

Franchise Lawyers

YEARS 2008-2019

[COMMITTEE OF LEGAL EXPERTS OF THE AEF]

**OBSERVATORY
ON FRANCHISE
CASE LAW
IN SPAIN**



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Letter of presentation

The Committee of Legal Experts of the Spanish Association of Franchisers (AEF) has spent four consecutive years preparing this “Observatory on Franchise Case Law in Spain”, a pioneering report, at a world level, in the field of franchising, which presents the state of affairs of this business system in terms of the degree of litigiousness that is recorded between Franchisers and Franchisees in Spain.

The data indicated by the Observatory is very significant in terms of the scarcity of conflicts that are recorded each year between Franchisers and Franchisees. In this fourth report, the period between 2008 and 2019 has been analysed, with an average litigiousness of only 0.09%, showing that the business model of franchises is far from being conflictive.

In addition, and although the usually held belief is that Franchisees are the ones predominantly taking matters to court to solve their problems with Franchisers, this study reveals the opposite. Thus, it is noted that the highest number of procedures are initiated by Franchisers, with an average of 60.39%. In fact, the Observatory goes even further by pointing out that the resolutions issued by different Provincial High Courts or Courts of Law are also favourable to Franchisers, with an average percentage of 67.72%.

All these figures give a realistic and objective view of the litigiousness that occurs in the world of franchising today and they accord to this study, which has been drawn up with seriousness and rigour, the importance that it deserves within this business system, while clearing up all doubts and ruminations about the conflicts between the parties, which end up in court.

Providing specific data from the AEF we have taken a step further, and, decisive in this case, evidencing the maturity and strength of the franchise system and its self-regulation, which aims to reduce contentious issues and settle possible disputes out of court.



Luisa Masuet

Chairperson of the
Spanish Association of Franchisers

Letter of presentation

The Committee of Legal Experts of the Spanish Association of Franchisers (AEF) was created in 2004. Its members are lawyers appointed by the Board of AEF and are chosen based on a criteria of excellence, due to their knowledge and experience in the franchise system.

Throughout its history, the Committee of Experts has carried out numerous activities, including the preparation of reports on legislative projects that affect franchising and the carrying out of lobbying activities with the authorities that processed the said regulations, the adaptation of the European Code of Ethics for Franchising (EFF) to Spain, the mediation in conflicts affecting members of the AEF, as well as the participation in numerous events that contribute making franchising better known. The members of the Committee are, moreover, specialised franchise arbitrators recognised by the World Intellectual Property Organisation, among other national Courts of Arbitration.

The outreach tasks of the Committee include the creation of a newsletter, which is available online at www.abogadosdefranquicia.com.

On this occasion, I am pleased to present the fourth edition of the “**Observatory on Franchise Case Law in Spain**”, which was created in 2017 as a tool at the service of the franchise system. The Observatory consists of a statistical study that offers a quantitative and qualitative x-ray of litigiousness in the field of franchise in Spain. In this way, it not only analyses statistically the number of judicial resolutions related to franchises and their impact in relation to the size of the sector, but also makes a qualitative analysis to determine the state of opinion of Case Law on the most important issues.

This study was set up to be ongoing, as shown by the fact that this is the fourth edition.



Jordi Ruiz de Villa

Chairperson of the Committee of Experts of the
AEF Partner of the Franchise Department of
fieldfisher JAUSAS

Letter of presentation

24 years have already passed since Banco Sabadell began its trajectory in the franchising business model, accompanying franchising brands in their expansion and facilitating necessary resources for entrepreneurs to start their new businesses as Franchisees.

Over the years we have joined with the Spanish Association of Franchises who have helped us on the path to becoming leaders in the world of franchising, not only leaders in business, but leaders in experience and knowledge of the sectors which make up this model; in which Banco Sabadell has continued to provide financial products and specific services to cover the necessities that have emerged, remaining in touch with the trademarks and their expansion in order to be close to Franchisees and pushing the necessary actions to make this model grow. A business model which has been constantly growing and developing, in good and bad times. And in this field, the relationships between the Franchisers and the Franchisees may generate disagreements and the best way of analysing them is with their real data.

In this case, the AEF's Committee of Legal Experts presents us with the fourth litigiousness report on the world of franchising in Spain. A good analysis of the last 12 years, as much quantitative as qualitative that shows us the main reasons for conflict and where we can observe a low level of litigiousness between Franchisers and Franchisees as evidenced by an average of 0.09% in respect to the establishments under the auspices of franchising. That gives us an idea of the low level of conflict which exist in this business model, if there are any incidents, the good communication that resolves them extra-judicially.



Gabriel Moya

Director of the Franchise Department of Banco Sabadell

Methodology

Several databases were consulted in preparing this report, mainly Westlaw (publisher Aranzadi), LALEYDIGITAL (publisher Wolters Kluwer) and CENDOJ, related to judgements of Provincial High Courts (“Audiencias Provinciales”) and of the Supreme Court (First Chamber of Civil Matters) (“Tribunal Supremo- Sala de lo Civil”).

