
THE FRANCHISE LAW REVIEW

FOURTH EDITION

EDITOR
MARK ABELL

LAW BUSINESS RESEARCH

This book is dedicated to
JOHN NELSON-JONES,
an exceptional lawyer and mentor,
who passed the wonder and pleasure of
practising law from one generation to another,
with an unsurpassed generosity of spirit.

THE FRANCHISE LAW REVIEW

Fourth Edition

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MARK ABELL

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EDITOR'S PREFACE

This book is dedicated to my dear, recently deceased mentor, John Nelson-Jones, who took me under his wing and first introduced me to international franchising in the early 1980s. At that time I had no idea what an incredible professional journey I was embarking upon. Without John's immense intellect, keen understanding of the commercial world and enormous generosity of spirit, supporting and encouraging me, I may well have given it up as being far too much of a challenge for a young lawyer. It soon became clear to me that to advise clients upon franchising one needed to have a strong understanding of a wide range of legal disciplines, from competition law and intellectual property through real estate, contract, commercial, corporate, tax and private international law to the boundaries of new and previously undreamed of areas of jurisprudence in jurisdictions far beyond one's own. Who in the early 1980s, for example, had even imagined areas of law such as privacy and data protection, which now play such an important role in how franchising is structured and regulated across the globe? It all seemed an incredible intellectual and professional challenge in respect of an area of commerce that was not even recognised as existing under English law. However, John was gently insistent and understood the role that franchising would play in an increasingly global economy. For John, who was a true legal polymath (having authored several leading textbooks on areas of law as diverse as taxation and package holidays), the breadth and depth of legal knowledge that was required merely made franchising a more interesting and rewarding area of law in which to specialise.

Showing his characteristic altruism and desire to help young lawyers make the most of their talents, John guided and supported me as I struggled to understand the international complexities of franchising, sending me to the United States, where I was able to immerse myself in the dynamic and highly regulated world of American franchising. I also had the pleasure of co-authoring my first chapter in a legal text book on franchising with John, or 'JANJ', as the younger lawyers in the firm referred to him. In his typically gracious and humorous manner, he insisted that my name appear before his in the index and on the first page of the chapter as, in his words, "The 'A' is mightier than the 'N'!"

John was a charming and self-effacing individual, with a kind word for everyone and a genuine interest in everybody who worked with him. I was only one of his protégées, and he steered many other young lawyers to become internationally renowned practitioners in

a number of other areas of law, such as taxation and international travel. John took all of the hard work involved in supporting and shaping the careers of young lawyers easily in his stride, while at the same time successfully managing one of the City's up-and-coming law firms, looking after a large and demanding portfolio of blue-chip clients and making regular Saturday visits to Plough Lane, where he watched his local football club, Wimbledon (aka 'the Crazy Gang'), win the FA Cup in 1988 and then try to defy gravity by vainly battling to avoid relegation from the first division for the rest of the decade.

Thirty-five years on from the time that John introduced me to international franchising, his confidence in the future role and importance of franchising in the world economy has been vindicated. As usual, he was able to see what most others could not – potential, whether it was in respect of people or ways of doing business.

The Franchise Law Review is therefore just one small part of John's legacy to the legal profession and it is my great pleasure to dedicate this fourth edition to him.

Since the publication of the third edition of *The Franchise Law Review*, there have been major economic and geopolitical developments that have had a significant impact on world trade, not least the election of Donald Trump as president of the United States and the referendum that resulted in Brexit. The price of oil is still low, China's manufacturing sector is still suffering significant setbacks, Europe faces a further range of challenges, Iran and Saudi Arabia are exacerbating the problems in the Middle East and the Russian economy continues to float in the doldrums. Through all this, however, the apparently inexorable march towards the globalisation of commerce has continued unabated.

Despite the slow emergence of a few economic bright spots, the economy of what was once called the 'developed' world continues to struggle for the most part, while even Brazil (despite the recent Olympics) is still wallowing in recession. As a consequence, businesses are often presented with little choice but to look to more vibrant markets in Asia, the Middle East and Africa for their future growth.

