, Nader. 1988. «Criminal law and the legal system in revolutionary Iran.» BC Third World LJ 8. 91.

GINSBURG, Jane C. 2002. "The concept of authorship in comparative copyright law" In: DePaul L. Rev. Vol. 52, p.1063.

DUFFY, John F. 2002. Harmony and diversity in global patent law. College of William & Mary Law School. Williamsburg, USA.

KATOUZIAN, Homa. 1980. Historical Perspectives: From Political Economy to Positive Economics. Ideology and Method in Economics. Palgrave. London, UK.

KIOUSSI, Sofia. 2008. Quality design, construction and development enterprises: Exploring the model and marketing strategies for integration. Diss. UCL (University College London). London, UK.

MAULIDIANA, Lina. 2017. «Implementation Of Franchise Agreement Perspective In Contract Law» In: International Journal of Social Sciences and Development. Pp. 61-74.

NUGENT, Neill; RHINARD, Mark. 2015. The European commission. Macmillan International Higher Education. London, UK.

RICKETSON, Sam; GINSBURG, Jane C. 2006. International copyright and neighboring rights: The Berne convention and beyond. Oxford University Press. Oxford, UK.

SECKELMANN, Margrit. 2011. «From the Paris Convention (1883) to the TRIPS Agreement (1994): The History of the International Patent Agreements as a History of Propertisation?.» In: Comparativ. Vol. 21, No. 2, pp. 46-63.

SINGER, Joseph William. 1982. «The legal rights debate in analytical jurisprudence from Bentham to Hohfeld» In: Wisconsin Law Review. Vol. 1982, No. 6, pp. 975-890

THE EUROPEAN FRANCHISE FEDERATION (EFF). 2016. EFF European Code of Ethics for Franchising.

TRIASIH, Dharu; MURYATI, Dewi Tuti. 2020. «Legal Protection of the Parties in the Franchise Agreement.» The 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020). Atlantis Press. Paris, France.

VON BAR, Christian. 2002. «Communication on European contract law: joint response of the Commission on European Contract Law and the Study Group on a European Civil Code» In: European Review of Private Law. Vol. 10, No. 2.

WIRTÉN, Eva Hemmungs. 2010. «Colonial Copyright, Postcolonial Publics: The Berne Convention and the 1967 Stockholm Diplomatic Conference Revisited» In: SCRIPTed. No. 7, pp. 532-550.

UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.39 Nº 69

Esta revista fue editada en formato digital y publicada en julio de 2021, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

www.luz.edu.ve
www.serbi.luz.edu.ve
www.produccioncientificaluz.org