With respect to the previous edition, the judgements of 2019 have been included, as well as those of 2008 and 2009, so this report covers the period from 2008 to 2019. Since twelve years are encompassed, we believe that this is a sample with sufficient statistical value and that, therefore, even if we took more years into consideration, the results would not be significantly different.

Judgements issued by the Courts of First Instance have not been taken into account given that there is no reliable database that publishes all judgements passed in Spain. In this degree of jurisdiction, both Westlaw (publisher Aranzadi) and other databases consulted, make a subjective selection of those judgements they consider most significant, so statistical data cannot be obtained. Arbitral awards have not been taken into account either, given the difficulty in obtaining information from the Arbitral Courts due to the confidential nature of the awards. Consequently, judgements of the High Courts of Justice related to appeals against arbitral awards have not been taken into account.

The Judgements have been ordered pursuant to the bodies that issued them and pursuant to the years (2008 to 2019). A classification has also been made depending on whether the party that initiated the process was the Franchiser or the Franchisee.

Finally, the activity sector has been analysed in order to bring it in line with the main economic figures of the franchise.

This analysis allows us to have a better knowledge of the degree of litigiousness of an activity that was integrated by 58,032 Franchisees, billing €16,844,452 million, and identify the main conflicts between Franchisers and Franchisees.

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Introduction

Between 2008 and 2019, a total of 517 judgements¹ were passed in the field of franchising. The following table shows the list of resolutions handed down each year.

| TOTAL RULINGS | 517 |
|----------------------|------------|
| 2008 | 32 |
| 2009 | 40 |
| 2010 | 46 |
| 2011 | 44 |
| 2012 | 41 |
| 2013 | 45 |
| 2014 | 45 |
| 2015 | 33 |
| 2016 | 39 |
| 2017 | 39 |
| 2018 | 57 |
| 2019 | 56 |

As one can see, the number of resolutions issued during the period under review is relatively stable, with between 39 and 46 resolutions per year, with three exceptions. On one hand, a lower number of resolutions was observed in 2008 and 2015, compared to the average (32 in 2008 and 33 in 2015). On the other hand, in the last two years (2018 and 2019) there is an upward trend in the number of resolutions, with has augmented considerably with regard to the average, namely, 57 judgements in 2018 and 56 in 2019.

However, despite the resurgence in the past two years, the total number of judgements shows that the franchise is a system in expansion that has little litigiousness.

There are probably more controversies than judicial ones, but the fact that judicial assistance is not needed to resolve differences evidences that mediation, negotiation and/or conciliation systems are successful and allow the differences between parties to be resolved in a reasonable manner.

Below, these figures will be broken down pursuant to the body that issued the resolution.

¹ Including judgements handed down by the Supreme Court and Provincial High Courts.

Provincial High Court Judgements

| TOTAL RULINGS | 505 |
|---------------|-----|
| 2008 | 32 |
| 2009 | 38 |
| 2010 | 45 |
| 2011 | 44 |
| 2012 | 36 |
| 2013 | 44 |
| 2014 | 44 |
| 2015 | 33 |
| 2016 | 39 |
| 2017 | 38 |
| 2018 | 56 |
| 2019 | 56 |

The number of judgements shows little litigiousness, regardless of the way that they are analysed. Thus, when analysing the global number of resolutions, between the years 2008 to 2019, the Provincial High Courts (AAPP) have ruled on 505 occasions on aspects related to a franchising contract.

The analysis by years shows that the number of judgements issued by the Provincial High Courts remains stable during the years 2008 to 2017, with a slight decrease in the years 2015 to 2017 and a resurgence in 2018 and 2019, showing an upward trend in the number of controversies that reached the Provincial High Courts.

Judgements depending on whether the Franchiser or the Franchisee initiated the procedure - are analysed below:

| | TOTAL | INITIATED BY THE FRANCHISEE | INITIATED BY THE FRANCHISER | IN FAVOUR OF THE FRANCHISEE | IN FAVOUR OF THE FRANCHISER |
|-------------------------|------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| TOTAL JUDGEMENTS | 505 | 196 (38.81%) | 305 (60.39%) | 163 (32.28%) | 342 (67.72%) |
| 2008 | 32 | 13 (40.63%) | 19 (59.37%) | 10 (31.25%) | 22 (68.75%) |
| 2009 | 38 | 19 (50%) | 17 (44.75%) | 12 (31.58%) | 26 (68.42%) |
| 2010 | 45 | 19 (42.22%) | 26 (57.77%) | 15 (33.33%) | 30 (66.66%) |
| 2011 | 44 | 16 (36.36%) | 28 (63.63%) | 14 (31.81%) | 30 (68.18%) |
| 2012 | 36 | 9 (25%) | 27 (75%) | 12 (33.33%) | 24 (66.67%) |
| 2013 | 44 | 14 (31.82%) | 30 (68.18%) | 15 (34.10%) | 29 (65.90%) |
| 2014 | 44 | 17 (36.36%) | 27 (61.36%) | 13 (29.55%) | 31 (70.45%) |
| 2015 | 33 | 10 (30.30%) | 23 (69.69%) | 7 (21.21%) | 26 (78.79%) |
| 2016 | 39 | 17 (43.58%) | 22 (56.41%) | 17 (43.59%) | 22 (56.41%) |
| 2017 | 38 | 16 (42.10%) | 22 (57.89%) | 11 (28.95%) | 27 (71.05%) |
| 2018 | 56 | 25 (44.64%) | 31 (55.35%) | 22 (39.28%) | 34 (60.71%) |
| 2019 | 56 | 21 (37.50%) | 33 (58.93%) | 15 (26.79%) | 41 (73.21%) |