The key word would seem to be uncertainty.

Brexit is set to have an impact on franchising in Europe, but it is as yet unclear what that impact will be. With the fall in the pound against the dollar we have already seen a number of US franchisors buy out their UK master franchisees. However, whether that is a long-term trend remains to be seen. In legal terms, the only potentially significant impact so far has been upon EU trademarks, resulting in many franchisors taking the precaution of also registering UK brands for their marks. On the other side of the Atlantic, the election of Donald Trump to the presidency is another unknown that will most probably have an impact upon franchising during the next few years.

The political uncertainty in continental Europe is also likely to have some impact. With the demise of both Hollande in France and Renzi in Italy, and the general rise of anti-establishment and anti-EU parties, Chancellor Merkel in Germany seems likely to be one of the few strands of continuity over the coming few years.

South–South trade continues to increase, perhaps at the expense of its North–South counterpart. All of this, coupled with the unstable wider geopolitical landscape, presents business with only one near certainty: there will be continued deleveraging of businesses in the coming years and, thus, growing barriers to international growth for many of them. All but the most substantial and well-structured of such businesses may find themselves facing not only significant difficulties because of their reduced access to funding for investment in their foreign ventures, but also challenges arising from their lack of managerial experience and bandwidth.

At the same time, the regulation of franchising continues to evolve and the past 12 months have seen the EU Parliament focus on how it might best change the regulatory environment for franchising within the European Single Market.

Despite all of the above uncertainty, franchising, in its various forms, continues to present businesses with one way of achieving profitable and successful international growth without the need for either substantial capital investment or a broad managerial infrastructure. In sectors as diverse as food and beverages, retail, hospitality, education, healthcare and financial services, it continues to be a popular catalyst for international commerce and makes a strong and effective contribution to world trade. We are even seeing governments turning to it as an effective strategy in the future development of the welfare state, as social franchising continues to gain traction as a means of achieving key social objectives.

Given the positive role that franchising can make in the world economy, it is important that legal practitioners have an appropriate understanding of how it is regulated around the globe. This book provides an introduction to the basic elements of international franchising and an overview of the way it is regulated in 36 jurisdictions.

As will be apparent from the chapters of this book, there continues to be no homogeneous approach to the regulation of franchising around the world. Some countries specifically regulate particular aspects of the franchising relationship. Of these, a number try to ensure an appropriate level of pre-contractual hygiene, while others focus instead on imposing mandatory terms upon the franchise relationship. Some do both. In certain countries, there is a requirement to register certain documents in a public register. Others restrict the manner in which third parties can be involved in helping franchisors meet potential franchisees. No two countries regulate franchising in the same way. Even those countries that have a well-developed regulatory environment seem unable to resist the temptation to continually develop and change their approaches to regulation – as is well illustrated by the recent changes to the Australian regulations. The inexorable onward march of franchise regulation continues, with countries such as Argentina – which previously had not specifically regulated franchising – adopting franchise-specific laws in the past 12 months.

Many countries do not have franchise-specific regulation, but nevertheless strictly regulate certain aspects of the franchise relationship through the complex interplay of more general legal concepts such as antitrust law, intellectual property rights and the doctrine of good faith. This heterogeneous approach to the regulation of franchising presents yet another barrier to the use of franchising as a catalyst for international growth.

This book certainly does not present readers with a full answer to all the questions they may have about franchising in all the countries covered – that would require far more pages than it is possible to include in this one volume. It does, however, in the first section, try to provide the reader with a high-level understanding of the challenges involved in international franchising, and then, in the second section, explain how these basic themes are reflected in the regulatory environment within each of the countries covered.

I should extend my thanks to all of those who have helped with the preparation of this book, in particular Caroline Flambard and Nick Green, who have invested a great deal of time and effort in making it a work of which all those involved can be proud.

It is hoped that this publication will prove to be a useful and often-consulted guide to all those involved in international franchising, but needless to say it is not a substitute for taking expert advice from practitioners qualified in the relevant jurisdiction.

