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Managing Risks in International Franchising

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REBRANDING FRANCHISE NETWORKS

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Introduction

The are very few static things in life beyond the concept of change. We live in a world where change happens faster than it ever did before. Within the retail sector of the economy change occurs today faster than we could have ever imagined. In franchising it is unlikely that the business concept that a franchisee originally bought into will be new and unique by the end of the term of their franchise agreement. As markets change, franchised chains must be prepared to adapt the ever-changing market place. To keep one’s niche is an ever-increasing challenge. The franchisor must be on a constant vigil to determine how market changes will affect their brand offering and what they must do to keep it fresh, or become a forgotten player on the retail landscape.

As product and service offerings must change to meet the changing market a Franchisor must be prepared to make changes to their brand image including rebranding their name and décor. How they go about rebranding will dictate their success, in not only their ability to re-brand but also in maintaining a strong and supportive relationship with their franchisees.

This paper has been written to assist in the discussions of the workshop on rebranding franchise networks which will take place during the 26th Annual IBA/IFA Joint Conference

The Rationale and how a franchisor makes its decision to rebrand and implementation

The decision to rebrand must be business and not legally driven. A franchisor for a variety of reasons at some point in their existence will determine that they must make a change to the merchandising of their brand. The reasons can be many. The franchisor may determine that they want to freshen their image with a more hip name to appeal to a new and young generation, or the impetus for change may be the result of the loss or slow death of a product that currently is reflected in the name of the franchisor. As an example, if the brand of a franchisor incorporates the word mufflers when due to market changes most consumers no longer need to change them then the franchisor will soon realize that even if it changes its products to meet the changes in the market the customer will still view the franchisor as a purveyor of mufflers. Therefore, unless the franchisor is willing to rebrand its name to meet its new service or product offerings it is likely that it will lose significant market share.

Once the franchisor determines that a change is needed or desired to its brand, it should assemble a team to discuss and assist it in the implementation of this change. Whether there are legal impediments to rebranding the franchisor should exercise its business judgment on what are the true needs of the franchise
system. Again, the legal needs should follow the business needs and not vice versa.

The franchisor's team should include the following players: 1) marketing representatives—either in house or third parties, 2) representatives of the franchisee council or if none, then representative franchisees, 3) representatives of the franchisor's operations department, 4) legal representation, and 5) representatives of the real estate department or someone with knowledge of local zoning ordinances.

Rebranding across many international boundaries adds an extra dimension such that the team will also need to include the relevant international operations representatives. This scenario requires a different approach because where the Franchisor has networks in, for example, five countries it will be dealing with at least five different groups (and possibly more if there are single units granted into some countries) which will mean different cultures and needs from those of the home country. Different communication methods may also be needed as it is unlikely that all the different overseas franchisees will be able to be gathered under one roof for consultation. Therefore the steps referred to below will probably have to be dealt with on a country-by-country basis.

Before a franchisor meets with franchisee representatives it should have a plan to present to these representatives explaining the need for rebranding and how they intend to go about it. Equally as important as determining that rebranding is necessary, is buy-in from the franchisees. Remember, many of the franchisees in a franchise system came into the system with the notion that they were selling a specific product or service under a specific name and system. For many franchisees change does not come easily, and for them change may be limited by their capitalization abilities or their own desire to remain with what they feel is comfortable to them. The franchisor will need to work hard to prove to the chain that rebranding is necessary for their continued success, and that it will not result in a loss of the goodwill that the franchisees built up in their individual businesses.

It will be in the best interests of the franchisor to conduct a number of customer studies or surveys to ascertain what will be the best name and/or décor change that will support the goals of the franchisor to make a change in their brand. If the surveys are shared with the franchisee council or representatives then it is likely that they will feel a part of the decision making process, which likely will result in an easier path to implementation, whether or not the franchise agreement provides the franchisor with the right to make changes to or replace its trademark.

After a new name is chosen the franchisor's marketing representative should provide the re-branding team with an array of sample renderings of the new trademark or brand image. Before showing new brand alternatives to the
franchisee representatives, these renderings should first be vetted through consumer surveys or focus groups. The more objective the analysis the more likely it will receive the support of the franchisees.

The franchisor should be prepared for the fact that the rebrand may be more acceptable in some countries than others. In some countries, a wholesale rebrand may be fully acceptable to the network; in others, franchisees may, for example with a high fashion brand, want to run two clothing ranges and brands alongside each other for a couple of seasons until customers get used to the change. The franchisor will need to be sensitive to such requirements.

Once the franchisor determines that the re-branded name or mark it chooses will receive the support of a major portion of its chain, then it should have the new brand reviewed by its legal representatives to determine whether the new brand, both in name and design will pass trademark scrutiny. To the extent that the franchisor can provide trademark counsel with alternatives, that is always ideal. Whether intellectual property counsel has one or multiple marks to work with, a full and complete search of the various trademark registers should be conducted to determine what, if any, objection the franchisor could encounter in prosecuting a mark. Also the franchisor will want to know how long it will take to register the new trademark, so that it can be assured of protection in the various domestic and international jurisdictions that it intends to use the new trademark(s). In undertaking this exercise it is important to understand the universe of both common law as well as statutory rights that a user of the mark may enjoy pending registration. If a franchisor is intending the register the new trademark in a number of international jurisdictions it should determine what advantages it may have by registering its mark through the mechanism of the Madrid Protocol.

When determining to use a trademark in a non-domestic jurisdiction the franchisor should ascertain whether the trade name or trademark will take on a different meaning in that jurisdiction. Again, the franchisor will need to be sensitive to the cultural differences of the various countries that the franchisor wishes to use the new trademark.

**Legal Issues**

Once the franchisor, along with its franchisee advisory council, is confident of the need for rebranding and the replacement trademark and/or décor, the franchisor’s legal team should review the governing franchise agreement and international master license or franchise agreements to analyze what rights the franchisor will have to change the trademark that their franchisees are currently using. This will be vital to assisting the operations director in knowing how far he can go in negotiations. Many franchise agreements contain language (see appendix A) that allows a franchisor to require a franchisee to change the trademark that they were originally granted the right to use under certain
circumstances. In earlier vintage agreements the right to require a franchisee to change their trademarks may be dependent upon a franchisor losing their right to use their current marks. Newer version franchise agreements may contain multiple reasons for change, and also may provide the franchisor with unbridled discretion to make changes to the existing trademark. The franchisor agreement also may contain provisions regarding who bears the cost for the changes. Who bears the costs for changes to the use of the trademark will engender discussions and negotiations with the chain.