As can be seen, 60.39% of procedures have been initiated by the Franchisee. It shows how the percentage slightly fluctuates during the analysed years with negligible differences, excluding 2012 and 2015, when the percentage of litigations initiated by Franchisers reached about 70%, and 2009 when the figure was under 50%.

It must be noted that, in 2009, there were 2 judgements by Provincial High Courts coming from litigations initiated by third parties (5.25%), both finding in favour of the Franchiser. Likewise, in 2019, there were 2 judgements by Provincial High Courts coming from litigations initiated by third parties (3.57%), one of them finding in favour of the Franchiser, and the other in favour of the Franchisee.

Regarding the result of the judgements issued, 67.72% were favourable to the Franchiser. In addition, it can be seen that, in the years 2012 and 2013, the number of judgements in favour of the Franchiser is lower than the number of litigations initiated by Franchisers. In 2016, both numbers match. This means that the Franchisers, in the remaining nine years, have obtained more favourable judgements than procedures initiated by the Franchisers themselves. A comparison follows between the number of decisions given in the years covered by analysis with the number of existing Franchisees and an analysis of the sectors with the highest degree of litigiousness.

In this comparison, only the years 2010 to 2019 will be considered due to the source of information which collects the data on Franchisees in Spain, and separates them by sector has been extracting data and issuing its annual reports since 2010, and therefore it is not possible to extend the data analysis of the Franchisees by sector to the years 2008 and 2009.

| | TOTAL | NUMBER OF FRANCHISEES ² | % DEGREE OF LITIGIOUSNESS | JUDGEMENTS IN FAVOUR OF THE FRANCHISEE | % IN FAVOUR OF THE FRANCHISEE |
|-------------------------|------------|------------------------------------|---------------------------|--|-------------------------------|
| TOTAL JUDGEMENTS | 435 | 478,182 | 0.09% | 141 | 0.03% |
| 2010 | 45 | 42,433 | 0.10% | 15 | 0.04% |
| 2011 | 44 | 42,849 | 0.10% | 14 | 0.03% |
| 2012 | 36 | 41,179 | 0.08% | 12 | 0.03% |
| 2013 | 44 | 41,420 | 0.10% | 15 | 0.04% |
| 2014 | 44 | 44,619 | 0.09% | 13 | 0.03% |
| 2015 | 33 | 46,125 | 0.07% | 7 | 0.02% |
| 2016 | 39 | 50,994 | 0.07% | 17 | 0.03% |
| 2017 | 38 | 53,778 | 0.07% | 11 | 0.02% |
| 2018 | 56 | 56,753 | 0.09% | 22 | 0.04% |
| 2019 | 56 | 58,032 | 0.09% | 15 | 0.02% |

² Data obtained in the annual reports of "La Franquicia en España (Franchises in Spain). National statistics" published by the Spanish Association of Franchises.

The number of franchised premises between 2010 and 2019 has increased by 15,599 (36.76%), as reflected in the official statistics of the AEF.

Despite this, the degree of litigiousness during the years 2010 to 2019 remains stable and is certainly low, with the average percentage being 0.09% in relation to the number of establishments open to the public on a franchise basis in Spain. Additionally, if the number of judgements in favour of the Franchisee is analysed in relation to the number of franchises open to the public, the percentage decreases to 0.03%.

The two sectors with the highest record of litigiousness historically, in the 12 years analysed are Hospitality and Catering, with a total of 54 procedures; and Fashion, with a total of 51 procedures. These sectors are followed by the Aesthetic and Beauty sector with a total of 39 litigations, the transport service sector with 39 procedures and the Financial Service sector with 31 procedures.

While the Hospitality, Catering and Fashion sectors constitute sectors with a high number of brands and Franchisees, the Financial Services sector presents an anomalous degree of litigiousness.

In this way, according to AEF's report, "Franchising in Spain 2020", on the 1,381 existing ensigns in Spain in 2019, the sector which has the highest number is "Fashion", with a total of 242 franchises, - 5 less than the year before -, and 5,883 Franchisees.

