



## ISSUES OF LEGAL REGULATION OF FRANCHISING IN INTERNATIONAL PRIVATE LAW

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**ABSTRACT:**Franchising is a business model in which the franchisor (right holder) grants the franchisee (user) the right to use his trademark, business plan and other intellectual property objects on certain terms. These relations are widely used in international business and require the regulation of a certain law. Since the participants in the international franchising process are located in different countries, the issue of which country's law is applied in resolving disputes is an important issue. Each country's own national laws are important in regulating franchising. Some countries have special franchising laws (for example, the USA and France), while others apply general contract law.

**KEYWORDS:** Civil Code, International Private Law, Franchising, Franchise Agreement, Trademark, Commercial Disputes, National Legislation.

### INTRODUCTION

Today, in the conditions of globalization and the development of competition, the consumer has the right to choose a product of the best quality, meeting world standards. Entrepreneurs need to spend money on improving the quality of products (services) and advertising. For those who want to try their hand at business, it is advisable to choose safe structures for entrepreneurial activity. Franchising is a widespread practice in the world of international trade and business, which combines commercial, intellectual property and contractual rights. In this model, the franchisor shares its business concept with the franchisee and receives other payments. However, franchising in international private law has its own characteristics and legal complexities.

Franchising is an effective form of doing business in all countries with a developed market economy. That is, for the franchisor (franchisor) it is entry without large investments. For the franchisee (franchisee) it means engaging in a new type of activity with a low risk of failure or failure at all.

In the Civil Code, a complex business license agreement provides for the use of the license complex, the licensor's experience in the field of work and commercial experience in a certain volume (in particular, a minimum and/or maximum volume) (for the sale of goods obtained from the licensor or manufactured by the licensee in a certain field of activity, the provision of services, the performance of work, the implementation of commercial activities, with or without specifying the territory of use.<sup>1</sup> The franchisee purchases the right to conduct business according to the scheme developed by the franchisor and pays fees. The franchisee bears the costs of preparing, launching and operating his point of sale. A franchise is a system that describes all aspects and conditions of conducting a business that meets the franchisor's requirements. A franchise agreement is a legal agreement between the franchisor and the franchisee, in which the parties determine their mutual obligations and rights. This agreement formalizes commercial cooperation and determines the terms of use of intellectual property, business model, services and trademarks. Main elements of a franchise agreement. Franchisor: The owner of intellectual property rights and the provider of the business model. A person or company that receives the right to use the franchise.

<sup>1</sup> <https://lex.uz/docs/-180552>

Granting the franchisee the right to use the trademark, patents, business model and other intellectual property objects from the franchisor. Payment of an initial fee set by the franchisee. Franchisor's Obligations: Obligations of the Parties Franchisor's Obligations: To train and support the franchisee. To protect its trademark. To provide marketing-related services to suppliers. The agreement clearly states which state's law will apply. The terms of the agreement's validity and termination are specified. The US Trademark Act of 1946 (Lanham Act) 2The adoption of the law paved the way for the resolution of the issue of intellectual property rights transfer. The Automobile Dealers Franchise Act of 1956 became the specific law regulating franchising at the federal level. The concept of "franchise" in it means a written agreement concluded between any automobile manufacturer and any automobile dealer engaged in business<sup>3</sup>. This law, for the first time, includes the principle of good faith in franchise relationships, namely, "each party must act honestly and fairly towards the other party."<sup>4</sup> league was established.

