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Franchising and intellectual property

The concept of ‘franchising’

Franchising is typically a business situation in which a franchisee pays a franchisor for the use of the latter’s name, reputation, and get-up, the exploitation of which will normally remain under the franchisor’s control and supervision. ‘Normally’ is an important word here: there is no specific legal definition of a franchise; rather, it is up to the (presumably) freely contracting parties to define the nature and extent of their relationship.

In the most frequent situation, a common business format is developed by the franchisor. A series of intellectual property rights may substantially increase the value of this format: trade marks, know-how, copyrights, and, sometimes, even patents. This results in a package of rights, which is licensed by the franchisor, who wishes to establish a franchise network in which the franchisees trade under a common name in order to obtain an optimal return from the business format developed. Apart from paying a fee for the use of the common business format and the associated intellectual property rights, the franchisee undertakes to maintain and preserve the character of the franchise.

This system presents a major advantage to undertakings that lack the capital and/or the skills to undertake the eventual worldwide exploitation themselves: they become franchisors and their franchisees undertake the exploitation. But from the franchisee’s point of view, the franchise system presents the advantage that it
becomes possible to enter the market without having to invest in the creation of a business format and a name. The existing package and the business reputation of the franchise network reduce the risks for the franchisee. If the system operates properly, the market sees the beneficial arrival of new independent operators, who, in a sense, run their own business, while the control system put in place by the franchisor allows the consumer to get the same product with a standard quality level from each of these operators.\(^1\) Recognition of trade names and a quality-level guarantee are surely advantageous for the consumer, which means that a properly operated franchise system can be beneficial to all parties involved.

No one can deny the importance of franchising today. The 2015 NatWest/BFA Franchise Survey reveals that franchising is currently a £15.1bn industry in the UK which continues to expand. It is also likely that the sharing of capital burdens between the two sides of the agreement and the motivation of the often newly self-employed franchisee will combine to give the business a fighting chance in stormy economic times.

An enormous range of businesses are operated on a franchise basis. These may be large business ventures necessitating considerable investments: the Holiday Inn chain of international hotels is a franchise operation, as are the hundred or more Clarks shoe shops around the UK. Many smaller operations, such as various domestic cleaning firms, are also run in this way.

Franchising is a little-investigated area of the law. This may be, in part due to the relatively recent growth in its importance, but may also be due to the fact that the relevant legal rules emanate from a range of different sources. As already indicated, contract law is of direct relevance to the creation and content of a franchising agreement, and particular care must be taken to avoid an agreement becoming void as being in restraint of trade. Similarly, the perils of the laws—both domestic and European—that exist to promote free competition must be borne in mind, because the interests of the parties to a franchising agreement will often lie in creating a monopoly. Last, but not least, the use of images, logos, and other marketing material as part of the franchisor–franchisee relationship gives rise to significant difficulties in intellectual property law and it is these issues, rather than those in other areas of law (in so far as they can be treated separately), with which we are concerned in this chapter.


3 See e.g. Six Continents Hotels Inc. v. Event Hotels GmbH (2006) 150 SJLB 1251.

4 For a somewhat bizarre case concerning the relationship between the supplier, the franchisor, and the franchisees see Fears (t/a Autopaint International) v. Anglo-Dutch Paint and Chemical Co. Ltd, De Beer Lakfabrieken BV v. Fears (t/a Autopaint International) [2008] EWCA Civ 99 (CA).
Franchises and trade mark law

The starting point

How do the basic provisions of trade mark law, as outlined earlier in this book, help or hinder the franchisor and franchisee? The law in this area is equally applicable to services since the entry into force of the Trade Marks (Amendment) Act 1984. The first problem is the difficult question of who is the proprietor of the mark, given that the franchisor has created the trade marks that characterize the business—the logos of Colonel Sanders that haunt the shops of the Kentucky Fried Chicken chain worldwide are a good example to consider—while the franchisee, not the franchisor, is the person actually responsible for delivering the product and service. The mark is defined as ‘any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings’. The goods or services that are distinguished from those of other undertakings are the goods and services of the franchise chain, not those of the individual franchisee. Therefore the franchisor should apply for trade mark registration and become the proprietor of the trade mark.