Even if the governing franchise agreements provide the franchisor with the rights and/or discretion to cause the rebranding of its system, the legal inquiry will not stop there. Unless the franchisor has spent the necessary time to create a buy-in mentality from the franchisees, it can count on a certain amount of resistance from the franchisee community. In fact, the more successful the franchise chain at the current moment of the sought change, the more resistance a franchisor should expect. From the franchisee’s standpoint their chief points of resistance will focus on cost and the perceived loss of goodwill to their business that they believe that will be caused by the rebranding.

In the first instance, the franchisee may rely on certain franchise relationship statutes that may prohibit the franchisor from requiring them to undertake any changes to their franchised business that would result in the change of their competitive circumstances. (See various franchise relationship and special industry statutes in Appendix A). In essence, if they can argue that requiring them to change their franchise will be of such a great cost to them they may be able to invoke both statutory and common law rights to prohibit the franchisor from requiring the franchisee to undertake the changes.

Whether or not the franchise agreement provides the franchisor with the flexibility to require a franchisee to rebrand their business need not be fatal to the implementation of the rebranding efforts. It would not be unusual that many franchisees in the franchise system may not possess the necessary capital to undertake the necessary changes. So, it will be to the advantage of the franchisor if it can put in place or design a program that will enable franchisees to obtain financing for the changeover from either the franchisor or a third party. In either case, such assistance could be contingent upon the franchisee agreeing to an addendum to the franchise agreement to allow for the rebranding where the franchise agreement is silent or does not permit it, coupled with a release against any claims that may arise regarding the re-branding. Depending upon how much assistance a franchisor gives to its franchisee will determine how generous a franchisee will be in agreeing to amend their franchise agreement and to provide the franchisor with a release.

Research will need to be carried out into the statutory and common law rights applicable in each country. Common law countries for example may have a concept that the franchisor must not “derogate from their grant” of trademark
rights and that a rebrand may constitute such derogation. The English Court of Appeal for example in 2007 found that pressure by the franchisor on its network to rebrand their vehicles so as to promote a second brand was a substantial derogation from the grant of the right to use the original brand. Courts in some civil law jurisdictions might conclude in a similar manner if they find that franchisee’s consent to contract does not extend to the use of a new mark or even to the use of the mark in a substantially different manner.

Even a more compelling argument for the franchisee that resists rebranding is the assertion that the rebranding will result in a loss of goodwill to their business. The heart of their argument will be that it has been through their sweat equity and investment that produced the goodwill in their business—it will not be uncommon for a franchisee to argue that the goodwill of their business is owned by them and not the franchisor notwithstanding that it is the franchisor’s name forms the basis of their business. Along these lines, the franchisee often will argue that a rebranding of their business will undermine the intrinsic value of their business such that it will adversely affect the potential selling price of it. In that there are countless different jurisdictions worldwide that may entertain this equitable argument in likely will not fall upon deaf ears.

In essence, after a rebranding, a franchisor must be sensitive to the possibility that it may be the target of claim that a franchisee’s loss is the result of the franchisor’s rebranding. Accordingly, as part of a rebranding effort, a franchisor should assiduously analyze the sales results of those franchisees that have embraced the decision to rebrand a franchise system. It should also wherever possible, and as part of a deal for assisting each franchisee in the rebrand, take such legal steps as it can to close down the potential for any future claims. This might range from an agreement by the network to accept changes to the franchise agreement that acknowledge the validity of the current rebrand; and, as discussed above have each franchisee sign a release in which they waive their rights to make any claims in respect of the change to the brand (and possibly their franchise agreement as well) in consideration of specific assistance in the rebrand from the franchisor.

**Implementing Rebranding Changes**

As it is easier to lead a franchise chain with a carrot rather than with a stick, the franchisor will want to find ways to accelerate the implementation of a decision to rebrand a franchise system. Whether or not the franchise agreement gives the franchisor the right to impose its rebranding decision on the franchise system, most franchisors know that unless there is a backlog of franchisees waiting in the wings to re-populate a terminated franchisee’s territory, they do not want to use the nuclear remedy of termination to impose its rebranding strategy upon the franchisee. Accordingly, since it will be problematic to impose mandatory
rebranding, it behooves the franchisor to employ incentives or assistance in a franchisee's rebranding efforts.

Rebranding of a franchise system may take on many forms, from merely changing out the franchisee’s signage to changing out the businesses décor and product identifiers. The most appreciated franchisor assistance will be in the form of money or other capital contributions. In some instances the ability of the franchisor to arrange low cost financing for the franchisee’s change-out expenditures will be enough to satisfy a reluctant franchisee. Often however, the franchisor will need to offer franchisee cash incentives or help to cause them to rebrand their facilities. Where this cash comes from always will be a challenge. A franchisor may even look to its advertising fund for the source of financial assistance.

Franchise advertising funds are a topic of discussion in and to themselves and not the focus of this paper. That being said, the structure and flexibility of an advertising fund is an issue that pervades all aspects of the franchise relationship. If a franchisor was clairvoyant when it set-up their advertising fund and designed its advertising program it likely will have devoted a portion of the fund for general marketing undertakings. These undertakings likely will be broad in scope and include the preparation of national advertising or market research or other marketing initiatives that are left to the franchisor’s sole discretion. From this portion of the fund a franchisor can feel confident that the use of these proceeds for rebranding will meet with less resistance from a franchise network. While these funds may be available to a franchisor’s rebranding efforts, it will be of great advantage to the franchisor to discuss its use of them for that purpose with representatives of the franchisee network. As discussed previously, peer pressure often works better than parental pressure in a franchise system. If the franchisee leadership supports a franchisor’s rebranding efforts it is more likely that the remainder of the chain will follow.

If the structure of the franchisor’s advertising fund does not provide the flexibility discussed above then the absence of that flexibility will present the franchisor with additional challenges. No doubt that it will be able to develop a plausible rationale to use other portions of the fund, claiming that the rebranding presents unqualified benefits to the franchise system. If however, the fund works on a pooled or joint concept then the franchisor will risk claims for breach of contract from reluctant or recalcitrant franchisees. They will claim that the money being used for rebranding violates the purpose of the fund, and that the reduced advertising funds that is being directed towards the brand as they know it is adversely affecting their business. Of course the Franchisor will have significant defenses to this claim, and will likely show that the rebranding results in additional sales for those that choose to rebrand. While the legal tail should not wag the business dog these issues illustrate the challenges that a franchisor will face in rebranding its system.
Some Special Recommendations

The thought of rebranding a franchise system will scare and render the franchisees of any franchise system insecure as to the success of the rebranding of a franchise system unless the franchisor takes special steps to assuage that fear and quell confusion within the system. The most important thing that a franchisor can do is to communicate! There is no substitute for effective communication of the entire rebranding process to the entire franchise system. A franchisor should bring franchisee’s into the decision making process as early as possible. All effective means of communication should be employed not only to let the franchisees know why the franchisor thinks that the franchise system should be rebranded, but also how it plans to implement these changes, and over what period of time. Every step of the rebranding efforts should be communicated to the franchisees. Each operations representative should be armed with an array of answers for the various questions that the franchisees are likely to have. A franchisor’s real estate department should understand any zoning issues that may result from a changing of signage at a franchisee’s business location.

