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Franchising Quality Control

Introduction

Franchising contract is new for Georgia as well as for other post-Soviet countries. However, despite its specific and foreign name for Georgian language, which creates a certain lack of clarity around it among the large part of the community, in reality, we are in touch with franchising more often then we realize; even when we, as ordinary customers, apply to Georgian stores to buy products made under the trademarks of foreign enterprises. In fact, they use Franchising to give us the goods or service, as, because of its global nature, the franchising system is widely used in retail trade and food industry, production-selling of goods, restaurant business, banking services and other areas of service.

The term "Franchise", in Georgian "Franchising" is of the French origin and means advantage, privilege. The same meaning carries English term "Franchising". Historically franchise comes from the middle centuries, when at court of the Great Britain, it was known as a privilege connected with taxation for bishops and barons on the places for trade. The first elements of relatively modern form of Franchising appeared in the USA in the first half of 19th century and its development began in late 70-ies. The first company, which started activities by franchising system, was "Singer Sewing Machine Company" in 1898. It was followed by "General Motors", "Coca-Cola" "Pepsi" and others. The greatest bum has begun from 1950, which was accomplished by adapting the law for trademark in the USA. At this period famous food companies (McDonalds) where formed. Hotel businesses began to use franchise system as well. As for Europe and Japan, Franchising there was implemented later, but nowadays its role in economic trade relations has risen greatly. Franchising contract was spread in over 80 countries and was recognized as independent object of legal regulation, but separate legislation about Franchising was taken in few ones. Other countries regulate it by contractual law.

Concept of Franchising

"Franchise can be interpreted as a form of business production and management, according to which one of the business owner (franchisor), who develop a business correspondence model, sells the right to produce the business to another entrepreneur (franchisee). In most cases, franchisee gains the right to use the model on the certain territory and within a certain period of time. Under the Franchise contract franchisor offers a franchisee a business-concept of selling goods and service and franchisee buys a right to use the trademark, brand and other exclusive rights and to sell goods or service of the franchisor on condition to pay a fixed fee" [2, 6].

In Georgia, Franchising system is studied in the course of civil law. Its concept is given in the 607th article of the Civil Code of Georgia: "A franchise agreement is a long-term relationship of obligation, under which independent businesses are bilaterally bound, as far as necessary, to promote the production and marketing of goods and rendering of services by performing specific obligations." "The subjects of the franchise contract are intangible property rights – trademarks, industrial design, packing, concept of production, purchasing and selling of goods and business organization, etc" [1, 138].

By the franchising agreement one part, a franchisor passes the other part – a franchisee, a model of implementation an enterprise activity and by permanent support secures its instillation and development instead of some amount of money, and a franchisee sells the goods or provides services using the franchisor's company name, trademark and other exclusive rights. Franchising helps a franchisor to widen its business rapidly on the base of other's capital and attracting human recourses, and the franchisee gets the opportunity to become an independent enterpriser and develop business on the base of experiences of franchisor. In addition, a franchisee uses already known and approved business model, recognized name and trademark on a market. It saves time needed to start a business with a new company name and attracted recourses, which doesn't always work.

The importance of quality control

During the franchise agreement, a franchisor controls the quality of a franchisee's work, as a franchisor should have a guarantee that any commercial enterprise, bearing its name, corresponds to relevant standards. Existence of quality is most important for franchising network, because exactly franchisees create a brand image since franchisors give them a license to be in a direct contact with customers. That is why a franchisor should help a franchisee. The first stage of this process is to select a potential franchisee. A franchisor has to value weather a franchisee is appropriate in this case. After signing the contract, a franchisee passes initial necessary training, in case not to fall the quality of the goods or international level of service during the work. Many owners of growing companies fear this, which results in a dilution of their brands. So, franchising must be well-planned for the purposes of quality control to determine corresponding system standards, training methods, operational manuals, internal policies and supportive staff. "A system that does not maintain an effective quality control strategy is not likely to survive in a competitive marketplace." [7, 30] Accordingly, a franchisee is responsible to fully meet the standards established by the franchisor. Franchise agreement provides that the franchisee must comply with the franchisor's recommendations about the activities of the enterprise organizing, especially the recommendations recorded in the operational manual. A franchisee must implement all the changes, improvements, upgrading and news included in the operational manuals.

Standards of quality control

"It is obvious that a franchisor has a full right to require the quality control of the products purchased in the enterprise of the franchisee to protect the interests of both parties of franchising system. Despite this, it is necessary to assure that such requirement doesn't violate national legislation on competition. On the other hand, national legislation on trademark often requires from the licensors to control the use of trademarks licensed by them in order to implement their rights and keep in force the licensing contract" [2, 125]. For example, special law about trademark in the USA expressly indicates that it allows the use of the trademark by someone other than the owner only when the owner exercises sufficient control over the nature and quality of the goods or services. According to this law quality control is mandatory and otherwise a franchisee will not have a legal right to use a trademark or a company name of the franchisor. So, quality control standards must be foreseen in the franchise agreement.

