

Review

Commercial & Dispute Resolution



Can't compete with Hammonds' franchise expertise

Good news for franchisors. In a recent franchisor/franchisee dispute, the High Court has clarified that franchisees can be stopped from competing with the franchisor at the end of the franchise. And Hammonds acted for the successful franchisor in this case.

What did the High Court say?

Pirtek (UK) Limited granted Joinplace Limited and Mr Vickers (its director) a franchise to manufacture, sell and service industrial hoses in County Durham for 10 years. The franchise agreement included a restrictive covenant which provided that Mr Vickers would not for one year after termination of the agreement and within County Durham:

"directly or indirectly be engaged or concerned or interested in any capacity whatsoever in any business which carries on a business similar to or which competes with the Pirtek Business".

Just before the franchise agreement was terminated, Mr Vickers set up a new company (named Vetech) which also manufactured, sold and serviced industrial hoses in County Durham. Hammonds successfully obtained an injunction for Pirtek. This prevented Vetech from trading on the basis that this would be a breach of the restrictive covenant. Vetech argued that it was not bound by the restrictive covenant which was in breach of UK and European competition law and so invalid.

The High Court found in favour of Pirtek. The restrictive covenant was necessary to protect Pirtek's goodwill in its business method and to prevent the risk that know-how and assistance provided by Pirtek to Mr Vickers during the franchise agreement would be used to aid Pirtek's competitors, namely Vetech. The covenant did not breach competition law. It was valid and Vetech was bound by it.

What does this mean for franchisors?

The judgment is significant. There has always been uncertainty over whether restrictive covenants in franchise agreements, like the one used in this case, are binding on franchisees. Following this case, franchisors can include these restrictions in their franchise agreements with confidence that they will work to prevent a franchisee competing later down the line, provided they protect a legitimate interest of the franchisor (its goodwill or know how – this will usually be the case).

How were Hammonds involved?

Hammonds acted for Pirtek in this case. Hammonds has a team of highly experienced lawyers which specialises in resolving franchise disputes. Our team is based throughout our UK and European offices and is led by partners Lucci Dammone and Victoria Leigh. We act for franchisors of all sizes and in all industry sectors in national and cross border disputes. Our clients include a number of blue chip international franchisors.

Our approach is commercial and business focused. Our advice will always take into account the commercial objectives of your business. We also recognise that disputes can be costly. Our aim is to resolve disputes at an early stage before costs start to escalate. Where this is not possible, we often act on the basis of flexible fee arrangements.

Hammonds acted for the franchisor where the High Court confirmed that franchisees can be stopped from competing

Our dispute resolution expertise is recognised by leading legal directories, including Legal 500 and Chambers & Partners. In 2010, Chambers said this about us:

“Clients testify that this commercial disputes team provides sound advice underpinned by commerciality”

Our experience includes:

- Successfully acting for a major retailer when a franchisee stopped paying its franchise fees, recovering unpaid sums and enforcing payment of future sums
- Advising a well known brand on dealing with fraudulent activity by a franchisee
- Assisting a major franchisor with its strategy on introducing a new computer system for franchisees, in line with the franchise agreement and overcoming resistance from the franchisees
- Advising a large franchisor on amending a franchise agreement during its term in the face of opposition from franchisees
- Successfully defending a public interest winding up petition presented by the Secretary of State for Business against a leading international franchisor
- Acting for a large franchisor in successfully defending a franchisee’s allegation that the franchisor had waived its rights under the franchise agreement by failing to enforce them over time
- Resolving a significant dispute between a franchisor and franchisee over the termination of a franchise agreement

Our work supports and enhances the services offered to franchisors by Hammonds’ non-contentious franchise experts, who advise on franchising strategy and the establishment, operation and development of franchise networks both domestic and international.

FURTHER INFORMATION

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