Assignments

The simplest way forward is to assign the mark to the franchisee and this is perfectly permissible. The problem here is clear, however: the franchisor who fully assigns the mark assigns all of the rights associated with it and thus loses any rights in connection

5 TMA 1994, s. 1(1).
6 TMA 1994, s. 24.
with it.\textsuperscript{7} Under the Trade Marks Act (TMA) 1938, the proprietor who did not use the mark him- or herself could find that he or she was the victim of an action to strike out the mark on the grounds of non-use,\textsuperscript{8} although, in the absence of any direct authority on the point in terms of franchising law, it seemed strongly arguable that use in the sense of being the basis of a franchising operation is still ‘use in relation to goods’ (albeit an indirect use) and therefore not attackable by these provisions. Successful non-use cases were typically those in which there was no current intention to trade\textsuperscript{9} or to trade commercially.\textsuperscript{10}

The TMA 1994 removes all doubt. Revocation of the trade mark is not possible if the trade mark has been used genuinely by the proprietor of the mark or with his or her consent.\textsuperscript{11} The latter provision clearly applies to a franchising operation.

\textbf{Licences}

Trade mark legislation, however, offers a more specific method of protecting franchise operations. Under ss. 28 and 29 of the 1994 Act, it is possible to grant a licence, including an exclusive licence, to use a trade mark. This does not involve a transfer of the ownership of the trade mark, but it does normally result in use of the trade mark with the consent of the proprietor and thus steers clear of the sanction of s.

\textsuperscript{7} But all kinds of partial assignments are possible: TMA 1994, s. 24(2).

\textsuperscript{8} TMA 1938, s. 26.

\textsuperscript{9} e.g. \textit{Pussy Galore Trade Mark} [1967] RPC 265.

\textsuperscript{10} e.g. \textit{Imperial Group Ltd v. Philip Morris} [1982] FSR 72.

\textsuperscript{11} TMA 1994, s. 46(1).
46. Such a transaction can be registered\textsuperscript{12} and a licensee registered as such will obtain certain rights. The complicated provisions of s. 30 can be summarized as allowing the registered user to require the proprietor to act in relation to any infringement of the mark and allowing the user to institute, in default, an action him- or herself. Exclusive licensees get the rights of an assignee and can therefore independently bring an infringement action.\textsuperscript{13}

**Trafficking**

One hazard that need no longer be considered here is the issue of trafficking. Whereas the use of a trade mark purely as an item in its own right was not permissible under the provisions of the 1938 Act, the TMA 1994 has repealed that provision and no longer refers to the issue.

**Summary**

In summary, it can be seen that the most appropriate way forward to protect a franchise agreement is to grant a licence to use the trade mark to the franchisee and to register that transaction, thus enabling the franchisee-licensee to share the protection already enjoyed by the franchisor against the outside world. The franchisee is not protected against the activities of the franchisor by this method and will have to look at the terms of the contract agreed between the parties for assistance in that respect. An exclusive licence clearly offers more protection in this area, because it also excludes the use by the licensor-franchisor of the trade mark in the manner authorized

\textsuperscript{12} TMA 1994, s. 25.

\textsuperscript{13} TMA 1994, s. 31.
by the licence.\textsuperscript{14} In exceptional cases, it may be that a franchise operation will fall within the category of certification trade marks,\textsuperscript{15} but this would not be common given the infrequency with which this type of mark is used in any situation, let alone a franchising situation.

It must be emphasized that failure by the franchisor to use either the assignment or licensing routes will leave the franchisee unprotected, because his or her use of the mark with the consent of the franchisor justifies the award of the mark to the franchisor\textsuperscript{16} and not to the franchisee. A franchisee who has to face competition from a third party and who fails to gain the support of the franchisor to take action against that third party is unprotected by trade mark law, and will only find a remedy at common law.

**Franchising and passing off**

At the heart of any franchise relationship lies the concept of goodwill: the franchisee wishes to attract some of the goodwill created by the franchisor; likewise, the franchisor will wish to see his or her goodwill extended, and certainly not harmed, by the activities of the franchisee. In cases in which goodwill is mentioned, inevitably, the tort of passing off—the function of which is to protect goodwill—will become involved. But the key question is whose goodwill is at stake?

\textsuperscript{14} TMA 1994, s. 29(1).

\textsuperscript{15} TMA 1994, s. 50.