It is worth mentioning another legislative document regulating franchising relations - this is the 1978 Petroleum Sales Market Practices Act. It regulates the production and commercial activities of hundreds of thousands of gas stations supplied by the largest oil corporations - franchisors, the most powerful branch of American franchised transport services. This regulation is of a purely sectoral nature and its main task is to protect the interests of the distributor (franchisee) from voluntary termination or non-renewal of the franchise agreement. The law defines a franchise agreement as "any agreement under which a retailer or distributor (depending on the population) is allowed to occupy a retail space that must be used for the sale, shipment or distribution of motor fuels of a type owned or controlled by a raw oil refinery. The 1978 law has greater legal force than individual state laws governing the termination and renewal of franchise agreements.<sup>5</sup>

The law provides for a specific list of grounds for termination and non-renewal of the contract. In addition, it establishes the following requirement: "if the supplier (franchisor) decides to terminate or not renew the contract, he must send a written notice to the franchisee 90 days before terminating or not renewing the contract." Both federal laws were designed to balance the licensor's capabilities with the licensee's capabilities. Both federal laws, firstly, establish franchise relationships between parties of the simplest type of dealer, trade or service; secondly, they serve as a legislative model for US states in these areas of franchise relationships. Thus, according to the California Franchise Act of 1970, a "franchise" is a contract or arrangement between two or more persons under which: - the licensee acquires the right to engage in a business activity by offering, selling goods or providing services in accordance with a marketing plan or system developed by the licensor; - the licensee's business activity is carried out in accordance with a plan or system that is significantly associated with the licensor's trademark, service mark, logo, advertising or other sign identifying the licensor or its affiliate; - the licensee is obliged to pay compensation directly or indirectly to the licensor. The main purpose of the franchise legislation of the US states (as well as federal laws) is, first of all, to meet the most pressing requirements of judicial practice and to provide American courts with the means to resolve the most important issues from the point of view of the interests of the most conflicting and weak parties to the franchise relationship. Such weakly guaranteed, "critical" nodes of the franchise relationship are, firstly, the timing of the transfer of the necessary information by the potential licensor to the potential licensee before the conclusion of the franchise agreement, and secondly, the grounds and consequences of early termination of the franchise agreement by the licensor <sup>6</sup>.

A franchise trademark is one of the key elements of franchising, which is an important intellectual

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2 The Lanham Act of 1946// 15 US Code of Federal Regulations, §§ 1051-1127. Wash., 1946.

3 Lafontaine F., Morton F. S. Markets: State franchise laws, dealer terminations, and the auto crisis //Journal of Economic Perspectives. - 2010. - T.24. - №.3. - P.250.

4 Automobile dealer Franchise Act of 1956 //15 15 US Code of Federal Regulations, §§ 1221-1225. Wash., 1956.

5 Закон о защите франшизных инвестиций в штате Калифорни. 1971 (California Franchise Investment Protection Law)

6 Truss C. Who's in the driving seat? Managing human resources in a franchise firm // Human Resource Management Journal. - 2004. - T.14. - №.4. - P.75

property object that distinguishes the franchisor's brand, goods or services from those of other participants. In the franchising process, the franchisor grants the franchisee the right to use the trademark on certain terms. The franchisor protects its trademark illegally, as it is its business identity. International registration of a trademark facilitates the global expansion of franchising. In franchising, a trademark acts as a means of brand recognition and attracting customer trust. The franchisee reduces marketing costs by using the franchisor's recognized trademark in its business. The franchisee must follow brand rules when using a trademark. In each country, a trademark is required to be registered with national intellectual property offices. To protect trademarks at the international level, registration is carried out through the Madrid Protocol. Through this system, a trademark can be protected in more than 130 countries based on a single application. The franchisee's right to use the trademark should be clearly defined only under the terms specified in the contract. Franchising is a business partnership between two parties, the franchisor and the franchisee, which often leads to commercial disputes. Franchising disputes can arise for various reasons: legal errors, breach of contract, late or improper payment, illegal use of the trademark, and other circumstances. For franchising to work successfully, the franchisor must make its management system effective and transparent. This will help the franchisee to successfully run their business. Commercial disputes in franchising can arise for various reasons. However, in order to effectively resolve these disputes, it is important to clearly define the terms of the contract, use alternative methods such as arbitration and mediation, and comply with illegal regulations. A well-drafted contract and an effective management system play an important role in making franchising sustainable.

#### **References:**

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