Mark Abell

Bird & Bird LLP

London

January 2017

Chapter 37

MEXICO

*Silverio Sandate*¹

I INTRODUCTION

The Mexican franchise market is still considered to be a fresh and growing market, and one that continues to offer good opportunities for people wanting to start a business, people seeking to develop a business or expand a brand, or people already involved with business.

In this regard, there is even a programme sponsored by the Secretariat of Economy, the purpose of which is to provide support to people willing to invest in the acquisition of a franchise. This support consists in the granting of financing under preferential conditions. However, resources obtained under this programme cannot be used to acquire a franchise; the franchise must be registered before this applying to the programme. In this way, the programme not only supports potential franchisees, but also has an impact on franchisors.²

The Mexican franchise market is composed of Mexican brands and foreign brands from many other countries. It is estimated that more than 50 per cent of the brands franchised are Mexican; however, the most enduring franchises correspond to brands with presence in the United States and around the world, and the cost of accessing these is very high.³

In the private sector, the Mexican Franchise Association⁴ is a legal entity that seeks to support the development of the franchise market in Mexico. Some of the goals pursued by

1 Silverio Sandate is an associate at Von Wobeser y Sierra, SC.

2 www.franquicias.economia.gob.mx.

3 www.franquiciasen.mx; Ismael Jiménez, 'The best 15 franchises in Mexico', Forbes Mexico, available at; www.forbes.com.mx/las-15-mejores-franquicias-en-mexico/#gs.VVLr2HI; 'Mexico, leader in the creation of franchises in Latin America', *La Jornada*, available at www.jornada.unam.mx/ultimas/2015/04/26/mexico-lider-en-generacion-de-franquicias-en-america-latina-2315.html.

4 www.franquiciasdemexico.org.mx.

this association are to develop and promote activities to improve conditions for the franchise market, to host and organise events promoting the professionalisation of the franchise field, and to develop a bank of relevant statistics.

As regards available governmental information, studies prepared by the National Institute of Statistics and Geography on 'Franchise Catalogues in Mexico' for 2008 and 2012 offer only lists of franchises but no other relevant data.

II MARKET ENTRY

i Restrictions

There are no general restrictions on foreign franchisors entering the Mexican market. However, restrictions may apply depending on the type of products or services offered or commercialised by the franchise.

Furthermore, there are no established restrictions on foreign franchisors or foreign entities granting master franchises or granting development rights to local entities.

Regarding real state, foreign persons or entities are not entitled to acquire properties located within a band 100 kilometres wide along the country's borders nor within 50 kilometres of its beaches.

ii Foreign exchange and tax

Among the most common tax liabilities relevant to cross-border franchising are royalty payments, tax withholding and deductions. In Mexico, royalties are considered to be any kind of payment for the use or temporary enjoyment of patents, trademarks, copyright, artistic or scientific works, industrial, commercial or scientific designs, among others. However, in Mexico the tax treatment of cross-border franchising depends largely on the tax residence of the foreign party. See Sections V.i and V.ii, *infra*, for further details.

III INTELLECTUAL PROPERTY

i Brand search

The authority that handles the registration process for trademarks and other intellectual property rights (such as slogans, collective trademarks, patents and utility models, among others) is the Mexican Institute of Industrial Property (IMPI).

The IMPI manages a digital platform, Marcanet, which can be accessed through the internet by any interested person; however, users are required to pay governmental fees to access this service.

Using this platform, any person is able to conduct different types of searches of the IMPI's records in relation to applications and registrations for trademarks, service marks, slogans, collective trademarks and commercial names. While it is even possible to request IMPI to conduct a search by filing a writ, the most efficient way to conduct a search is through Marcanet.

Marcanet enables the user to conduct phonetic searches in the different classes covered by the Nice Classification of products and services; search for specific denominations; locate specific applications or registrations through their number; and conduct searches to find applications and registrations for trademarks, service marks, slogans, collective trademarks and commercial names owned by a person or legal entity.