\textsuperscript{16} TMA 1994, s. 32(3).
The position of the franchisor

The creator of the franchise is the most obvious candidate to be the owner of the goodwill and thus the claimant in a passing off action. That this is so is confirmed by the decision of the Privy Council in *J. H. Coles Pty Ltd v. Need*, 17 an appeal from Australia. Coles was a chain of stores, one of which was operated on a franchise basis by Need. The business relationship failed to endure and, eventually, Coles went into liquidation, while Need, now without authority, continued trading under the ‘Coles’ banner.

In his speech, Lord Wright identified the ability of Need to use the ‘Coles’ trading name as being a revocable licence to use the name as long as the business arrangement continued.18 Given that the relevant licence had been revoked unequivocally by Coles, it was therefore clear that Need was now unlawfully passing himself off as being authorized to use the Coles name, and that this deception would prejudice Coles’ reputation and goodwill. In passing, it is by no means obvious that Coles, being in liquidation, still enjoyed such reputation and goodwill, but the decision can be explained by reference to the fact that Coles’s initial complaint was made prior to the sad demise of the business.

If the franchisor’s goodwill is protected against the franchisee, it seems to follow inexorably that he or she will also be protected against outsiders. Protection by the tort of passing off is valuable to a franchisor, given the currently vigorous and

17 [1934] AC 82.

18 [1934] AC 82 at 87.
expansionist nature of the action that, as we have seen,\(^\text{19}\) is capable of extending its net to capture similar advertising campaigns and ‘get-up’ of goods by rival traders, and also will cover future trading areas by well-known names. All of these points may be of particular relevance in a franchise environment.

**The position of the franchisee**

A more problematic question is whether all of these benefits of a passing off action can also be enjoyed by the franchisee. Consider a far from implausible scenario: the Kentucky Fried Chicken fast-food store outlet in Leicester suddenly finds its business in serious decline because a rival operation has started trading selling similar products and using logos and other promotional material sufficiently similar to that of the Kentucky firm that an action in passing off appears viable. We have just seen that the franchisor is protected, but the loss is more likely to fall on the franchisee, whose immediate income will be reduced, but who may, depending on the precise terms of the franchise agreement, still have to pay fixed sums, perhaps based on pre-agreed turnover calculations for the franchise. In an ideal world, the contract between the parties may incorporate an appropriate term forcing the franchisor to act and providing for the franchisee to benefit from the fruits of that action—but such clauses do not appear to be in regular use.

Authority on the specific issue of franchisees’ rights of action in passing off appears non-existent. The problem arises in the way in which the public recognizes and responds to the goodwill and reputation of the franchisor, from which the

\(^{19}\) See Ch. 28.
unknown (to the public) franchisee then indirectly benefits. It is clear, however, that there is no reason for an action in passing off to hinge on the identity of the victim of the tort.

In *Birmingham Vinegar Brewery Co. v. Powell*, a dispute concerning two rival versions of a sauce called ‘Yorkshire Relish’, it was asserted that the failure of the defendant to identify himself as the manufacturer of the sauce was no bar to a successful action even though ‘*the customer does not know or care who the manufacturer is, but it is a particular manufacture that he desires*’. It seems sensible to adopt a similar approach if the source of the claimant’s goods or services is similarly confused, between franchisor and franchisee. It also seems compatible with the general approach of the courts that permits a passing off action by someone with only an indirect or partial involvement with the goods or services in question, and the solution suggested also appears to accord with good policy given the difficulties the franchisee may otherwise face.

In summary, that passing off protects the franchisor is undoubted; for the franchisee, the tort, in its currently vigorous form, appears capable of providing the necessary protection and it is clear that, to protect the financial and personal commitment of the franchisee, it should do so.

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20 [1897] AC 710.

21 [1897] AC 710, per Lord Halsbury LC at 713.
Franchising and other areas of intellectual property law

A franchising operation will often give rise to many of a wide range of intellectual property issues. The purpose of this section is to do little more than identify those areas, because, unlike in the previous sections of this chapter, we feel that there are no unique features that arise only in franchising situations. Most obviously, the creation of the identity of the franchise will often give rise to the possibility of copyright protection for the original work of the franchisor. This may cover logos, as artistic works; or advertisement copy, as a literary work; or promotional photographs or drawings. Of course, there would be no problem within a properly established franchise, because authorized use of copyright material by a licensed user does not amount to infringement.22 Clearly, however, unauthorized use—even by a franchisee acting beyond his or her remit—would be an infringement. The various provisions protecting designs, as discussed in Chapters 21 and 22, are also potentially relevant on a similar basis.

