



International Distribution Institute

Recent trends in franchisee's protection among different jurisdictions

POSSIBLE STRATEGIES

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Protective trends

- Earning claims, disclosure claims
- Interpretating franchise agreement beyond the text of the contract
- Application of the principle of good faith (e.g. encroachment)
- Abuse of economic dependence

What is the approach followed by Courts?

The franchisor's direct perspective

A franchisor wants to avoid disputes, especially over agreement

- Time-consuming, expensive, uncertain
- Bad reputation
- Must be disclosed to prospective franchisees
- Takes away from growing the business

Possible strategies when drafting the agreement

- language should be clear and unambiguous
- emphasizing advantages for the franchisee
- justifying and explaining the restrictions
- arbitration vs jurisdiction clauses

Drafting more balanced contracts? E.g. may franchisees have the right to terminate?

Possible strategies during the performance of the agreement

- Make sure actions are grounded in contract
- Follow notice, default and termination provisions closely
- Attention to documents, exchanges, etc.
- Acting in good faith in performance and enforcement of contract
- If indulgences granted, make sure to reserve rights

Possible strategies during litigation

- Always start with the contract
- Ensure that it has been followed
- Documentary record is key



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Thanks for your kind attention!

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