In view of the above, Marcanet provides useful and efficient tools for locating existing applications or registrations for a trademark or other distinctive sign, as well as determining the viability of registration of a trademark or early detection of obstacles that it might face during the registration proceedings. Conducting a search using Marcanet will help determine whether a pre-existing application or registration might bar the registration process.

Marcanet does not provide any service regarding assessments or opinions on the feasibility of a registration nor on any other proceeding. However, it does provide, on an almost automatic basis, enough information to form such an opinion, and while the information the system displays does not have official status (since there might be delays in the updating of the system), the information is updated very frequently.

ii Brand protection

Any person or legal entity interested in obtaining registration for a trademark is entitled to prepare and file an application with the IMPI. The filing can be performed directly at the IMPI's offices or online through the internet, and using the Madrid Protocol. An application template is provided by the IMPI and can be downloaded from the internet.

The application should be filed providing, among other information, name, nationality and address of the applicant. The name or logo (or both) of the trademark should be also provided. The class in accordance with the Nice Classification should be also identified, with the recitation of products or services of interest. Multiclass applications are not yet available in Mexico (in the case of applications filed under the Madrid Protocol, the IMPI will assign an application number for each class).

The applicant is not required to demonstrate that the mark is in use within the Mexican territory or in commerce in Mexico to obtain registration. However, if the mark is already in use, the applicant might claim a first-use date.

Once an application is filed, a first examination of the application is conducted. The purpose of this examination is to analyse all the formal aspects of the application, such as correspondence of the Nice Classification with the recitation of goods or services provided, payment of governmental fees, clarification of products or services as described, correct classification of the mark applied (nominative, figurative, three-dimensional, etc.).

Once all the formal requirements of the application are dealt with, the second examination is performed. The purpose of this examination is to analyse the viability of the proposed mark for registration in accordance with the Industrial Property Law. During this phase, the examiner will determine whether there is any legal obstacle that might bar registration.

The Industrial Property Law establishes certain prohibitions against registration, such as, among others, words that describe the products or services of interest; isolated letters, digits or colours, except when combined with other elements that provide distinctiveness; signs that reproduce or imitate official signs or seals of a foreign state; the name or portrait of a person used without consent; and marks identical or confusingly similar to those in a previous application or registration covering similar or related products.

If all formal requirements are fulfilled and no legal obstacle is detected by the examiner in charge of the application, registration for the mark will be granted. The IMPI will proceed to issue and serve the corresponding trademark registration certificate without prior issuance of the Notice of Allowance and without requesting the payment of any governmental fees. An application that passes the formal examination, and without any legal obstacle detected, might mature into registration in an average time of between four and six months.

When a formal requirement is missing or there is a legal obstacle barring registration, the examiner will proceed to issue an official notice. In this official notice the examiner will indicate the missing requirement or the legal obstacle and provide a two-month period in which the applicant must prepare and file a response. An automatic two-month extension of this period is available upon payment of additional governmental fees.

If the official notice is issued and served but no response is filed, the application will be considered as abandoned. In the event that a response is prepared and filed, the IMPI will take a further three-month period to issue a new response.

Registration is also available for slogans, trade names and collective trademarks. Proceedings will be the same as those followed by an application filed to obtain registration for a trademark.

iii Enforcement

Depending on the characteristics of the case, intellectual property rights may be enforced by means of an administrative infringement action before the IMPI or by means of a criminal denouncement lodged with the General Attorney's Office. Before starting any type of legal action, it is common to send a cease-and-desist letter with a view to stopping the infringement and seeking settlement.

In general, criminal denouncements are made to the General Attorney's Office in relation to counterfeiting activities, while administrative infringement actions before the IMPI stem from unfair competition practices in relation to intellectual property rights, such as using a trademark that is confusingly similar to a registered trademark to protect products or services identical or similar to those protected by the registered trademark.

Although registration is not available for trade dress nor for commercial images of products or services as a specific intellectual property right, the Industrial Property Law offers the option to start and file an infringement action on grounds of non-authorized imitation of trade dress or of a commercial image of products or services.