Patent law may also provide an essential element in a franchising operation: I may invent a wonderful new type of dishwasher that can be taken from door to door to clean up after wild parties, but I may not have the energy or ability to set up a business to exploit this new wonder properly; I may well wish to set up a franchise operation so to do, which would be based, at its heart, on the franchisees being granted licences to operate the patented invention.

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22 CDPA 1988, ss. 16(2) and 90.
Finally, and briefly, much know-how and trade information will inevitably pass between franchisor and franchisee, and, subject to any specific contractual provision, obligations of confidentiality are inevitably likely to arise between them.

**Franchising and competition law**

It is inevitable that franchisees will seek some form of monopoly. There is no point in spending time and effort developing the franchise business if the franchisor has also contracted with your next-door neighbour, or another resident of the same town, region, or even country, depending upon the scale and type of business in question. Likewise, a franchisor will be keen to ensure that the franchisee will loyally devote him- or herself to selling the franchisor’s goods and services, and will not dilute the value of the franchise by also selling the goods and services of commercial rivals of the franchisor. Terms to cover these sorts of problems are common in franchise agreements, but are immediately confronted by UK and European Union (EU) competition law, which seeks to limit anti-competitive monopolies.

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23 There may, however, be circumstances in which the franchisee will legitimately be pursuing another part of its business alongside the franchise: see *Fleet Mobile Tyres Ltd v. Stone* (2006) 150 SJLB 1150 (CA).

24 Restrictive covenants limiting the freedom of activity of a former franchisee are common and also give rise to problems: see *Carewatch Care Services Ltd v. Focus Caring Services Ltd* [2014] EWHC 2313 (Ch), *PSG Franchising Ltd v. Lydia Darby Ltd* [2012] EWHC 3707 (QB) and *Dyno-Rod plc v. Reeve* [1999] FSR 148; *Convenience Co. Ltd v. Roberts* [2001] FSR 625.
The Treaty provisions

The Competition Act 1998 has remodelled UK competition law on the basis of the EU’s rules on competition, and it is therefore to Art. 101 of the Treaty on the Functioning of the European Union (formerly Art. 81 of the EC Treaty) and its application to franchise agreements that we now turn.

It is obvious that Art. 101 is relevant, because a franchise agreement can be an agreement that may affect trade between member states and has as its object or effect the prevention, restriction, or distortion of competition within the EU. The provisions of Art. 101 were first applied to a franchise agreement by the European Court of Justice in Pronuptia de Paris v. Schillgalis.\(^{25}\) As is so often the case, the Article was invoked as a defence in contractual proceedings. Pronuptia de Paris—the franchisor—sued Mrs Schillgalis—the franchisee for Hamburg, Oldenburg, and Hanover in Germany—on the basis that her royalty payments were insufficient as compared to the royalty provisions of the franchise agreement. Mrs Schillgalis argued that Pronuptia could not rely on the franchise agreement, because that agreement was void as contravening Art. 101.

First, the Court analysed the specific nature of a franchise agreement. In the Court’s analysis, the transfer of intellectual property rights from the franchisor to the franchisee is not only relevant to distinguish a franchise agreement from more conventional distribution systems, but it is a vital element if a franchise agreement is to realize its main aim, which is to allow the franchisee to operate as an independent

business that is using the franchisor’s name and know-how. This implies that certain restrictions need to be imposed regarding the maintenance of the common standards of the franchise and regarding the protection of the intellectual property rights involved. The franchisor should, indeed, be able to impose common standards on all franchisees if the franchise system is to work effectively and to benefit from its main asset: the common business format, which is recognizable by the consumers and attracts them, because they are entitled to expect the same quality standards from each outlet. The protection of the intellectual property rights involved is equally essential, which requires the franchisor to impose certain restrictions upon the franchisee on top of the fee that is already paid by the franchisee for the use of the franchisor’s know-how, trade mark, design, logo, and other intellectual property rights. As a result of its analysis, the Court reached the conclusion that these restrictions, which are imposed to maintain common standards and to protect intellectual property rights, did not fall within the scope of Art. 101(1). The Court indicated that these essential elements of a franchise agreement did not restrict competition at all.