The largest sector is followed by "Hospitality / Catering", with 207 chains, - 11 more than in 2018 -, and 7,067 Franchisees.

In contrast with the what was previously stated, we observed how the Financial Services sector has a total of 16 franchising ensigns, -1 more than the year before -, and 462 Franchisees.

If we compare the specific weight of these sectors as a whole, we see that in the first two sectors the litigiousness rate is equivalent to the number of franchised premises, while in the Financial Services sector it is much higher. Thus the percentage of premises in Hospitality and Catering in respect to the total number of franchised premises is 12.18% and the percentage of litigations is 12.41%. On the other hand, in the Fashion sector the percentage of franchised premises with respect to the total is 10.14%, while the percentage of judgements is 11.72%.

However, in the Financial Services sector, whilst the percentage of franchised premises is 0.80%, the number of litigations in respect to the total is 7.13%:

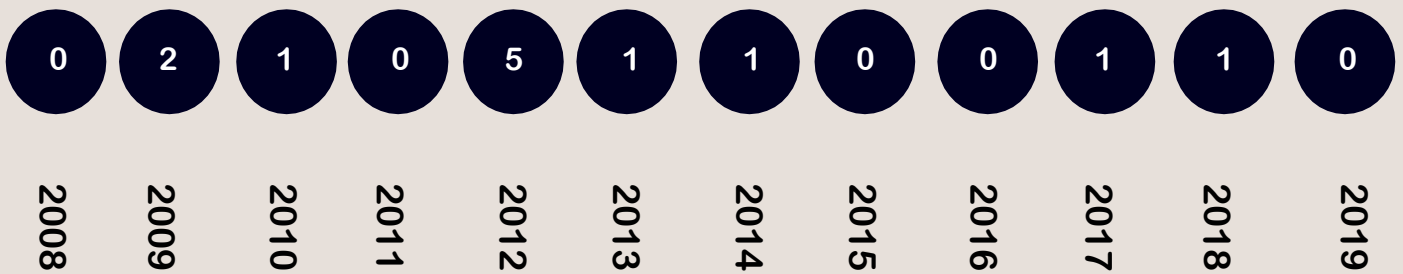
The conclusion to be drawn is that the Hospitality and Catering, and Fashion sectors, despite being the most litigious in accumulated terms, is that this is due to the fact that they have a large number of franchised premises, while the financial services sector has an anomalous degree of litigation.

Supreme Court Judgments

We have eliminated all reference to the decrees of inadmissibility of appeals before the Supreme Court, in order to focus on the analysis of judgements.

As can be seen in the graph, the 12 judgements of the Supreme Court (Civil Chamber) between 2008 and 2019 show that the franchise institution, in spite of being firmly established legally, presented in the aforesaid period an unquestionable interest in terms of appeals in cassation.

TOTAL JUDGEMENTS



Qualitative assessment of the Case Law

In preparation of the different editions of the “Observatory on Franchise Case Law in Spain”, which we started in the year 2017, we have had the opportunity to verify that the amplification of the number of years which were covered by analysis in each edition of the Observatory did not imply, however, a substantial modification of the qualitative assessment of Case Law analysed in each edition. Neither do the qualitative conclusions reflect, in this new edition, substantial differences. As in the previous editions, the analysis of Case Law related to the conflicts arising from the Franchiser-Franchisee relationship is sectioned into six main issues covered by the trial process.

It is irrelevant for these purposes, whether the procedure has been initiated by the Franchiser or by the Franchisee since, in most cases, the defendant rejects and, in practically all of the analysed past cases, the Franchiser is finally forced to accredit the correct and proper compliance with its three main obligations, namely: (1) assignment of the peaceful use of the brand; (2) the transfer of know-how; and (3) the initial and continued assistance relevant to a franchise business. Another frequent issue is the profitability of the franchised business. We now turn to the main areas that are liable to judicial review in the most recent resolutions:

(I) NULLITY OF THE FRANCHISE AGREEMENT DUE TO DEFECTS IN THE FRANCHISEE’S CONSENT

In some of the resolutions analysed, Franchisees filed legal actions based on the alleged nullity of the franchise agreement due to defects in the consent given, taking into account the rationale summarised below:

- Nullity of the agreement was requested alleging defects in the consent given by the Franchisee.
- Absence or insufficiency of the pre-contractual information provided by the Franchiser was alleged as the cause of error in the consent granted by the Franchisee alleging that if it had received such information or had received it completely, it would not have given its consent to the agreement.
- The difference between the economic results obtained by the Franchisee in the operation of its business and the corporate accounts provided by the Franchiser prior to the granting of the agreement has also been alleged in different procedures.