Another highlight of the Industrial Property Law is that it offers the option to request the imposition of precautionary measures to prevent continuance of the infringement. Precautionary measures might consist in the seizure of infringing products, prohibition against continued marketing of the infringing products or the order to withdraw advertising materials from circulation.

To obtain the imposition of these types of measures, the plaintiff must request them by filing a writ proving ownership of a trademark registration, or other intellectual property right, and the existence of a violation of that right or its imminent violation; or the existence of the possibility of irreparable damage being sustained; or the existence of a justified fear that evidence might be destroyed, concealed, lost or altered. In addition, the plaintiff is requested to provide a bond or sufficient security to cover any damages arising or loss of profits that might be caused to the person against whom the measure is sought.

Once the provisional measures are imposed, the plaintiff will have a non-extendable period of 20 working days to file the infringement action. The Industrial Property Law enables the defendant to lodge a counter-bond or counter-security so that the provisional measures can be lifted.

The plaintiff must expose all its arguments and attach all evidence to the initial writ. A copy of the initial writ and of the documentary evidence is served to the defendant, who will have 10 working days to prepare and file a response to the plaintiff's arguments. The defendant might be also entitled to exhibit all evidence that he or she considers necessary.

A copy of the response and documentary evidence filed by the defendant will be served to the plaintiff, who will then have three working days to provide arguments against the defendant's response and evidence. Once this term lapses, the IMPI will process the case. During this phase, any inspections of specimens, websites, advertising materials, etc. requested by the parties are performed.

When the entire case file has been processed, an official notice requesting the final pleadings of the parties will be issued. Once this official notice has been served, each party will be given 10 working days to prepare and file its final pleadings. When this term lapses, the infringement proceeding will enter into its final phase and, with or without the parties' final pleadings, the case will be analysed subsequent to the issuance of the corresponding decision.

iv Data protection, cybercrime, social media and e-commerce

There is no specific legislation, nor any other provisions, addressed specifically to franchises regarding these issues. Regarding data protection, if a franchisee requires to collect data from its customers to provide goods or services, the franchisor should provide the franchisee with a privacy notice, which the franchisee should display. If the franchisor requires the franchisee to share the data collected, this fact should be indicated in the privacy notice.

IV FRANCHISE LAW

i Legislation

The Industrial Property Law contains provisions that are intended to regulate general aspects of franchise agreements. Moreover, although the Law does not provide a definition of 'franchise', it establishes that a franchise shall exist when, together with the licensing of the use of a trademark, know-how is transferred or technical assistance provided so that the person to whom the licence is granted can produce or sell goods or provide services consistently according to the operating, commercial and administrative methods established by the owner of the trademark, in order that the quality, prestige and image of the products or services distinguished by the said trademark may be maintained.

On this basis, regulations contained in the Industrial Property Law seek to establish the minimum requirements for a franchise agreement. However, these regulations do not establish provisions that might constitute exceptions to the application of provisions contained in the Civil or Commercial Codes.

ii Pre-contractual disclosure

The Industrial Property Law requires franchisors to provide potential franchisees with relevant information about the state of the company at least 30 days prior to the signature of the franchise agreement. The regulations of the Industrial Property Law detail the information that must be provided to potential franchisees and lists, among other things: name, address and nationality of franchisor; franchise description; intellectual property rights involved; considerations; description of the type of technical assistance to be provided and services to be rendered by the franchisor to the franchisee; confidentiality terms; right to grant subfranchises; and general description of the franchisee's rights and obligations.

The Industrial Property Law establishes that the information to be provided by the franchisor prior to the signature of the franchise agreement must be true. Otherwise, the franchisee may claim the nullity of the agreement, as well as the payment of damages and compensation for lost profits caused by the franchisor.

In addition, the Industrial Property Law establishes that the failure of franchisor to provide this information when required by a potential franchisee may constitute an administrative infringement and may be sanctioned by the imposition of a fine.

iii Registration

Registration of the franchise agreement before the IMPI is required by the Industrial Property Law, so the franchise agreement becomes opposable to third parties. On this basis, it is clear that lack of registration does not affect the validity of the franchise agreement.