In a second part of the judgment, the Court made it clear that only the essential elements described above fall outside the scope of Art. 101(1); restrictions that are able to partition the Common Market on a territorial basis are caught by Art. 101(1). Eventually, they may be granted exemption under Art. 101(3), but such an exemption is not available for restrictions imposing resale price maintenance. The latter restrictions are caught by Art. 101(1) and will not be granted an exemption on the basis of Art. 101(1).
We think this fairly favourable treatment of franchise agreements by the European Court of Justice can be explained by the high degree of integration that characterizes franchise agreements. Indeed, the commercial policy of the franchise network is essentially determined by the franchisor, as if it were one single business, although all franchisees run an independent business from a legal point of view. The Court clearly had in mind that one cannot compare a franchise network with its restrictions on competition to a series of independent businesses in free competition without taking into account that the alternative to the franchise network would probably be one single business with a whole series of outlets. Employees of the producer-franchisor would then simply replace independent franchisees and there would be no competition at all.

**Individual exemptions**

It is worth mentioning a number of individual decisions published by the Commission of the European Communities in which the Commission brought the main principles of the Court’s ruling in the *Pronuptia* case into practice.\(^{26}\) These decisions deal with territorial restrictions. The type of franchise agreements under which the franchisor manufactures or selects the goods that are sold by the franchisee was at the heart of the *Pronuptia*\(^ {27}\) and *Yves Rocher*\(^ {28}\) cases. In *Computerland*,\(^ {29}\) the Commission applied

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the principles laid down by the Court to a franchise agreement that provided only a distribution method and left the franchisee free to buy microcomputers wherever it wished.

The Commission was confronted, for the first time, with a service franchise in the ServiceMaster case.30 Such franchises provide a common business format for the provision of services, rather than for the distribution of goods. In this case, services provided by the franchisee to commercial and domestic customers were related to housekeeping, cleaning, and maintenance. The Commission indicated that the same principles could be applied to this slightly different type of franchising agreement and granted an individual exemption.

**The block exemption**

Based on these individual decisions, the Commission drafted a block exemption for certain types of franchise agreement in 1988,31 which remained in force until 31 May 2000. From 1 June 2000 onwards, franchising agreements were covered by the wider Regulation dealing with vertical agreements.32 This Regulation expired in May 2010.

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and the latest Regulation entered into force on 1 June 2010.\textsuperscript{33} Major changes are not expected.

Franchise agreements are vertical in nature, because the franchisor and franchisee operate at different levels, and can therefore be described as ‘suppliers’ and ‘buyers’ in terms of the Regulation. It is therefore to the provisions of the Regulation that we now turn.

**The Vertical Agreements and Converted Practices Regulation 2010**

The starting point is a very simple one. Article 2(1) read in conjunction with Art. 1(1)(a) exempts from the application of Art. 101(1) of the Treaty:

agreements or concerted practices entered into between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services.

This clearly covers most franchise agreements.\textsuperscript{34} Article 3 limits the exemption to the situation in which the market shares of suppliers and buyer do not exceed 30 per cent.

Franchise agreements are additionally complicated by the fact that they involve, generally, a transfer of intellectual property rights to the franchisee. The


\textsuperscript{34} See also the special rules in Art. 2(4) for agreements entered into by competing undertakings.
Regulation exempts such transfers of or rights to use intellectual property rights, provided that they do not constitute the primary aim of the agreement and provided that they are directly related to the sale of goods or provision of services that forms the object of the franchise agreement. Any restrictions that are excluded under the Regulation can also not be brought back in via the exemption for intellectual property rights.\textsuperscript{35}

In its own guidelines on vertical restraints,\textsuperscript{36} the Commission summarized the position as follows:

Article 2(3) of the Block Exemption Regulation includes in its application vertical agreements containing certain provisions relating to the assignment of IPRs to or use of IPRs by the buyer and thereby excludes from the Block Exemption Regulation all other vertical agreements containing IPR provisions. The Block Exemption Regulation applies to vertical agreements containing IPR provisions when five conditions are fulfilled:

\begin{itemize}
\item The IPR provisions must be part of a vertical agreement, i.e. an agreement with conditions under which the parties may purchase, sell or resell certain goods or services;
\item The IPRs must be assigned to, or licensed for use by, the buyer;
\item The IPR provisions must not constitute the primary object of the agreement;
\end{itemize}

\textsuperscript{35} Art. 2(3).


