

Familymart Co., Ltd.

Supreme Administrative Court (2018)

Case: Supreme Administrative Court overruled the administrative litigation filed by Familymart over sanctions imposed by the FTC

Keyword(s): Franchise, order placement, convenience store

Reference: Supreme Administrative Court Judgment (2018) Pan Tzu No. 530

Industry: Convenience stores, chain (4711)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. Previously, the appellee (FTC) decided that the appellant violated Article 25 of the Fair Trade Law for failing to fully disclose restrictions on franchisees, including minimal suggested order amounts and product stock-to-sales ratios (hereinafter referred to as the information in question), to trading counterparts in writing before contract signature during franchisee recruitment and the practice was obviously unfair conduct able to affect trading order. Therefore, the FTC issued the Disposition Kung Ch'u Tzu No. 105104 on September 19, 2016 to order the appellant to correct the aforesaid behavior and imposed an administrative fine of 2 million New Taiwan dollars (same currency applies hereinafter). The appellant found the sanction unacceptable and filed an administrative litigation but it was overruled by the Taipei High Administrative Court via Judgment 2016 Su Tzu No. 1686. As a result, the appellant filed this appeal to the Supreme Administrative Court.
2. The Supreme Administrative Court thought the information in question had its contractual force and therefore had to be considered restrictions. In the franchisor-franchisee relationship, the appellant licensed franchisees to use its trademark rights and management techniques, provided assistance or gave instructions to franchise stores, and collected charges from franchisees. During the franchise contract period, the franchisee was highly dependent on the appellant. It was doubtless that the appellant, compared to all the franchisees, had relatively stronger market power or more market information advantages. As agreed, scrapped products were the responsibility of the franchisee and the cost had to be deducted from the reward for the franchisee. Meanwhile, order amounts and product stock-to-sales ratios were factors having direct effects on the cost of scrapped products. Therefore, the information in question was important information prospective franchisees needed to have when they decided whether they would join the franchise and the franchisor had the obligation to fully disclose it before contract signature. At the same time, a franchisor-franchisee relationship was by no means a singular, non-recurring relationship. As a franchisor, the appellant was likely to engage in the same or similar conduct in the future and there would be many more potential victims. Apparently, trading order on the market could be affected.
3. The appellant asserted that by disclosing information regarding how to order the right amounts of products at the right time, and how to maintain certain stock levels and predict the cost of product scrap was enough for franchisees to estimate the reward to be expected. The appellant therefore insisted that the information in

question was not restrictions imposed on the franchisee. However, the Supreme Administrative Court pointed out that ordering the right amounts of products at the right time was merely an instruction on the principle of order placement and it had nothing to do with imposing concrete restrictions on the amounts of products to order and maintenance of certain product stock-to-sales ratios. As for stock maintenance, the Supreme Administrative Court noted that it was the standard of total product inventory imposed on franchisees and therefore it was not the same as the restriction on the amount of each product to be ordered or the stock-to-sales ratio of each product. Meanwhile, prediction of the cost of scrapped products was just an illustration of the amount to be expected. This is of not help for a prospective franchisee to understand before contract signature there would be restrictions on the amounts of product orders and product stock-to-sales ratios. For this reason, the obligation of the appellant to disclose the information in question could not be exempted just because the appellant's disclosure of the information such as the right order placement at the right time, etc. In addition, whether the restrictions were reasonable was irrelevant to whether the information in question had to be disclosed.

4. The Supreme Administrative Court concluded that the appellant's failure to fully disclose the information in question to trading counterparts in writing before contract signature was obviously unfair conduct able to affect trading order. It was legally sound when the FTC issued the original disposition to order the appellant to correct the conduct and imposed an administrative fine of 3 million dollars after taking into account the sales and number of outlets of the appellant between 2013 and 2015, the number of franchisees recruited in 2014 and 2015, the duration of the conduct, the total capital invested by franchisees, the direct influence of the conduct on the expected reward of trading counterparts from store management, the lost opportunities for competitors to get franchisees, the level of cooperativeness of the appellant throughout the investigation, and the fact that it was the first time the appellant violated Article 25 of the Fair Trade Law. Therefore, the Supreme Administrative Court thought there was nothing wrong with the original disposition and overruled the appeal.

Appendix:

Taiwan Familymart Co., Ltd.' Uniform Invoice Number: 23060248

Summarized by Chen, Cheng-Yang; Supervised by: Ren, Han-Ying