All registration requirements for franchise agreements are established in the Industrial Property Law and its regulations. These legal provisions basically require the presentation of a copy of the franchise agreement at the time of filing the application for registration of the agreement.

Since the franchise agreement involves the licensing of the use of a trademark, registration of the agreement is made in the official file of the trademark or trademarks licensed.

iv Mandatory clauses

The Industrial Property Law does not establish mandatory clauses for franchise agreements. As mentioned above, the Law provides a description of the scope of the franchise agreement and also establishes the minimum formal requirements to be covered by the agreement. These requirements, rather than referring to clauses to be included in the agreement, refer to information that must be provided in or attached to the agreement.

v Guarantees and protection

There are no specific legal provisions regulating guarantees and protections provided to franchisors and franchisees. Guarantees are subject to civil law and other legislation. In addition, there is no provision that orders the granting of guarantees to either the franchisor or the franchisee. The granting of guarantees and protections may vary depending upon specific characteristics of the franchise. However, the Industrial Property Law provides the option to agree that at the end of the term of the franchise agreement the franchisee should transfer the ownership of its assets to the franchisor. In addition, the parties may agree that the franchisee should transfer shares of its company to the franchisor.

V TAX

i Franchisor tax liabilities

The franchisor must pay income tax in connection with the royalties paid by franchisees in relation to the technical assistance services rendered, and also in connection with advertising services provided by the franchisor to the franchisee.

Under Mexican income tax law, a taxable source of wealth is considered to exist in the country in relation to, for example, royalty payments when those are paid by a resident in Mexico to a resident abroad. In such cases, the Mexican franchisee should make a withholding corresponding to the 25 per cent tax rate and issue a corresponding withholding receipt.

However, if the franchisor's tax residence is outside Mexico, in a country that has executed a double taxation avoidance treaty with Mexico, then a beneficial tax rate for those payments shall apply.

ii Franchisee tax liabilities

Royalty payments should be paid by the franchisee to the franchisor. When doing so, the franchisee should withhold the corresponding tax for those payments, as indicated in Section V.i, *supra*. Should the franchisee fail to withhold the tax, the franchisee will be responsible for that tax. Furthermore, under Mexican income tax law, when certain considerations arise, royalty payments may not be considered tax-deductible.

VI IMPACT OF GENERAL LAW

i Good faith and guarantees

Any contract must be based on the valid consent of the parties involved. Consent is not considered to be valid if it has been granted in error. In view of the foregoing, parties should act on a good-faith basis, so that neither could claim to have entered into the agreement in error.

In addition, the Civil Code indicates that agreements oblige the parties to comply not only with the terms contained in the contract, but also with the consequences that are, by their nature, in accordance with good faith, use or law.

ii Agency distributor model

There is no specific legislation nor legal provisions regard distribution or the agency model. However, whether the parties would require to include provisions to regulate the distribution of products or similar arrangements would depend upon the characteristics of the franchise. It is also possible that the franchisee could be required to execute a distribution agreement with a specific supplier appointed by the franchisor, but that would be a separate agreement.

iii Employment law

Franchisees are not treated as employees by the courts since they do not render subordinated services to the franchisor. In addition, franchisees are usually legal entities and not individuals. This is important, as legal entities cannot be considered as employees.

iv Consumer protection

Under no circumstances would franchisees be treated as consumers. In view of the foregoing, there are no provisions in the corresponding legislation that regulate or apply to the franchisor–franchisee relationship.

Notwithstanding the above, within the franchise agreement the franchisor may establish guidelines or policies that the franchisee should follow to manage or address complaints from final consumers. In some cases, particularly in those where the franchisor is the manufacturer of products purchased by consumers, the franchisor might also require the franchisee to direct consumers to contact the franchisor to resolve their complaints.

v Competition law

No specific legislation nor legal provisions apply to franchises regarding competition and antitrust issues. The Federal Economic Competence Law applies to all individuals and legal entities, both profit and non-profit, that participate in economic activity. The purpose of this Law is to promote, protect and guarantee free concurrence and economic competence.

vi Restrictive covenants

The parties may include clauses or paragraphs establishing means to enforce restrictive covenants through particular proceedings or other arrangements. Should this be the case, the proceedings might establish remedies, penalties or other consequences applicable in cases of breach of the restrictive covenants.

vii Termination

Regarding termination, the Industrial Property Law establishes that neither the franchisor nor the franchisee is entitled to terminate the franchise agreement unilaterally, unless the agreement was subject to an indefinite term, or there is justified cause.