Before making the decision to rebrand a franchisor should identify every type of audience that their brand is likely to encounter to determine the impact that the rebranded name or logo has on each segment of their customers.

The franchisor should encourage debate and discussion with its franchisees, preferably a small group of them, to flush out all of the anticipated problems or questions the franchise system is likely to face in a rebranding effort.

The franchisor should undertake a program to merchandise the benefits of rebranding to the franchise system. The franchisor should show pictures and results of those who already have undertaken the rebrand. The focus of the franchisor is to make the experience as positive as it can for its franchisees. If the franchisor leaves the implementation of the franchise rebrand to the franchisees it won’t get done, and worse yet, it will meet with fierce resistance. If the franchisor treats its rebranding efforts as a general would prepare a battle plan it is more likely that the franchisor will enjoy a successful re-branding effort.
APPENDIX A

CONTRACTUAL CLAUSES

Discontinuance of Use of Marks

If we determine it is advisable at any time for us and/or you to modify or discontinue use of any Mark and/or use one or more additional or substitute trademarks, service marks or trade dress, you agree to comply with our directions within a reasonable time after notice. We will have no liability or obligation to you whatsoever with respect to any such required modification or discontinuance of any Mark, or the promotion of a substitute trademark, service mark or trade dress, that is a result of our determination of a risk of conflicting rights with others.

Modification. You acknowledge that we shall have the exclusive right to add, modify, discontinue and/or substitute any or all of the Marks on behalf of the System, as we deem appropriate in our sole discretion. Within 10 days from receiving our written notification, you must, at your sole cost and expense, discontinue using all Marks which we have modified or discontinued and begin using all additional, modified or substituted Marks, as we specify. Nothing under this Section ___ will materially alter your fundamental rights under this Agreement.

Modification of Trademarks

From time to time, in the Operations Manual or in directives or bulletins supplemental thereto, Company may add to, delete or modify any or all of the Trademarks. Franchisee shall accept, use, or cease using, as may be applicable, the Trademarks, including any such modified or additional trade names, trademarks, service marks, logotypes and commercial symbols, in accordance with the procedures, policies, rules and regulations contained in the Operations Manual, as though they were specifically set forth in this Agreement.

Franchisor may modify or discontinue Franchisee’s use of any Proprietary Marks and/or substitute Proprietary Marks. Franchisee agrees, at his/her expense, to comply with any such modification or discontinuance in accordance with time periods reasonably prescribed by the Franchisor.
EXCERPTS OF STATUTES

Wisconsin, Fair Dealership Law Sec. 135.03. Cancellation and Alteration of Dealerships

No grantor, directly or through any officer, agent or employee, may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

Italy: Law on “commercial affiliation” (Franchising)
Approved by the Senate of the Italian Republic on April 21, 2004

Unofficial translation provided by the EFF; 27.04.2004

Note Some unofficial translations in English have substituted the word “commercial affiliation” with Franchising. The EFF has chosen, in this translation, to refer as closely as it can to the original Italian terms, whilst marking their “franchising” equivalents in blue:
- “commercial affiliation” = franchising
- “affiliant” (which does actually exist in English, but which can be understood) = franchisor,
- “affiliate” = franchisee.

Article 3. Form and content of the contract

1. The “commercial affiliation” (franchise) contract must be in writing; otherwise it is null and void.

2. To set up a “commercial affiliation” (franchise) network, the “affiliant” (franchisor) must have tested its commercial formula on the market.

3. If the contract is defined for a limited term, the “affiliant” (franchisor) must guarantee the “affiliate” (franchisee) a minimum term to allow the latter to depreciate his investments, and in any case not less than three years, except in the case of earlier termination of the contract due to one of the parties not fulfilling its contractual obligations;
Minnesota Statutes Annotated

Trade Regulations, Consumer Protection (Ch. 324-338)

Chapter 325E. Trade Practices

Heavy and Utility Equipment Manufacturers and Dealers

M.S.A. § 325E.0681

325E.0681. Terminations or cancellations

Currentness

Subdivision 1. Good cause required. No equipment manufacturer, directly or through an officer, agent, or employee may terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, if the requirements are not different from those requirements imposed on other similarly situated dealers by their terms. In addition, good cause exists whenever:

(a) Without the consent of the equipment manufacturer who shall not withhold consent unreasonably, (1) the equipment dealer has transferred an interest in the equipment dealership, (2) there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or (3) there has been a substantial reduction in interest of a partner or majority stockholder.

(b) The equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it that has not been discharged within 30 days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the equipment business, or there has been a commencement of dissolution or liquidation of the dealer.

(c) There has been a change, without the prior written approval of the manufacturer, in the location of the dealer's principal place of business under the dealership agreement.

(d) The equipment dealer has defaulted under a security agreement between the dealer and the equipment manufacturer, or there has been a revocation or discontinuance of a guarantee of the dealer's present or future obligations to the equipment manufacturer.

(e) The equipment dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the business.

(f) The equipment dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and manufacturer.

(g) The dealer has engaged in conduct that is injurious or detrimental to the dealer's customers or to the public welfare.

(h) The equipment dealer, after receiving notice from the manufacturer of its requirements for reasonable market penetration based on the manufacturer's experience in other comparable marketing areas, consistently fails to meet the manufacturer's market penetration requirements.

Subd. 2. Notice. Except as otherwise provided in this subdivision, an equipment manufacturer shall provide an equipment dealer at least 90 days' prior written notice of termination, cancellation, or nonrenewal of the dealership agreement. The notice
MCA 30-11-802

Title 30. Trade and Commerce (Refs & Annos)
Chapter 11. Sales
Part 8. Termination, Cancellation, Nonrenewal, or Substantial Alteration of Farm Implement Dealership Agreements

30-11-802. Cancellation and alteration of dealerships

No grantor may, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.


LIBRARY REFERENCES

Antitrust and Trade Regulation ¶ 262.
Westlaw Key Number Search: 29TK262.

