



Cheng Cohen Alert

Protecting the Brand: The Franchisor's Duty?

A Quebec court has found that Dunkin Donuts failed to adequately protect and enhance its brand in the Quebec market, and has ordered the franchisor to pay \$16.4 million to 21 of its former franchisees there. This case stems from the steep decline of Dunkin Donuts' market share in Quebec in the face of stiff competition from Tim Hortons, with the number of Dunkin Donuts shops plummeting from 200 in 1998 to 11 in 2012. The impacted franchisees blamed their failures on the franchisor, asserting claims based on the franchisor's alleged negligence and incompetence, and also asserting that the franchisor breached the franchise agreement by failing to either protect the brand or appropriately arm the franchisees in the face of the increased competition. Ruling in favor of the franchisees, the Court found that brand protection is "an ongoing, continuing and successive obligation" of the franchisor and held that, by not shoring up the brand in the face of Tim Hortons' competition, Dunkin Donuts effectively deprived its franchisees of the benefit of the franchise agreement (despite the fact the franchisees had been able to carry on their business during this time).

In reaching its decision, the Quebec court stated that there is “an underlying assumption in all franchise agreements” that the “brand will support a viable commerce.” But the real foundation for its decision was its interpretation of language in the franchise agreement in which Dunkin Donuts agreed to continue its efforts to protect “the demand for its product.” In other words, the outcome of this case might have been avoided through careful and precise drafting, by avoiding all language that might be interpreted as a performance covenant.

While franchisors traditionally have shifted responsibility for the success of the franchised business to each individual franchisee/owner, this case, though not binding on any court outside of Quebec, illustrates how a court might look to the franchisor where the equities warrant and how important the words used in the franchise agreement can be in that instance.

For more information to ask specific questions about the case, please contact us.

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