In addition, it is also established that the franchisor and the franchisee are always able to mutually agree to terminate the agreement early. Furthermore, the parties can mutually agree causes or proceedings for early termination of the contract.

A termination in violation of the above would entitle the other party to claim damages and compensation for lost profits from the counterparty. Furthermore, although this is covered by the Industrial Property Law, the affected party would also be entitled to file a claim of this nature pursuant to the Civil Code.

viii Anti-corruption and anti-terrorism regulation

There is no particular legislation, issues or codes of practice relevant to fraud, anti-corruption or money laundering that address directly those people involved in franchising activities.

ix Dispute resolution

Franchise contracts may contain provisions establishing a proceeding whereby the parties agree to try to solve any type of dispute that might arise from the interpretation of the content of the contract or regarding non-compliance with one or more obligations, among other situations. Since it is possible that the parties might not settle the dispute, the parties do not waive to their rights to file a claim before a competent judicial or administrative authority.

Notwithstanding the foregoing, even if the franchise agreement or contract does not contain any clauses regarding a proceeding to be followed by the parties to settle a dispute, it is common that jurisdiction is fixed in accordance with the franchisor's domicile.

In those cases where a franchisee violates the trademark rights of the franchisor in such a way as to mislead consumers, the trademark violation will entitle the franchisor to file an infringement action before the IMPI. The IMPI is the only authority in Mexico with faculties competent to declare a trademark infringement.

Proceedings before Mexican courts can be very bureaucratic and the parties may have to spend a lot of time and resources to obtain a decision. Furthermore, an initial decision might be challenged, which would further delay the definitive decision in the dispute. It is

common, therefore, to find in many franchise agreements, and especially those in which the franchisor is a foreign legal entity, that the parties agree to submit the resolution of disputes to arbitration proceedings.

Mediation is another alternative for parties seeking to settle a dispute without facing a proceeding before the courts. While mediation is a recognised form of alternative dispute resolution, there is no mandatory legal requirement to try to settle a dispute through mediation before filing a case before the courts.

For those cases filed before the courts, there is no specific proceeding that should be followed to decide a dispute between a franchisor and a franchisee and general rules for proceedings would be followed by the court in charge of deciding a claim.

As has been mentioned, there is a national franchise association, the Mexican Franchise Association; however, this association does not provide any services in relation to dispute resolution.

VII CURRENT DEVELOPMENTS

The most recent relevant legislation update was in 2006, and consisted in a reform to the Industrial Property Law introducing some provisions related to the content of franchise agreements and related aspects.

There are currently no relevant developments related to pending legislation or proposals for modifications to current legal provisions. Furthermore, no relevant judicial criteria have been issued recently that might have an impact on practice.

Appendix 1

ABOUT THE AUTHORS

SILVERIO SANDATE

Von Wobeser y Sierra, SC

Born in Mexico City, Silverio Sandate obtained his law degree from the prestigious Free School of Law, Mexico City. He has also completed many postgraduate courses, in Mexico and abroad, related to intellectual property matters. Silverio Sandate has more than 10 years of experience advising Fortune 500 and other leading multinational companies on intellectual property matters. His main areas of focus include copyright, licensing, franchising, advertising and litigation, and he has been a key player in advising clients on the implementation of their major international advertising and marketing strategies and campaigns in Mexico. These projects have included social media and online campaigns, above-the-line and below-the-line promotions, packaging, advertisements, communications materials, retail and point-of-purchase materials, and promotional competitions. Silverio Sandate has further broadened his professional expertise by taking opportunities to work abroad and is also the first individual and lawyer to be officially recognised as a specialist in authors rights in Mexico.

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