

ARE FRANCHISEES STARTING TO LEVEL THE PLAYING FIELD IN NORTH AMERICA?

Abstract

This article suggests that there are hints that imbalanced power relationships between franchisors and franchisees may be slightly tilting more in favor of franchisees. The adoption of a major change in the California Franchise Relationship Act demonstrates that any reform movement in favor of franchisees is still alive, and might lead to more relationship statutes.

As legislatures give more serious consideration to franchisee rights, the courts are leaning in the same direction. The recent (and still unfinished) decision in Bertico v. Dunkin' Brands Canada Ltd. has given more support for the concept that parties to a contract (including a franchise agreement) must have good faith in their execution and performance of their obligations. The term "good faith" still lacks definition, but nevertheless, under the facts of Bertico, the terms of the relevant franchise agreement, and the principles governing implied obligations, a franchisor has a duty to protect its brand and take appropriate steps to enhance its brand. The article suggests that Bertico may just be an aberration, but it, together with the change in California law, may be the harbingers of change in favor of franchisees on the franchise relationship playing field.

Key words: Relationships, good faith, franchising, legislation, implied covenant