RESEARCH REFERENCES

ALR Library

40 ALR 5th 57, Damages for Wrongful Termination of Franchise Other Than Automobile Dealership Contracts.

NOTES OF DECISIONS

In general 1
Attorney fees 3
Damages 2
Sufficiency of evidence 4

1. In general

Sale of assets by farm equipment manufacturer to second farm equipment manufacturer significantly altered dealership relationship and contract between farm equipment dealer and first manufacturer, and thus nonretroactive statutes regarding changes in competitive circumstances applied to contract, even though original contract was entered into before statutes were enacted; first manufacturer was insolvent, and second manufacturer's position that it was entitled to assets but not liabilities of agreement with first manufacturer indicated that assignment to second manufacturer was more than product change. MCA 30-11-802, 30-11-803. Van Riper v. Ford New Holland, Inc., 1993, 261 Mont. 206, 862 P.2d 47. 40 A.L.R. 5th 827. Antitrust And Trade Regulation ¶ 130

2. Damages

Damage award of $443,000, to farm equipment franchise from manufacturer which changed competitive circumstances of franchise agreement without good cause and without proper notice, was not improper; damages were half of franchise's expert's ten-year projection for lost profits, and five-year profit projection based solely on manufacturer's projections suggested lost profits with present value of $698,040, and manufacturer's own expert projected lost profit with upper range of $501,885. MCA 30-11-802, 30-11-803. Van Riper v. Ford New Holland, Inc., 1993, 261 Mont. 206, 862 P.2d 47. 40 A.L.R. 5th 827. Antitrust And Trade Regulation ¶ 391

3. Attorney fees
MCA 30-11-802

West's Montana Code Annotated Currentness
Title 30. Trade and Commerce (Refs & Annos)
Chapter 11. Sales
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3. Attorney fees
Trial court properly awarded attorney fees of $162,000 in farm equipment franchisor's suit against manufacturer for changing competitive circumstances of franchise agreement without good cause and without proper notice; case involved novel and difficult question of interpretation of statutes which had not been previously construed, case involved series of complicated factual issues, case required over three and one half years to complete, case was important, and result obtained was favorable to franchise. MCA 30-11-802, 30-11-803. Van Riper v. Ford New Holland, Inc., 1993, 261 Mont. 206, 862 P.2d 47, 40 A.L.R.5th 827. Antitrust And Trade Regulation Cm. 397

4. Sufficiency of evidence

Sufficient evidence supported finding that farm equipment manufacturer violated statute prohibiting grantor from substantially changing competitive circumstances of dealership agreement without good cause; manufacturer placed farm equipment dealer in atrophied status, deprived dealer of possibility of selling franchise, requested dealer's resignation, and erroneously maintained that dealer breached agreement, and established competing dealership when it was aware two competing dealers could not survive. MCA 30-11-802. Van Riper v. Ford New Holland, Inc., 1993, 261 Mont. 206, 862 P.2d 47, 40 A.L.R.5th 827. Antitrust And Trade Regulation Cm. 369

Current through all 2007 legislation

West's Tennessee Code Annotated

Title 47. Commercial Instruments and Transactions

Chapter 25. Trade Practices (Refs & Anns)

Part 13. Repurchase of Terminated Franchise Inventory (Refs & Anns)

T. C. A. § 47-25-1302

§ 47-25-1302. Retail agreements; good cause

Currentness

(a) No supplier, directly or through an officer, agent or employee, may terminate, cancel, fail to renew or substantially change the competitive circumstances of a retail agreement without good cause. “Good cause” means failure by a retailer to comply with requirements imposed upon the retailer by the retail agreement if such requirements are not different from those imposed on other retailers similarly situated in this state. In addition, good cause exists whenever:

1. There has been a closeout on the sale of a substantial part of the retailer’s assets related to the equipment business, or there has been a commencement of a dissolution or liquidation of the retailer;

2. The retailer has changed its principal place of business or added additional locations without prior approval of the supplier, which shall not be unreasonably withheld;

3. The retailer has substantially defaulted under a chattel mortgage or other security agreement between the retailer and the supplier, or there has been a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier;

4. The equipment retailer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned the business;

5. The retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and the supplier; or

6. The retailer transfers an interest in the dealership, or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership. However, good cause does not exist if the supplier consents to an action described in this subsection.

(b) Except as otherwise provided herein, a supplier shall provide a retailer with at least ninety (90) days’ written notice of termination, cancellation or nonrenewal of the retail agreement and a sixty-day right to cure the deficiency. If the deficiency is cured within the allotted time, the notice is void. In the case where termination is enacted due to market penetration, a reasonable period of time shall have existed where the supplier has worked with the dealer to gain the desired market share. The notice shall state all reasons constituting good cause for action. The notice is not required if the reason for termination, cancellation or nonrenewal is a violation under the provisions of subsection (a).

Credits

Notes of Decisions containing your search terms (0)
§ 4-72-310. Violations of subchapter, A.C.A. § 4-72-310

West's Arkansas Code Annotated

Title 4. Business and Commercial Law

Subtitle 6. Business Practices (Chapters 70 to 85)

Chapter 72. Franchises

Subchapter 3. Farm Equipment Retailer Franchise Protection

A.C.A. § 4-72-310

§ 4-72-310. Violations of subchapter

Currentness

(a) It is a violation of this subchapter for a manufacturer, wholesaler, or distributor to coerce a dealer to accept delivery of parts, accessories, or specialized tools which the dealer has not voluntarily ordered.

(b) It is a violation of this subchapter for a manufacturer to:

(1)(A) Condition or attempt to condition the sale of farm implements, machinery, utility and industrial equipment, lawn and garden outdoor powered machinery and equipment, and attachments on a dealer also purchasing other goods or services, except that a manufacturer may require the dealer to purchase those parts reasonably necessary to maintain the quality of operation in the field of the equipment used in the trade area and to purchase or lease such telecommunications equipment, including computer software, as is substantially and reasonably necessary to communicate with the manufacturer.

(B) Provided, however, that upon termination, nonrenewal, or cancellation of an equipment dealer franchise, the equipment manufacturer must reimburse the equipment dealer for all telecommunications equipment, including computer software, purchased by the equipment dealer in order to comply with the requirements of the equipment manufacturer that the dealer returns or offers to return to the equipment manufacturer, subject to a reasonable reduction for depreciation;

(2) Coerce or attempt to coerce a dealer into refusing to purchase the equipment manufactured by another equipment manufacturer;

(3)(A) Discriminate in the prices charged for equipment of like grade and quality sold by the equipment manufacturer to similarly situated equipment dealers.

(B) This does not prevent the use of volume discount or a differential which makes only due allowance for differences in the cost of manufacture, sale, or delivery, or for the differing methods by which or quantities in which the equipment is sold or delivered by the equipment manufacturer; or

(4) Attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealership agreement based on the result of a natural disaster, including a sustained drought in the dealership market area, labor dispute, or other circumstances beyond the dealer's control.

