



International Distribution Institute

Effects breach disclosure obligations

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Introduction

Effects depend on :

1. The severity of the breach
2. The possible applicable sanction
3. Sometimes: the non achievement of forecast results

1. The severity of the breach

- Serious / major breach vs. Not serious / minor breach

1. The severity of the breach

Disclosure breaches

- Most common type of allegation made by a franchisee against a franchisor
- Negotiations, both parties – not just the franchisor – must disclose all material facts
- Pre-contractual disclosure rules
- Good faith and Buyer beware (*caveat emptor*)



1. The severity of the breach

Distinction breaches

Serious breach vs. minor breach – what are we talking about?

- Misrepresentation for pre-contractual statements
- Is it a mismatch of expectations or a breach?
- Innocent, negligent or intentional statements
- concealed or misrepresented essential circumstances → damage suffered → damage caused by the concealment

Did the breach affect consent?



1. The severity of the breach

Examples of serious or minor breaches in different jurisdictions

- Can we remedy the breach?
- Can we compensate it? - OR -
- Do we terminate?

Examples & classification of breaches in your jurisdiction?



2. The possible applicable sanction

Common sanctions

- Total nullity or partial nullity (Belgium)
- Annulment based on breach of contract or rescission based on error (Netherlands)



2.The possible applicable sanction

Specific sanctions

- Criminal sanctions (criminal fine France)
- Civil sanctions:
 - Termination (France)
 - Modification



3. The non achievement of forecasted results

- Netherlands:

- no obligation to provide forecasts
- if franchisor provides a forecast, it needs to be without errors
- in the event of errors, the franchisor is liable towards franchisee
- Legal basis: tort and default



3. The non achievement of forecasted results

What is a faulty forecast?

- Responsibility franchisee for operation store
- Efforts franchisee
- Entrepreneurial risk
- Competitors
- Geographical influences



3. The non achievement of forecasted results

What is a faulty forecast?

- Not achieving forecast = not a faulty forecast *per se*!
- Every forecast is an estimation, it is not a guarantee
- Starting points need to be correct



3. The non achievement of forecasted results

Improving the results

- Franchisor to provide assistance and advice when not franchisee does not achieve the forecast?
- What does this entail; also financial assistance?
- 'Duty of care'



3. The non achievement of forecasted results

Sanctions

- Rescission or annulment of the contract based on breach of agreement or error (dwaling); and/or
- Claim for damages based on tort
- Claim for damages based on default / neglecting duty of care towards franchisee





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Conclusions & Open Discussion

