From *Mannekium* to *Universal Chocolate*: a rebranding experience ...

"*Mannekium*" was for more than 50 years the most famous brand of Belgian chocolates. It was set up in Brussels in 1959. The name came from the two most iconic landmarks of Brussels: the statue of *Mannekenpis* (the famous little boy peeing) and the *Atomium*, the building in the shape of a unit cell of an iron crystal magnified 165 billion times which was the centrepiece of the 1958 Brussels Universal Exposition.

The genius idea of its founder, which was strictly followed during decades, was to make every Mannekium store look like a small "Brussels embassy" filled with little representations of the Mannekenpis and of the Atomium and large wall pictures of "*moules-frites*" and of waffles, iconic dishes of Belgian gastronomy, while the windows were adorned with Belgian lace. This typical Brussels touch contributed to the immense success of the brand and of the network through the world. Indeed, Mannekium, which had begun its international expansion in the 70's, had in 2015 a global network of more than 1,500 stores, amongst which 1,350 owned by franchisees, where every customer would emotionally remember his/her days spent in the beautiful and charming capital of Europe.

However, in 2015-2016 a series of events (terror attacks, Brexit, bad weather, …) severely impacted the attractiveness of Brussels (and of its iconic landmarks) which led the management of Mannekium to decide on 30 June 2016 to rebrand its network and change the appearance of the stores, as of 1 January 2017. From that day on, the trademark and tradename Mannekium was changed into *Universal Chocolate* and the appearance of the stores was to change so that they would now look like small worlds with pictures and artefacts from the six continents.

In accordance with Article 263 of the franchise agreement, the franchisor Universal Chocolate S.A. (previously Mannekium S.A.) required its 1,350 franchisees to change the tradename and appearance of their shops by 1st April 2017. Article 263 reads:

> **Article 263.1 – Uniqueness of the System**. Franchisee recognizes and accepts that the System developed by Franchisor at great expense, is absolutely unique, and that all parts thereof, including but not limited to the **Trademarks, Tradenames and Trade Dress**, enjoy a formidable global reputation which, alone, more than justify the very modest royalties payable under this Agreement in consideration for its right to use the System.
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> **Article 263.2 - System Modifications**. Franchisor developed the System to protect the distinction, goodwill, quality and uniformity symbolized by the Trademarks. Franchisee acknowledges and agrees that Franchisor has the right to adapt the System to changing conditions competitive circumstances, business strategies, business practices and technological innovations and other changes as Franchisor deems appropriate. Franchisee must comply with these modifications, additions or rescissions at its expense, subject to any other express limitations set forth in this and provided further that capital expenditures per franchised store for any such modifications, additions, reductions, eliminations or changes to the System do not exceed 50% of the average annual turnover of the store over the last three years.

During the Mannekium 2016 Franchise Convention (held as every year in early July and assembling in Brussels all the franchisees and the management of the franchisor), the franchisor told them that they would have much more time to convert their store than necessary and insisted on the fact that it would convert all its own 50 stores in less than 6 months, which it did, as they all started operating under the *Universal Chocolate* name on 1 January 2017.

The franchisor also stressed the fact that the cost for converting the store was modest (maximum 50% of the average yearly turnover of a store) and was in any event an investment necessary to re-boost the sales in light of the decreased attractiveness of the previous brand and store appearance.

Many franchisees protested against the changes imposed by the franchisor, the deadline for its completion and its cost. Nevertheless, a majority of them complied and started operating under the brand Universal Chocolate as of 1 April 2017.

Alas, the first weeks of operations proved catastrophic, with average sales plummeting by 50% as compared to the same period in 2016 and this regardless of the fact that the sold products had remained exactly the same. Concerned by this evolution, the franchisor ordered a market study which revealed that 86 % of the polled consumers (all previously customers of Mannekium) found the new name *Universal Chocolate* completely dull and 88% of them found the new appearance of the stores even duller. What used to be a '*thrilling shopping experience'* had become, according to an overwhelming majority of polled customers, "*a boring chore*".