Case Law is unanimous in the sense that a franchise agreement does not constitute a promise of results to the Franchisee, the latter taking on the risk of the business activity

(II) NULLITY OF THE AGREEMENT DUE TO LACK OF OBJECT THE CONTRACT AND BREACH IN OBLIGATION TO REGISTER IN THE REGISTRY OF FRANCHISERS

The non-existence of know-how is argued, as much as a cause of nullity of the agreement as, on occasion, as a cause for termination thereof, alleging a breach by the Franchiser of the obligation of transferring the aforementioned know-how to the Franchisee. The rulings tend to value the accreditation of the transmission of know-how by means -not only- of the delivery to the Franchisee of the Franchising Manuals, but also through the existence of the training programmes, operational or functional elements and assistance and/or supervision tasks, deployed by the Franchiser. Case Law has evolved to accommodate an enhancement in the concept of know-how, which initially was identified as a “secret knowledge of an industrial order” and has subsequently evolved to include knowledge of “commercial order”. In the resolutions issued in the oldest legal procedures, the issue - now peacefully overcome - of the lack of registration of the Franchiser in the Registry of Franchisers as a cause of nullity of the agreement, was resolved. From the beginning and on an ongoing basis, judicial resolutions have limited the consequences of such an absence to a purely administrative scope and without any inter-party consequence, denying that the same could motivate the nullity of the franchise agreement.

(III) NON-COMPLIANCE OF FRANCHISEE DUE TO NON-PAYMENT OF ROYALTIES

This is possibly the most common cause of litigiousness between Franchiser and Franchisee. It is a breach that is usually replicated by the Franchisee alleging the existence of previous breaches attributable to the Franchiser, such as the lack of transfer of know-how and the absence of training and commercial and/or technical assistance. With this, the procedure, as we have said before, becomes an examination of the degree of compliance by the Franchiser of its own contractual obligations. Only the existence of a previous breach attributable to the Franchiser allows the Franchisee to evade its obligation to pay Royalties. The judgements analysed mostly resolve as to the non-existence of previous breaches by the Franchiser and consequently declare the existence of the breach of the Franchisee, for non-payment of Royalties.



(IV) NON-COMPLIANCE OF FRANCHISEE DUE TO BREACH OF POST-CONTRACTUAL NON-COMPETITION CLAUSE

The reported breach occurs in two different circumstances:

- The first is that of the Franchisee, -after the end of the validity of the contract -, carries out a competing business with that of the Franchiser (this being prohibited in the agreement)
- The second is that, when the agreement is terminated in advance as a result of a contractual breach by the Franchisee, activity in competition with the Franchiser continues to be carried out (this also being prohibited in the agreement).

Judgements require there be no prior breach by the Franchiser so that it can claim fulfilment by the Franchisee of its obligations of post-contractual non-competition. Judgements admit the application of the prohibition on post-contractual competition, as well as the possibility of establishing penalty clauses for the case of breach of this obligation by the Franchisee, although the amount of said clause can be moderated by the judge if considered disproportionate. There are different rulings that oblige the Franchisee to cease activity for breach of its obligation of post contractual non-competition.

(V) NON-COMPLIANCE OF FRANCHISEE DUE TO MARKETING OF UNAUTHORISED PRODUCTS OR PRODUCTS FROM UNAUTHORISED SUPPLIERS

The enforcement by the Franchiser of the suppliers from which the Franchisee can (and must) acquire the materials that shall be used in the operation of the Franchise is sometimes questioned by the Franchisee. The rulings consider that such an enforcement, and the consequent prohibition on purchasing products from other suppliers, is a logical consequence of the nature of the franchise agreement and of the power of control by the Franchiser of the know-how that is transferred to the Franchisee.

The power of control over products that the Franchisee has to acquire either from the Franchiser or from third parties with the prior authorisation and verification of the Franchiser, is a consequence of the transfer of the know-how to the Franchisee, that is to say, technical knowledge that is not in the public domain and that is necessary for the manufacture or marketing of a product or provision of a service, acknowledge that therefore gives an advantage to those who master it over competitors, whose preservation is attempted by avoiding its disclosure.

The obligations of the Franchisee to supply itself through the Franchiser with raw materials and any other merchandise related to the operation, and to acquire them from the third parties with the previous authorisation from the Franchiser, must be understood to be in accordance with the nature of the agreement and essential for the maintenance of a good name and image of the franchised network.

(VI) NON-COMPLIANCE OF FRANCHISER BY FAILING TO PROVIDE TECHNICAL ASSISTANCE

The provision by the Franchiser to the Franchisee of commercial and/or technical assistance during the term of agreement is an essential obligation of the Franchiser within the framework of a franchise relationship. This is established in the legal provisions and has been accepted without controversy by Case Law. Therefore, the absence or deficiency (understanding this as to its uselessness in providing the Franchisee with advice regarding the actual activity to be carried out by the Franchisee in the operation of the franchised activity) is considered a breach of sufficient entity to motivate the termination of the agreement for causes attributable to the Franchiser.

Judicial decisions consider a variety of instruments as valid means for the provision of assistance, such as commercial training, technical training, marketing and/or advertising advice and supervisory work deployed in the Franchisee's establishment.