Credits

Notes of Decisions containing your search terms (0)
View all 5
§ 4-72-310. Violations of subchapter, A.C.A. § 4-72-310


End of Document

United States Code Annotated

Title 15. Commerce and Trade

Chapter 85. Petroleum Marketing Practices (Refs & Annos)

Subchapter I. Franchise Protection

15 U.S.C.A. § 2801

§ 2801. Definitions

Effective: December 20, 2007
Currentness

As used in this subchapter:

(I)(A) The term “franchise” means any contract--

(i) between a refiner and a distributor,

(ii) between a refiner and a retailer,

(iii) between a distributor and another distributor, or

(iv) between a distributor and a retailer,

under which a refiner or distributor (as the case may be) authorizes or permits a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such use.

(B) The term “franchise” includes--

(i) any contract under which a retailer or distributor (as the case may be) is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such occupancy;

(ii) any contract pertaining to the supply of motor fuel which is to be sold, consigned or distributed--

(I) under a trademark owned or controlled by a refiner; or

(II) under a contract which has existed continuously since May 15, 1973, and pursuant to which, on May 15, 1973, motor fuel was sold, consigned or distributed under a trademark owned or controlled on such date by a refiner; and

(iii) the unexpired portion of any franchise, as defined by the preceding provisions of this paragraph, which is transferred or assigned as authorized by the provisions of such franchise or by any applicable provision of State law which permits such transfer or assignment without regard to any provision of the franchise.

(2) The term “franchise relationship” means the respective motor fuel marketing or distribution obligations and responsibilities of a franchiseor a franchisee which result from the marketing of motor fuel under a franchise.
(3) The term "franchisor" means a refiner or distributor (as the case may be) who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(4) The term "franchisee" means a retailer or distributor (as the case may be) who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(5) The term "refiner" means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person.

(6) The term "distributor" means any person, including any affiliate of such person, who—

(A) purchases motor fuel for sale, consignment, or distribution to another; or

(B) receives motor fuel on consignment for consignment or distribution to his own motor fuel accounts or to accounts of his supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

(7) The term "retailer" means any person who purchases motor fuel for sale to the general public for ultimate consumption.

(8) The term "marketing premises" means, in the case of any franchise, premises which, under such franchise, are to be employed by the franchisee in connection with sale, consignment, or distribution of motor fuel.

(9) The term "leased marketing premises" means marketing premises owned, leased, or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of motor fuel.

(10) The term "contract" means any oral or written agreement. For supply purposes, delivery levels during the same month of the previous year shall be prima facie evidence of an agreement to deliver such levels.

(11) The term "trademark" means any trademark, trade name, service mark, or other identifying symbol or name.

(12) The term "motor fuel" means gasoline and diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

(13) The term "failure" does not include—

(A) any failure which is only technical or unimportant to the franchise relationship;

(B) any failure for a cause beyond the reasonable control of the franchisee; or

(C) any failure based on a provision of the franchise which is illegal or unenforceable under the law of any State (or subdivision thereof).

(14) The terms "fail to renew" and "nonrenewal" mean, with respect to any franchise relationship, a failure to reinstate, continue, or extend the franchise relationship—

(A) at the conclusion of the term, or on the expiration date, stated in the relevant franchise;

(B) at any time, in the case of the relevant franchise which does not state a term of duration or an expiration date; or

(C) following a termination (on or after June 19, 1978) of the relevant franchise which was entered into prior to June 19, 1978, and has not been renewed after such date.
(15) The term "affiliate" means any person who (other than by means of a franchise) controls, is controlled by, or is under common control with, any other person.

(16) The term "relevant geographic market area" includes a State or a standard metropolitan statistical area as periodically established by the Office of Management and Budget.

(17) The term "termination" includes cancellation.

(18) The term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).

(19) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

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Title 15. Commerce and Trade

Chapter 55. Petroleum Marketing Practices (Refs & Annos)

Subchapter I. Franchise Protection

15 U.S.C.A. § 2802

§ 2802. Franchise relationship

Currentness

(a) General prohibition against termination or nonrenewal
Except as provided in subsection (b) of this section and section 2803 of this title, no franchisor engaged in the sale, consignment, or distribution of motor fuel in commerce may--

(1) terminate any franchise (entered into or renewed on or after June 19, 1978) prior to the conclusion of the term, or the expiration date, stated in the franchise; or

(2) fail to renew any franchise relationship (without regard to the date on which the relevant franchise was entered into or renewed).

(b) Precondition and grounds for termination or nonrenewal

(1) Any franchisor may terminate any franchise (entered into or renewed on or after June 19, 1978) or may fail to renew any franchise relationship, if--

(A) the notification requirements of section 2804 of this title are met; and

(B) such termination is based upon a ground described in paragraph (2) or such nonrenewal is based upon a ground described in paragraph (2) or (3).

(2) For purposes of this subsection, the following are grounds for termination of a franchise or nonrenewal of a franchise relationship:

(A) A failure by the franchisee to comply with any provision of the franchise, which provision is both reasonable and of material significance to the franchise relationship, if the franchisor first acquired actual or constructive knowledge of such failure--

(i) not more than 120 days prior to the date on which notification of termination or nonrenewal is given, if notification is given pursuant to section 2804(a) of this title; or

(ii) not more than 60 days prior to the date on which notification of termination or nonrenewal is given, if less than 90 days notification is given pursuant to section 2804(b)(1) of this title.

(B) A failure by the franchisee to exert good faith efforts to carry out the provisions of the franchise, if--

(i) the franchisee was apprised by the franchisor in writing of such failure and was afforded a reasonable opportunity to exert good faith efforts to carry out such provisions; and
(ii) such failure thereafter continued within the period which began not more than 180 days before the date notification of termination or nonrenewal was given pursuant to section 2804 of this title.

(C) The occurrence of an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable, if such event occurs during the period the franchise is in effect and the franchisor first acquired actual or constructive knowledge of such occurrence--

(i) not more than 120 days prior to the date on which notification of termination or nonrenewal is given, if notification is given pursuant to section 2804(a) of this title; or

(ii) not more than 60 days prior to the date on which notification of termination or nonrenewal is given, if less than 90 days notification is given pursuant to section 2804(b)(1) of this title.

(D) An agreement, in writing, between the franchisor and the franchisee to terminate the franchise or not to renew the franchise relationship, if--

(i) such agreement is entered into not more than 180 days prior to the date of such termination or, in the case of nonrenewal, not more than 180 days prior to the conclusion of the term, or the expiration date, stated in the franchise;

(ii) the franchisee is promptly provided with a copy of such agreement, together with the summary statement described in section 2804(d) of this title; and

(iii) within 7 days after the date on which the franchisee is provided a copy of such agreement, the franchisee has not posted by certified mail a written notice to the franchisor repudiating such agreement.