Not in my name Inc., the largest US franchisee, operating 72 stores throughout the United States and headquartered in Minneapolis refused to implement the rebranding because it found the new name and concept really boring and was convinced it would have a catastrophic impact on its sales. On 30 April 2017, Universal Chocolate decided to terminate the franchise agreement with Not In My Name and filed on 1 June 2017 a request for arbitration against its franchisee for breach of contract. Not in my name filed a counterclaim, claiming compensation for wrongful termination..

Article 867 of the franchise agreement provides for ICC arbitration in Paris. Thanks to the ICC rules for super-expedite arbitration which came into force on 1 March 2017, the arbitral tribunal was constituted within 24 hours of the Request for Arbitration and the arbitral hearing was scheduled to take place in Paris on 10 June 2017.

Mock Case Scenario	**Issues/Questions**
"*Mannekium*" was for more than 50 years the most famous brand of Belgian chocolates. It was set up in Brussels in 1959. The name came from the two most iconic landmarks of Brussels: the statue of *Mannekenpis* (the famous little boy peeing) and the *Atomium*, the building in the shape of a unit cell of an iron crystal magnified 165 billion times which was the centrepiece of the 1958 Brussels Universal Exposition. The genius idea of its founder, which was strictly followed during decades, was to make every Mannekium store look like a small "Brussels embassy" filled with little representations of the Mannekenpis and of the Atomium and large wall pictures of "*moules-frites*" and of waffles, iconic dishes of Belgian gastronomy, while the windows were adorned with Belgian lace. This typical Brussels touch contributed to the immense success of the brand and of the network through the world. Indeed, Mannekium, which had begun its international expansion in the 70's, had in 2015 a global network of more than 1,500 stores, amongst which 1,350 owned by franchisees, where every customer would emotionally remember his/her days spent in the beautiful and charming capital of Europe. However, in 2015-2016 a series of events (terror attacks, Brexit, bad weather, …) severely impacted the attractiveness of Brussels (and of its iconic landmarks) which led the management of Mannekium to decide on 30 June 2016 to rebrand its network and change the appearance of the stores, as of 1 January 2017. From that day on, the trademark and tradename Mannekium was changed into *Universal Chocolate* and the appearance of the stores was to change so that they would now look like small worlds with pictures and artefacts from the six continents. In accordance with Article 263 of the franchise agreement, the franchisor Universal Chocolate S.A. (previously Mannekium S.A.) required its 1,350 franchisees to change the tradename and appearance of their shops by 1st April 2017. Article 263 reads: **Article 263.1 – Uniqueness of the System**. Franchisee recognizes and accepts that the System developed by Franchisor at great expense, is absolutely unique, and that all parts thereof, including but not limited to the **Trademarks, Tradenames and Trade Dress**, enjoy a formidable global reputation which, alone, more than justify the very modest royalties payable under this Agreement in consideration for its right to use the System. **Article 263.2 - System Modifications**. Franchisor	**Cause of rebranding** These circumstances would plead in favour of an objective need to proceed with a rebranding. Should the existence of an objective reason for the rebranding decision be given any weight or is it OK to give the franchisor a discretionary power to decide to rebrand. Q. by the arbitrator: would your position be different if the rebranding operation had been caused by (i) a threat of IP infringement; (ii) a merger/take over of the franchisor? **Contractual treatment of rebranding** Q.: Does this provision properly address a rebranding operation? What should be

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added/removed to make it appropriate and effective?

Communication/consultation with franchisees

Q. Would the situation have been different if the franchisees had not been put before a *fait accompli* and had been consulted before the rebranding decision was taken? Is such prior consultation always possible? Is it desirable?

Cost of rebranding

Is it fair/justified to have it borne by the franchisees? Should it be contractually limited? What if the contractual limit is exceeded?

Timing of rebranding

What should be a proper advance notice? What about new franchisees who just opened their store under the previous name/concept?

Return on Investment

Can the franchisor be held liable if the rebranding proves catastrophic?

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