Some important Judgements

Barcelona Provincial High Court Judgement of 4th February 2008: the Franchisee filed an action for compensation of damages, caused by contractual breach by the Franchiser, for the amount of €152,285.76. The Franchiser terminated the franchising agreement unilaterally because the Franchisee failed to establish the guarantee of payment provided for in the contract itself. The Provincial High Court ratified the Judgement of the Court of First Instance that dismissed the action of contractual breach by establishing that the Franchiser did not commit a contractual breach of any kind, so that the unilateral termination of the franchising contract by the Franchiser was justified in view of the Franchisee's failure to establish the guarantee of payment provided for in the contract itself.

Barcelona Provincial High Court Judgement of 14th February 2008: the Franchisee filed an action for termination of agreement called "trade partnership agreement". The action filed by the Franchisee was dismissed as there was no evidence of a breach by the Franchiser. The qualification or determination of the nature of a legal transaction depends on the intention of the contracting parties and on their declarations of intent, and not so much on the name attributed to it by the parties.

Madrid Provincial High Court Judgement of 17th April 2008: there was a subrogation in the position of Franchisee. The latter filed a lawsuit requesting the nullity of some clauses as being contrary to the General Contracting Conditions Act. The Court of First Instance understood that upon subrogating itself, it had explicitly and expressly accepted all the clauses and, therefore, it excluded their status as general contracting conditions. The High Court concluded that the fact that a subjective novation of the agreement existed or that the adherent to the franchise agreement extends the contractual relationship or does not dissociate itself from it if it can do so, does not change the nature of its contractual intent or eliminate the characteristics of generality, predisposition and imposition of the general conditions which the agreement may integrate. Consequently, one of the clauses contested by the Franchisee was considered to be null and void.

Madrid Provincial High Court Judgement of 11th July 2008: the Court declared that the failure to register in the Registry of Franchisers is an administrative breach and does not alter the contractual relationship of the two parties. Likewise, it considered that evidence was not provided that the prices established by the Franchiser exceeded normal market ones. The Franchisee cannot invoke unilateral price fixing as a cause of nullity if it has not been raised, either as a counter claim, or as a cause of terminating the contract. The Court accepted price fixing by the Franchiser given that it does not involve breach of contract. Surprisingly, the ruling did not mention the legal anti-monopoly provisions. The Court considered that, if there were delays in the delivery of the products, this would not constitute a serious breach, it was not enough of sufficient entity. It considered that sufficient information had been provided to the Franchisee, because the activity carried out by the latter did not require the "know-how" that the Franchiser could offer. With regards to compensation, the Court rejects as criteria for determining easy solutions, such as those of multiplying by 4 the earnings of 1 year. The fact that, with the abandonment of the Franchisee, the possibility of arranging a franchise with third parties, was a significant factor.

Malaga Provincial High Court Judgement of 3rd September 2008: the Franchisee signed a franchise agreement for five years and simultaneously a premise lease agreement for one year without a right to renewal marketed by the Franchiser. The nullity of the franchise agreement was initiated on the grounds of an error of consent as the term of the consent did not tally with the term of the lease. The Court considered the existence of an information deficit on the part of the Franchiser which misled the Franchisee by vitiating its consent. It considered that the term of the lease was an important element for the conclusion of the agreement. The restoration of benefits was established by the Court.

Madrid Provincial High Court Judgement of 27th January 2009: The Franchiser filed an action against the Franchisee, requesting the termination of the franchise contract, and claiming the amount of €387,567.06 for various reasons. The Court of the First Instance partially upheld the action, as it considered that the Franchisee had committed a breach (the one concerning defaults of some bills) but found a lack of significance to justify the termination of agreement. The Provincial High Court dismissed the appeal in its entirety and confirmed the Judgement of the Court of First Instance, as it had not been established that the other infringements that the Franchiser alleged had occurred, as (i) the contractual novation carried out by the promotion of the 2x1 system was constructed as a consolidated right and could not be unilaterally modified by the Franchiser to the detriment of the Franchisee, (ii) it had not been established that a debt existed in favour of the Franchiser in terms of franchise or advertising royalties, and (iii) the franchise contract did not reflect the Franchisee's obligation to pay the amount corresponding to the computer licences, having been established moreover that the Franchiser decided to acquire these licences without advising the Franchisees of their repercussion.

Supreme Court Judgement, Civil Chamber of 30th June 2009: The Franchisee filed an action against the Franchiser demanding nullity of the franchise agreement due to an error of consent or, subsidiarily, the termination of the agreement due to breach of contract by the Franchiser. In both cases, compensation for damages of €369,388.66 was demanded. The Court dismissed the nullity claim for defect of consent of the Franchisee, as the Franchisee already relied on three other franchising premises, the partners had previous experience and no complaints were made or further information requested until the poor economic results of the business occurred, and the forecasts provided were well-founded, even if they were not subsequently fulfilled.