(E) In the case of any franchise entered into prior to June 19, 1978, and in the case of any franchise entered into or renewed on or after such date (the term of which is 3 years or longer, or with respect to which the franchisee was offered a term of 3 years or longer), a determination made by the franchisor in good faith and in the normal course of business to withdraw from the marketing of motor fuel through retail outlets in the relevant geographic market area in which the marketing premises are located, if--

(i) such determination--

(I) was made after the date such franchise was entered into or renewed, and

(II) was based upon the occurrence of changes in relevant facts and circumstances after such date;

(ii) the termination or nonrenewal is not for the purpose of converting the premises, which are the subject of the franchise, to operation by employees or agents of the franchisor for such franchisor's own account; and

(iii) in the case of leased marketing premises--

(I) the franchisor, during the 180-day period after notification was given pursuant to section 2804 of this title, either made a bona fide offer to sell, transfer, or assign to the franchisee such franchisor's interests in such premises, or, if applicable, offered the franchisee a right of first refusal of at least 45 days duration of an offer, made by another, to purchase such franchisor's interest in such premises; or

(II) in the case of the sale, transfer, or assignment to another person of the franchisor's interest in such premises in connection with the sale, transfer, or assignment to such other person of the franchisor's interest in one or more other marketing premises, if such other person offers, in good faith, a franchise to the franchisee on terms and conditions which are not discriminatory to the franchisee as compared to franchisees then currently being offered by such other person or franchisees then in effect and with respect to which such other person is the franchisor.

(3) For purposes of this subsection, the following are grounds for nonrenewal of a franchise relationship:

(A) The failure of the franchisor and the franchisee to agree to changes or additions to the provisions of the franchise, if--

(i) such changes or additions are the result of determinations made by the franchisor in good faith and in the normal course of business; and

(ii) such failure is not the result of the franchisor's insistence upon such changes or additions for the purpose of converting the leased marketing premises to operation by employees or agents of the franchisor for the benefit of the franchisor or otherwise preventing the renewal of the franchise relationship.

(B) The receipt of numerous bona fide customer complaints by the franchisor concerning the franchisee's operation of the marketing premises, if--

(i) the franchisee was promptly apprised of the existence and nature of such complaints following receipt of such complaints by the franchisor; and

(ii) if such complaints related to the condition of such premises or to the conduct of any employee of such franchisee, the franchisee did not promptly take action to cure or correct the basis of such complaints.

(C) A failure by the franchisee to operate the marketing premises in a clean, safe, and healthful manner, if the franchisee failed to do so on two or more previous occasions and the franchisor notified the franchisee of such failures.

(D) In the case of any franchise entered into prior to June 19, 1978, (the unexpired term of which, on such date, is 3 years or longer) and, in the case of any franchise entered into or renewed on or after such date (the term of which was 3 years or longer, or with respect to which the franchise was offered a term of 3 years or longer), a determination made by the franchisor in good faith and in the normal course of business, if--

(i) such determination is--

(I) to convert the leased marketing premises to a use other than the sale or distribution of motor fuel,

(II) to materially alter, add to, or replace such premises,

(III) to sell such premises, or

(IV) that renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or reasonable additions to the provisions of the franchise which may be acceptable to the franchisee;

(ii) with respect to a determination referred to in subclause (II) or (IV), such determination is not made for the purpose of converting the leased marketing premises to operation by employees or agents of the franchisor for such franchisor's own account; and

(iii) in the case of leased marketing premises such franchisor, during the 90-day period after notification was given pursuant to section 2804 of this title, either--

(I) made a bona fide offer to sell, transfer, or assign to the franchisee such franchisor's interests in such premises; or

(II) if applicable, offered the franchisee a right of first refusal of at least 45-days duration of an offer, made by another, to purchase such franchisor's interest in such premises.

(c) Definition
As used in subsection (b)(2)(C) of this section, the term "an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable" includes events such as—

(1) fraud or criminal misconduct by the franchisee relevant to the operation of the marketing premises;

(2) declaration of bankruptcy or judicial determination of insolvency of the franchisee;

(3) continuing severe physical or mental disability of the franchisee of at least 3 months duration which renders the franchisee unable to provide for the continued proper operation of the marketing premises;

(4) loss of the franchisor's right to grant possession of the leased marketing premises through expiration of an underlying lease, if—

(A) the franchisee was notified in writing, prior to the commencement of the term of the then existing franchise—

(i) of the duration of the underlying lease; and

(ii) of the fact that such underlying lease might expire and not be renewed during the term of such franchise (in the case of termination) or at the end of such term (in the case of nonrenewal);

(B) during the 90-day period after notification was given pursuant to section 2804 of this title, the franchisor offers to assign to the franchisee any option to extend the underlying lease or option to purchase the marketing premises that is held by the franchisor, except that the franchisor may condition the assignment upon receipt by the franchisor of—

(i) an unconditional release executed by both the landlord and the franchisee releasing the franchisor from any and all liability accruing after the date of the assignment for—

(I) financial obligations under the option (or the resulting extended lease or purchase agreement);

(II) environmental contamination to (or originating from) the marketing premises; or

(III) the operation or condition of the marketing premises; and

(ii) an instrument executed by both the landlord and the franchisee that ensures the franchisor and the contractors of the franchisor reasonable access to the marketing premises for the purpose of testing for and remediating any environmental contamination that may be present at the premises; and

(C) in a situation in which the franchisee acquires possession of the leased marketing premises effective immediately after the loss of the right of the franchisor to grant possession (through an assignment pursuant to subparagraph (B) or by obtaining a new lease or purchasing the marketing premises from the landlord), the franchisor (if requested in writing by the franchisee not later than 30 days after notification was given pursuant to section 2804 of this title), during the 90-day period after notification was given pursuant to section 2804 of this title—

(i) made a bona fide offer to sell, transfer, or assign to the franchisee the interest of the franchisor in any improvements or equipment located on the premises; or

(ii) if applicable, offered the franchisee a right of first refusal (for at least 45 days) of an offer, made by another person, to purchase the interest of the franchisor in the improvements and equipment.

(5) condemnation or other taking, in whole or in part, of the marketing premises pursuant to the power of eminent domain;

(6) loss of the franchisor's right to grant the right to use the trademark which is the subject of the franchise, unless such loss was due to trademark abuse, violation of Federal or State law, or other fault or negligence of the franchisor, which such abuse, violation, or other fault or negligence is related to action taken in bad faith by the franchisor;
(7) destruction (other than by the franchisor) of all or a substantial part of the marketing premises;

(8) failure by the franchisee to pay to the franchisor in a timely manner when due all sums to which the franchisor is legally entitled;

(9) failure by the franchisee to operate the marketing premises for--

(A) 7 consecutive days, or

(B) such lesser period which under the facts and circumstances constitutes an unreasonable period of time;

(10) willful adulteration, mislabeling or misbranding of motor fuels or other trademark violations by the franchisee;

(11) knowing failure of the franchisee to comply with Federal, State, or local laws or regulations relevant to the operation of the marketing premises; and

(12) conviction of the franchisee of any felony involving moral turpitude.

