

Bayuan Dining

Case: Bayuan Dining was complained for violating the Fair Trade Law
by failing to fully disclose important franchise information

Keyword(s): Franchise, important information, information disclosure

Reference: Fair Trade Commission Letter of May 27, 2019

Industry: Restaurants (5611)

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

Summary:

1. The FTC received complaints that Bayuan Dining Co., Ltd. (hereinafter referred to as Bayuan Dining), when recruiting franchisees for the Fangyuan Hot Pot chain, did not fully disclose related information, including the “training fees before business operations started, capital equipment costs, costs of initial purchases, training fees during business operation, advertising and marketing expenses, intellectual property rights franchisees could use, the duration, the range of use and limitations, and the contents and approaches of training.” It was claimed that Bayuan Dining was in violation of the Fair Trade Law.
2. Findings of the FTC after investigation:
 - (1) In the draft franchise contract it signed with prospective franchisees, Bayuan Dining stipulated that if the prospective franchisee refused to sign the franchise contract or failed to pay the performance bond or remodeling expenses, Bayuan Dining could confiscate the deposit. For this reason, Bayuan Dining had the obligation to provide prospective franchisees with important franchise information before the contract was signed. The FTC inspected the information given to prospective franchisees by Bayuan Dining, and concluded that it did not include the contents and approaches of training.
 - (2) Regarding the “training fees before business operations started, capital equipment costs, costs of initial purchases, training fees during business operation, and advertising and marketing expenses,” the informer did not present any evidences that Bayuan Dining had collected training fees, capital equipment costs and advertising and marketing expenses, and furthermore, it was indicated that in the information disclosure statement from Bayuan Dining that Bayuan Dining would pay for the hardware equipment and there was no restriction on the quantity or amount of the initial purchase. Consequently, the FTC concluded that it was inappropriate to demand Bayuan Dining to disclose information about the above related expenses.
 - (3) As for the contents of intellectual property rights franchisees could use, the duration, the range of use and limitations, the FTC’s investigation revealed that Bayuan Dining had not yet acquired such rights during the recruitment. As a result, it was impossible for the company to disclose such information before establishing preliminary franchise relations. In other words, it was justifiable that Bayuan Dining did not disclose such information since the company did not have it.
 - (4) Bayuan Dining did not disclose information with regard to the “contents and approaches of training” before establishing preliminary franchise relations and it was indeed obviously unfair to trading counterparts. After considering the

facts that Bayuan Dining only had a small number of franchisees and the company already closed down, the impact on trading counterpart would be slight and trading order on the market was unlikely to be affected. Therefore, the FTC found it difficult to conclude that Bayuan had violated Article 25 of the Fair Trade Law.

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