

Zhao Brunch

1629th Commissioners' Meeting (2022)

Case: Zhao Brunch franchiser violated the Fair Trade Law by failing to disclose important franchise information when recruiting franchisees

Keyword(s): Franchise, contract examination, information asymmetry

Reference: Fair Trade Commission Decision of December 15, 2022 (the 1629th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 111088

Industry: Food Service Activities (5610)

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

Summary:

1. The FTC was informed that when recruiting franchisees, Zhao Brunch did not disclose important franchise information such as the expenses to pay before and during operation, the cost to maintain the POS system machine during operation, the list of products and raw materials initially needed, and the management plan or scheduled plan to set up establishments of the same franchise system in the vicinity of the franchisee. In addition, the company did not give potential franchisees a time period to examine the contract.
2. Findings of the FTC after investigation:
 - (1) Between September 4, 2018 and June 17, 2020, Yang Xianwei (the founder of the original Zhao Brunch store, hereinafter referred to as Mr. Yang) recruited franchisees but stopped doing so after Weili Rongye Co., Ltd. (hereinafter referred to as Weili Rongye) was created on July 2, 2020 to take over the recruitment task. Therefore, the Zhao Brunch franchisee recruitment involved two actors: Mr. Yang and Weili Rongye.
 - (2) Mr. Yang and Weili Rongye provided important franchise information, including the expenses to pay before and during operation, the cost to maintain the POS system machine during operation, the list of products and raw materials initially needed, and the management plan or scheduled plan to set up establishments of the same franchise system in the vicinity of the franchisee, to be examined by potential franchisees. According to the statements of many franchisees, the franchisers had indeed given them a reasonable contract examination

period.

- (3) Mr. Yang and Weili Rongye stated that they provided three documents, namely the franchise manual, Zhao Brunch franchise information and franchisee requirements, and franchise contract, for potential franchisees to read. However, the documents did not include a detailed list of the costs of products and raw materials to be purchased. Mr. Yang and Weili Rongye also admitted that the list of products and raw materials initially needed was not included in the contract. As a result, it was certain that before the contract was officially signed Mr. Yang and Weili Rongye did not fully disclose to potential franchisees the expenses required to purchase products and raw materials before and during operation.

3. Grounds for disposition:

- (1) It is clearly specified in Article 25 of the Fair Trade Law that “in addition to what is provided for in this Act, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order” because high-level information asymmetry exists between a franchiser and trading counterparts (potential franchisees) during the franchisee recruitment process. It is difficult for trading counterparts to find out about all the important franchise information before the contract is officially signed. Therefore, if a franchiser uses its information advantage and signs the contract with trading counterparts without providing important franchise information for them to examine in advance, it constitutes use of information advantage to achieve transactions. Such a practice is obviously unfair for trading counterparts. Furthermore, franchisee recruitment involves continuous business transactions. There can be many victims. The level of damage may be high, and many potential victims can be affected. For this reason, trading order is likely to be affected and such conduct is in violation of Article 25 of the Fair Trade Law.
- (2) Before the contract was officially signed, Mr. Yang and Weili Rongye did not fully disclose to potential franchisees information with regard to the costs of products and raw materials needed before and during operation. It was obviously unfair conduct. As of July 22, 2022, Mr. Yang and Weili Rongye respectively recruited 13 and 11 franchisees. Apparently, it was not a single event or non-recurring transaction incident, and many victims were affected. Mr. Yang and Weili Rongye had the information advantage but did not fully disclose the aforementioned trading information during the franchisee recruitment process. The practice impeded trading counterparts from making correct transaction judgments and their interests were jeopardized.

The conduct also caused competitors to lose the opportunity to obtain franchisees. The unfair competition was harmful to trading order and constituted a violation of Article 25 of the Fair Trade Law.

- (3) When recruiting franchisees for the Zhao Brunch chain, Mr. Yang and Weili Rongye did not fully disclose important franchise information, such as the costs to purchase products and raw materials before operation, and the costs to purchase products and raw materials during operation. The practice was obviously unfair conduct able to affect trading order and constituted violation of Article 25 of the Fair Trade Act. After taking into account the sales of Weili Rongye in 2021 achieving NT\$4.48 million, Mr. Yang and Weili Rongye respectively recruiting 13 and 11 franchisees, the duration of the unlawful act and the fact that both offenders being rather cooperative throughout the investigation, the FTC ordered both of them to immediately cease the unlawful act while imposed an administrative fine of NT\$100,000 on each of them by citing the first section of Article 42 of the Fair Trade Law.

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