(d) Compensation, etc., for franchisee upon condemnation or destruction of marketing premises

In the case of any termination of a franchise (entered into or renewed on or after June 19, 1978), or in the case of any nonrenewal of a franchise relationship (without regard to the date on which such franchise relationship was entered into or renewed) --

(1) if such termination or nonrenewal is based upon an event described in subsection (c)(5) of this section, the franchisor shall fairly apportion between the franchisor and the franchisee compensation, if any, received by the franchisor based upon any loss of business opportunity or good will; and

(2) if such termination or nonrenewal is based upon an event described in subsection (c)(7) of this section and the leased marketing premises are subsequently rebuilt or replaced by the franchisor and operated under a franchise, the franchisor shall, within a reasonable period of time, grant to the franchisee a right of first refusal of the franchise under which such premises are to be operated.

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19.98.008. Definitions, West's RCWA 19.98.008

West's Revised Code of Washington Annotated

Title 19. Business Regulations—Miscellaneous (Refs & Annos)

Chapter 19.98. Farm Implements, Machinery, Parts (Refs & Annos)

West's RCWA 19.98.008

19.98.008. Definitions

Currentness

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Audit" means a review by a supplier of a dealer's warranty claims records.

(2) "Change in competitive circumstances" means to materially impact a specific dealer's ability to compete with similarly situated dealers selling the same brand of equipment.

(3) "Current net price" means the price charged to a dealer for repair parts as listed in the printed price list, catalog, or electronic catalog of the supplier in effect at the time a warranty claim is made and superseded parts listed in current price lists, catalogs, or electronic catalogs when parts had previously been purchased from the supplier and held by the dealer on the date of the cancellation or discontinuance of a dealer agreement or thereafter received by the dealer from the supplier.

(4) "Dealer" means a person primarily engaged in the retail sale and service of farm equipment, including a person engaged in the retail sale of outdoor power equipment who is primarily engaged in the retail sale and service of farm equipment. Dealer does not include a person primarily engaged in the retail sale of outdoor power equipment or a supplier.

(5) "Dealer agreement" means an oral or written contract or agreement for a definite or indefinite period of time in which a supplier of equipment grants to a dealer permission to use a trade name, service mark, or related characteristic, and where there is a community of interest in the marketing of equipment or services related to the equipment at wholesale, retail, leasing, or otherwise.

(6) "Dealership" means the retail sale business engaged in by a dealer under a dealer agreement.

(7) "Distributor" means a person who sells or distributes new equipment to dealers or who maintains distributor representatives within the state.

(8) "Distributor branch" means a branch office, maintained by a distributor, that sells or distributes new equipment to dealers. "Distributor branch" includes representatives of the branch office.

(9)(a) "Equipment" includes:

(i) Farm equipment. Farm equipment includes but is not limited to tractors, trailers, combines, tillage implements, balers, and other equipment, including attachments and accessories that are used in the planting, cultivating, irrigation, harvesting, and marketing of agricultural, horticultural, or livestock products.

(ii) Outdoor power equipment. Outdoor power equipment includes self-propelled equipment that is used to maintain commercial, public, or residential lawns and gardens or used in landscape, turf, or golf course maintenance.

(b) "Equipment" does not include motor vehicles designed or intended for use upon public roadways as defined in RCW 46.70.011 or motorcycles as defined in *RCW 46.94.010.
(10) "Factory branch" means a branch office maintained by a manufacturer that makes or assembles equipment for sale to distributors or dealers or that is maintained for directing and supervising the representatives of the manufacturer.

(11) "Factory representative" means a person employed by a manufacturer or by a factory branch for the purpose of selling or promoting the sale of equipment or for supervising, servicing, instructing, or contracting with dealers or prospective dealers.

(12) "Free on board" or "F.O.B." has the same meaning as described in RCW 62A.2-319.

(13) "Geographic market area" means the geographic region for which a particular dealer is responsible for the marketing, selling, leasing, or servicing of equipment pursuant to a dealer agreement.

(14) "Good cause" means failure by a dealer to comply with requirements imposed upon the dealer by the dealer agreement, provided such requirements are not different from those requirements imposed on other similarly situated dealer[s] in the state either by their terms or in the manner of their enforcement.

(15) "Manufacturer" means a person engaged in the business of manufacturing or assembling new and unused equipment.

(16) "Person" includes a natural person, corporation, partnership, trust, or other entity, including any other entity in which it has a majority interest or of which it has control, as well as the individual officers, directors, or other persons in active control of the activities of each entity.

(17) "Similarly situated dealer" means a dealer of comparable geographic location, volume, and market type.

(18) "Supplier" means a person or other entity engaged in the manufacturing, assembling, or wholesale distribution of equipment or repair parts of the equipment. "Supplier" includes any successor in interest, including a purchaser of assets, stock, or a surviving corporation resulting from a merger, liquidation, or reorganization of the original supplier, or any receiver or any trustee of the original supplier.

(19) "Warranty claim" means a claim for payment submitted by a dealer to a supplier for either service, or parts, or both, provided to a customer under a warranty issued by the supplier.

(20) "Wholesaler" means a person who sells or attempts to sell new equipment exclusively to dealers or to other wholesalers.

Credits

[2002 c 236 § 1.]

Current with 2010 Legislation effective through April 22, 2010

It shall be a violation of this chapter for a supplier to:

(1) Require or attempt to require any dealer to order or accept delivery of any equipment or parts that the dealer has not voluntarily ordered;

(2) Require or attempt to require any dealer to enter into any agreement, whether written or oral, supplementary to an existing dealer agreement with the supplier, unless such supplementary agreement is imposed on other similarly situated dealers in the state;

(3) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of the dealer's order, to any dealer having a dealer agreement for the retail sale of new equipment sold or distributed by the supplier, equipment covered by the dealer agreement specifically advertised or represented by the supplier to be available for immediate delivery. However, the failure to deliver any such equipment shall not be considered a violation of this chapter when deliveries are based on prior ordering histories, the priority given to the sequence in which the orders are received, or manufacturing schedules or if the failure is due to prudent and reasonable restriction on extension of credit by the supplier to the dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control;

(4) Terminate, cancel, or fail to renew the dealer agreement of any dealer or substantially change the dealer's competitive circumstances, attempt to terminate or cancel, or threaten to not renew the dealer agreement or to substantially change the competitive circumstances without good cause;

(5) Condition the renewal, continuation, or extension of a dealer agreement on the dealer's substantial renovation of the dealer's place of business or on the construction, purchase, acquisition, or rental of a new place of business by the dealer unless: The supplier has advised the dealer in writing of its demand for such renovation, construction, purchase, acquisition, or rental within a reasonable time prior to the effective date of the proposed date of renovation or extensions, but in no case less than one year; the supplier demonstrates the need for such change in the place of business and the reasonableness of the demand with respect to marketing and servicing the supplier's product and any economic conditions existing at the time in the dealer's trade area; and the dealer does not make a good faith effort to complete the construction or renovation plans within one year;