Supreme Court, Civil Chamber, Judgement of 30th July 2009: the Franchiser filed an action demanding the termination of the franchise agreement due to a breach by the Franchisee. The Franchisee opposed this action and made a counter claim demanding the declaration of nullity of the franchise agreement because of the prices imposed by the Franchiser on the Franchisee. The Judgements of the Courts of First and Second instance declared the nullity of the franchising agreement due to considering the prices as imposed. Both rulings concluded that there was not a mere price recommendation but a real imposition by reference to lists of prices, which the Franchisee was obliged to adhere to, although it does not affect all of the supplied products, it is enough that it only affects some of those served by the Franchiser, and by affecting the sale [resale] of those indicated prices at the commercial margin it was affecting the Franchisee's income and with it the fee to be paid for the franchise. The Supreme Court considered that the reasoning of the Provincial High Court was correct.

Barcelona Provincial High Court Judgement of 22nd December 2009: the ruling was about the method of formalisation of the franchise agreement, discussing the efficacy of a verbal agreement of a franchise. In this respect, the High Court concluded that the franchise had been agreed verbally, even though the Franchisee had not signed the agreement. It has been demonstrated according to the High Court that the Franchisee carried out conclusive acts as a Franchisee (it carried out operations and acts as Franchisee, a geographical area was reserved for it, it delivered amounts to the account by way of a franchise reservation). Therefore, it concluded that given that our legal system the spiritualist principle prevails, consequently if the requirements that structure a contract concur and, even if verbally, the agreement exists.

Valencia Provincial High Court Judgement of 8th March 2010: the Franchiser claimed from the Franchisee amounts corresponding to sales made to final clients. However, the documentary evidence that served to support the claim was not written by the plaintiff only, but also revealed some very complex commercial relations; and, given the lack of an expert's opinion, the debt claimed was considered not proven.

Supreme Court Judgement, Civil Chamber, of 5th November 2010: the Franchiser demanded: (i) the declaration of termination of the franchise agreement; (ii) the payment of the amounts owed due to breach by the defendant; and (iii) the compensation for damages provided for in the penalty clause. The lawsuit was partially upheld and the franchise agreement was terminated and the Franchisee was ordered to pay the advertising and liquidation of campaign fees carried out without the Franchiser's authorisation, but the imposition of a penal clause was rejected. The Provincial High Court rejected the penal clause for a different reason: because it considered that as it was not appropriate in the event of a bankruptcy or of not reaching the minimum sales, it should not be applicable in the event of an economic crisis. The Supreme Court considered that the reasoning of the Provincial High Court was correct.

Seville Provincial High Court Judgement of 13th December 2010: The Franchisees asked for the nullity or annulment of the franchise agreements due to defect of consent or that, alternatively, the termination be declared and the Franchiser be charged with breach of contract, with compensation to the Franchisees in any case for the damages and losses incurred. The Court rejected the action for nullity or annulment because it considered that the defect of consent had not been proven; however, it considered the existence of a serious breach of obligations incumbent on the Franchiser. The document submitted as a Manual to make such an understanding possible was "so generic and includes such simple specifications", that in no way could it be understood as expressing a will to comply with the obligation of advice inherent to the activity that, like any business introduction into the market- such as the franchise- required greater complexity. The Court went so far as to affirm that the Franchiser left the Franchisees "in the air", as a result of such particularly unacceptable franchise relationship behaviour, a relationship in which one of the essential obligations of the agreement was the transfer of knowledge of the business (know how) by the Franchiser to the Franchisees. Finally, the Franchiser was ordered to compensate the Franchisees for the damages that the breach of the former' obligations had caused them and rejected the counter claim filed by the Franchiser, because having breached its contractual obligations it could not require its Franchisees to comply with theirs.

Madrid Provincial High Court Judgement 29th April 2011: the Franchisee filed an action against the Franchiser, requesting its right to compensation for customers to be recognised, on the understanding that the termination of the franchise agreement by the Franchiser was unilateral and unjustified. The Court of First Instance had dismissed the claim in its entirety, and so the Franchisee filed an appeal. The Provincial High Court dismissed the appeal, considering that the contractual termination initiated by the Franchiser was pursuant to the law, insofar as it had been proven that the Franchisee had incurred the breaches that led to that termination. However, the Court made it clear that "*had the plaintiff proved the unilateral and unjustified termination of the franchise agreement, compensation could have been considered if the damage had been proven within the parameters of the agency agreement itself, Article 28 of which does not conflict with the franchise agreement entered into by the parties and which gave rise to this dispute*".