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– The IPR provisions must be directly related to the use, sale or resale of goods or services by the buyer or his customers. In the case of franchising where marketing forms the object of the exploitation of the IPRs, the goods or services are distributed by the master franchisee or the franchisees;

– The IPR provisions, in relation to the contract goods or services, must not contain restrictions of competition having the same object as vertical restraints which are not exempted under the Block Exemption Regulation.37

In this way, the intellectual property rights involved are confined to playing the positive role of enhancing the operation of the franchise, and the distribution of goods and services that forms its aim.

The exemption has one major limitation: the market share of the supplier—that is, the franchisor or the supplier designated by the franchisor—or that of the franchisee cannot exceed 30 per cent of the relevant market on which the contract goods or services are sold.38 The exemption does not apply above that threshold. Underneath the threshold, vertical restraints on the purchase, sale, and resale of the goods and services within a franchising agreement—such as selective distribution, ‘non-compete’, or exclusive distribution—are exempted. Additionally, the exemption does not apply to vertical agreements that, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have certain

37 Guidelines on Vertical Restraints (n. 36 above), para. 31.

38 Art. 3 of the Regulation.
restrictions as their object. The first two of these have as their object the restriction of the franchisee determining its prices freely, or the restriction of the territory into which, or the customers to whom, the franchisee may sell the contract goods or services. But the strictness of these provisions is relaxed somewhat: the franchisor-supplier is allowed to recommend a sale price or to impose a maximum sale price as long as this does not result in a fixed or a minimum sale price as a result of pressures or incentives from any of the parties. The territorial restriction, meanwhile, can be allowed in certain circumstances: a franchisee can be restricted in terms of active sales to its exclusive territory or customer group, as long as its customers are free to sell the goods on. A franchisee operating at the wholesale level can also be stopped contractually from selling to end-users and sales by members of a selective distribution system to unauthorized distributors can also be ruled out.

Further restrictions have as their object the restriction of active or passive sales to end-users by members of a selective distribution system that operates at retail level. Such vertical agreements are not exempted, but members of such a distribution system can be obliged to operate at approved places of establishment.

Finally, restrictions that exclude cross-supplies between distributors within a selective distribution system will also place the vertical agreement outside the scope of the exemption.

Article 5 of the Regulation does not place vertical agreements as a whole outside the scope of the Regulation, but limits itself to specific obligations in such agreements that will not be allowed to benefit from the exemption. The main result of

39 Art. 4 of the Regulation.
this provision in relation to franchise agreements is that obligations not to compete on the goods or services purchased by the franchisee will only be exempted when such an obligation is necessary to maintain the common identity and reputation of the franchised network. In such cases, there will also be no restriction on the duration of the non-compete obligation, as long as it does not exceed the duration of the franchise agreement itself.\footnote{Art. 5 of the Regulation and Guidelines, para. 190.} The protection of the franchisee’s know-how can also be allowed to impose further restrictions on the franchisee or ex-franchisee, but such restrictions need to be indispensable for that purpose and the transfer of the know-how needs to create efficiencies and they can normally only run until one year after the franchise agreement has expired. The use and disclosure of know-how that is still secret and has not yet entered the public domain can, however, be restricted indefinitely.\footnote{Guidelines, para. 45 (c).}

As is the case with the benefit of each of the block exemptions, the benefit of this Regulation can be withdrawn if a franchise agreement or any other vertical agreement would unduly restrict competition, even though it met the requirements of the Regulation. If the undue restrictions happen at Community level, it will be up to the Commission to withdraw the benefit of the Regulation from a specific agreement\footnote{Recital 13 of the Regulation, and Guidelines, para. 74.} and, if the undue restrictions occur at national level, that task and power will be left to the competent (competition) authority of the member state concerned.\footnote{Recital 14 of the Regulation.}
An overview

It is clear that franchise agreements can restrict competition and that competition law interferes with this type of agreement. Nevertheless, one can say that franchising is generally seen as a beneficial commercial system and that competition law only tries to stop the undue restrictions to competition that are not the rule, but clearly the exception. Trade marks are clearly at the heart of many franchising agreements. The TMA 1994 facilitates the use of trade marks in this context and the law of passing off may still provide valuable assistance. Intellectual property law now offers adequate protection to what are often the most valuable assets of a franchising operation: its mark and the reputation linked to it. Any franchise agreement will, however, have to take account of competition rules and particularly of the Vertical Agreements Regulation.

Further reading