Why does the “McDonalds” hamburger taste the same in New York or in Tbilisi? Why do the homes cleaned by “Merry Maids” employees meet the same high-quality standards whether done in Seattle, Atlanta or Boston? The answer is found in the quality control system established by the franchisor and followed by the franchisee. This system may consist of the following parts:

- **Trainings,** which today is divided into three categories: 1. Initial main training, where the franchisee will be taught all the basic operating systems and procedures of the business. 2. In-store training, when the franchisee gets to know the experience of the other successful franchisees. 3. Ongoing trainings, which is held to the franchisee during the whole career. This can be held annually in order to introduce new developments, products and services to franchisees.

- **Customer Relations** is one of the main conditions, which the franchisee should know. The staff should know how important it is for business to establish good relations with the customers.

- **Pricing Strategies.** Franchising is unique to that a franchisor may suggest to the franchisee pricing strategies, pricing structures and explain the reasons of the price determinations, but the final prices are set by the franchisee.

- **Real Estate Criteria.** Franchisors generally provide suggestions about choosing the proper location. Mostly franchisees are requested to choose their favorite two or three locations and then the franchisors make the recommendations. At this time the demographic population, the age of the consumers and the related costs are examined.

- **Hiring and Firing**. Franchisee gets information about it from other successful franchisees’ experience. They also get legal requirements about hiring their staff.

- **Construction and Design**. Franchisors also provide the proper layout, design and architectural drawings.

- **Equipment Specifications,** which answer the following questions: What equipments should be placed in a fast-food restaurant? What equipment is needed to run a domestic cleaning business? The answers to these questions are easily provided by the franchisor.

- **Legal Aspects of Business.** Franchisors want their franchisees to operate within certain rules and laws, that’s why they spend a considerable amount of money in making sure that the franchisees understand the appropriate rules and laws under which they need to operate.

A franchisor must spend all affords to organize an appropriate functions of the enterprise. If the franchisor assumes the maximum benefit from the activities of its franchising enterprise within its specific territory, it'll try to help the franchisee for this purpose. In order, to give the franchisor opportunity to be ensured that its requirements are complied, a franchising agreement provides franchisor's right to carry out periodic inspection of an enterprise. A franchisor may have a right to conduct a survey of employees and customers too.

As it was already mentioned, a franchisor is greatly interested in franchisee's final products of the enterprise to meet the minimum standards of the quality. A franchisee may be required by the franchising contract not to sell other goods, except those deserving approval from the franchisor. A franchisor is interested to prevent selling any kind of goods by the franchisee, which will, in its opinion have a negative impact on a franchising system or will compete with its own goods. This limitation may become a reason of conflict with national or regional legislation. But, in most cases this is reasonable, if selling such goods from the manufacturer or rendering service will compete with the goods (services) manufactured by the franchisor itself, affect negatively on the reputation of the franchising system or impose any additional liability to the franchisor.

Conclusion

Thus, in spite of the fact that mentioned system has some clear possible risk-factors, namely, franchisee often meets exaggerated controls from the franchisor, on the other hand, franchisor will never be quite sure if the new franchisee will be competitive and trustworthily in a given sphere in order not to humiliate franchisor's business reputation, it has a lots of positive characteristics. For example, Franchisee gets the proved commercial activities with the minimal risk-factors, with the approved business-processes, conceptions, technologies and installations, already known and widely advertised company name and trademark on a market. And the Franchisor has the ability to rapidly settle on a marketplace and has an opportunity to direct enterprise activities effectively by producing products or services with its own trademark and a chance of more popularization on a national and international market, possibility of easily receiving extra incomes, save time and the recourses and so on.

References

1. Akhvlediani Z. 1999. *Obligation Law*. Tbilisi: Samartali.

2. Kokiashvili M. 2009. *Franchising and Its Legal Regulation.* Tbilisi: Meridiani.

3. Pirtskhalaishvili A. National Library of the Parliament of Georgia. *Franchising.* www.nplg.gov.ge/gsdl/cgi-bin/library.exe?e=d-01000-00---off-0period--00-1--0-10-0---0---0prompt-10---4-------0-1l--11-en-50---20-about---00-3-1-00-0-0-11-1-0utfZz-8-00&cl=CL4.1&d=HASH0119a4e2052953b3d90f3e6d.7&x=1 (22.02.12).

4. Georgia, the Parliament of Georgia. 2012. Law: Civil Code of Georgia. 1997. [1]786-II. Tbilisi: legislative herald. კანონი: საქართველოს სამოქალაქო კოდექსი 1997 წელი, ს. თბილისი: საკანონმდებლო მაცნე.

5. Barkoff R. M. 2008. *Fundamentals of Franchising.* USA. American Bar Association.

6. Justis R.T. and Vincent W.S. 2001. *Achieving Wealth through Franchising.* USA. Adams Media.

7. Sherman A.J. 2011. *Franchising and Licensing: two powerful ways to grow your business in any economy.* USA. AMACOM.

8. Franchising.ua. *Fundamentals of Business. Conducting Business. Checkup and Control of Quality Service.* http://ru.franchising.ua/osnovy-biznesa/764/proverka-kontrol-kachestva-obslujivaniya/ (22.02.12).