(6) Discriminate in the prices charged for equipment of like grade, quality, and brand sold by the supplier to similarly situated dealers in this state. This subsection does not prevent the use of differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are sold or delivered: PROVIDED, That nothing shall prevent a supplier from offering a lower price in order to meet an equally low price of a competitor, or the services or facilities furnished by a competitor;

(7) Prevent, by contract or otherwise, any equipment dealer from changing the capital structure of the equipment dealership or the means by which the equipment dealership is financed, provided the equipment dealer at all times meets any reasonable capital standards imposed by the supplier or as otherwise agreed to between the equipment dealer and supplier, and provided
this change by the equipment dealer does not result in a change of the controlling interest in the executive management or board of directors, or any guarantors of the equipment dealership;

(8) Prevent, by contract or otherwise, any equipment dealer or any officer, member, partner, or stockholder of any equipment dealer from selling or transferring any part of the interest of any of them to any other party or parties. However, no equipment dealer, officer, partner, member, or stockholder has the right to sell, transfer, or assign the equipment dealership or power of management or control of the dealership without the written consent of the supplier. Should a supplier determine that the designated transferee is not acceptable, the supplier shall provide the equipment dealer with written notice of the supplier's objection and specific reasons for withholding its consent;

(9) Withhold consent to a transfer of interest in an equipment dealership unless, with due regard to regional market conditions and distribution economics, the dealer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support a dealer. In any dispute between a supplier and an equipment dealer, the supplier bears the burden of proving that the dealer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support a dealer. The proof offered must be in writing. The provisions of this subsection do not preclude any other basis for a supplier to withhold consent to a transfer of interest in an equipment dealer;

(10) Fail to compensate a dealer for preparation and delivery of equipment that the supplier sells or leases for use within this state and that the dealer prepares for delivery and delivers;

(11) Require a dealer to assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed by this chapter; or

(12)(a) Unreasonably withhold consent, in the event of the death of the dealer or the principal owner of the dealership, to the transfer of the dealer's interest in the dealership to another qualified individual if the qualified individual meets the reasonable financial, business experience, and character standards required by the supplier. Should a supplier determine that the designated qualified individual does not meet those reasonable written standards, it shall provide the dealership, heirs to the dealership, or the estate of the dealer with written notice of its objection and specific reasons for withholding its consent. A supplier shall have sixty days to consider a dealer's request to make a transfer. If the qualified individual reasonably satisfies the supplier's objections within sixty days, the supplier shall approve the transfer. Nothing in this section shall entitle a qualified individual to continue to operate the dealership without the consent of the supplier.

(b) If a supplier and dealer have duly executed an agreement concerning succession rights prior to the dealer's death and the agreement has not been revoked, the agreement shall be observed even if it designates someone other than the surviving spouse or heirs of the decedent as the successor.

 Credits

[2002 c 236 § 7; 1990 c 124 § 3.]

Current with 2010 Legislation effective through April 22, 2010
19.98.130. Termination, cancellation, or nonrenewal of dealer agreement—Notice

Currentness

(1) Except where grounds for termination or nonrenewal of a dealer agreement or a substantial change in a dealer's competitive circumstances are contained in subsection (2)(a), (b), (c), (d), (e), or (f) of this section, a supplier shall give a dealer ninety days' written notice of the supplier's intent to terminate, cancel, or not renew a dealer agreement or substantially change the dealer's competitive circumstances. The notice shall state all reasons constituting good cause for termination, cancellation, or nonrenewal and shall provide, except for termination pursuant to subsection (2)(a), (b), (c), (d), or (e) of this section, that the dealer has sixty days in which to cure any claimed deficiency. If the deficiency is rectified within sixty days, the notice shall be void. The contractual terms of the dealer agreement shall not expire or the dealer's competitive circumstances shall not be substantially changed without the written consent of the dealer prior to the expiration of at least ninety days following such notice.

(2) As used in RCW 19.98.100 through 19.98.150 and 19.98.911, a termination by a supplier of a dealer agreement shall be with good cause when the dealer:

(a) Has transferred a controlling ownership interest in the dealership without the supplier's consent;

(b) Has made a material misrepresentation to the supplier;

(c) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer which has not been discharged within sixty days after the filing, is in default under the provisions of a security agreement in effect with the supplier, or is insolvent or in receivership;

(d) Has been convicted of a crime, punishable for a term of imprisonment for one year or more;

(e) Has failed to operate in the normal course of business for ten consecutive business days or has terminated the business;

(f) Has relocated the dealer's place of business without supplier's consent;

(g) Has consistently engaged in business practices that are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, or failure to provide service and replacement parts or perform warranty obligations;

(h) Has inadequately represented the supplier over a measured period causing lack of performance in sales, service, or warranty areas and failed to achieve market penetration at levels consistent with similarly situated dealerships in the state based on available record information;

(i) Has consistently failed to meet building and housekeeping requirements or failed to provide adequate sales, service, or parts personnel commensurate with the dealer agreement;

(j) Has consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf, or
(c) Has consistently failed to comply with the terms of the dealer agreement.

(3)(a) Notwithstanding the provisions of subsections (1) and (2) of this section, before the termination or nonrenewal of a dealer agreement based upon a supplier's claim that the dealer has failed to meet reasonable marketing criteria or market penetration, the supplier shall provide written notice of its intention at least one year in advance.

(b) Upon the end of the one-year period established in this subsection (3), the supplier may terminate or elect not to renew the dealer agreement only upon written notice specifying the reasons for determining that the dealer failed to meet reasonable marketing criteria or market penetration. The notice must specify that termination or nonrenewal is effective one hundred eighty days from the date of the notice.

Credits
[2002 c 226 § 8; 1990 c 124 § 4.]
Any equipment dealer may bring an action against a supplier in any court of competent jurisdiction for damages sustained by the equipment dealer as a consequence of the supplier's violation including requiring the supplier to repurchase at fair market value any data processing hardware and specialized repair tools and equipment previously purchased pursuant to requirements of the supplier, compensation for any loss of business, and the actual costs of the action, including reasonable attorneys' fees. The equipment dealer may also be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The remedies set forth in this action shall not be deemed exclusive and shall be in addition to any other remedies permitted by law. Nothing in this section is intended to prevent any court from awarding to the supplier actual costs of the action, including reasonable attorney's fees if the action is deemed frivolous.

Credits

[1990 c 124 § 5.]

Current with 2010 Legislation effective through April 22, 2010