Barcelona Provincial High Court Judgement of 16th May 2011: The Franchisee filed an appeal demanding: (i) the nullity of various clauses of the franchise agreement, specifically, articles of the agreement relevant to the payment of royalties, sales prices to the public, obligations of the Franchiser to the Franchisee before the start of the activity etc. and (ii) the sentencing of the Franchiser to the fulfilment of the clauses in respect to territorial exclusivity, to the advertising rules and to the modifications to the agreement. The High Court declared the following clauses null for violating Article 1,256 of the Civil Code by leaving it to one of the parties the fixing of an essential part of the agreement: (I) the clause in the agreement whereby the Franchiser, through a simple communication, “*reserves the right to modify the values of [the] royalties*”, and (ii) the clause in the agreement which obliges the Franchisee to provide in the establishment identified with the trademark “*the (services) that shall be provided by the Franchiser in the future*”: Consequently, the Court made it clear that a new agreement of intention would be needed between the parties on both issues. The Court went so far as to state that the prerogatives assumed by the Franchiser in the clauses relating to the organisational aspects of the franchise did not constitute a breach of the Law.

Supreme Court Judgement, Civil Chamber, of 27th February 2012: the Franchisee alleged before the Court that there was a defect of consent at the time the contract was entered into. It was determined that such a defect did not exist, since the Franchisee knew that the franchise was new and that the viability plans had not yet been verified. The Franchisee could have contacted the directors of the other three pilot establishments that had been operating for a year, and the Franchisee also had experience in the sector.

Supreme Court Judgement, Civil Chamber of 18th July 2012: Case Law requires that, in order to be able to request the unilateral termination of the franchise agreement, by virtue of a breach made by the opposing party, such a breach must have revolved around a principal and reciprocal obligation, the breach whereof hinders the legitimate expectations of the parties or their economic interests. Therefore, it must be a breach by a certain entity, deemed material, violating the object of the agreement.

Supreme Court Judgement, Civil Chamber, of 30th November 2012: the Franchiser granted to the Franchisee exclusive zones: However, the Franchiser reached an agreement with “El Corte Inglés” to carry out within its establishment, and consequently within the Franchisee's exclusive area, activities related to the marketing of the franchise's own products. This fact ended up having the same or an even worse impact, since the relationship between the Franchiser and “El Corte Inglés” was a hidden agreement and unknown to the rest of the Franchisees. The Supreme Court considered that the Franchiser violated the exclusivity agreement and committed a fundamental breach of contract, as it destroyed the significant trust required in collaboration agreements. Likewise, the Court ruled that reasonable expectations of profits, indicated in a pre-contractual manner, should not be confused with a hypothetical loss of profit duly quantified and accredited.

Supreme Court Judgement, Civil Chamber of 22nd October 2012: the Franchisee did not argue or contest invoices carried out during the contract period. When the agreement was terminated, the Franchisee attempted to reclaim them with a legal action. The Court rejected the lawsuit because it considered that the action was contrary to the doctrine of one's own acts. The invoices should have been challenged at the appointed time, otherwise the Franchisee gave the appearance that it was satisfied with them.

Burgos Provincial High Court Judgement of 5th April 2013: The Franchiser initiated a procedure requesting that the Franchisee be ordered the payment of outstanding fees until the agreement expiration date and €90,151,82 as payment of the penal clause for violation of the non-competition covenant in the years following the termination of the agreement. The Court partially considered the appeal filed by the Franchiser, it understood that the non-competition covenant was valid and that the Franchiser was entitled to compensation for its violation, but reduced the amount to €9,000. The reasoning of the Court was the following: the usefulness of the non-competition covenant lay in the fact that, once the agreement had ended, the Franchiser was not hindered by the competition of its former Franchisee. However, if the Franchiser had not shown signs of wanting to continue operating the business in that area, as in this case, the damage to the Franchisee would be minimal. Therefore, the compensation should also be minimal.

Seville Provincial High Court Judgement of 18th July 2013: despite the Franchisee operating the business properly, it did not fulfil the expectations that the Franchiser had indicated. Finally, the Franchisee terminated the agreement after various novations accepted by the Franchiser, who was knowledgeable about the situation of the franchise. The termination requested by the Franchisee did not comply with the time frames agreed in the agreement. However, the Court understood that this could not be considered as a material breach, since the Franchisee could not be forced to continue with the operation of a loss-making and ruinous business, whose losses were not attributable to the performance of the Franchisee.

Barcelona Provincial High Court Judgement of 24th July 2013: Declared the nullity of 3 clauses, for violating the General Contracting Conditions Act and the Bankruptcy Act: a) the clause that allowed the termination of the agreement in the case of insolvency proceedings; b) the clause that allowed the Franchiser to terminate the agreement in case of a change of ownership of the company, change of management body or "mortis causa" succession; c) the clause that established a daily sanction of €1,600 in the case of any violation of agreement on the part of the Franchisee, if it were not corrected within a term of 30 days.

Barcelona Provincial High Court Judgement of 10th October 2013: The Franchisee dissociated itself from the franchise agreement without terminating the agreement. The Franchisee changed the name of the business and continued to provide the same services. In the agreement there was a prohibition of competition during the contractual relationship and in the year after its termination. The Franchiser noted a significant drop in sales and verified that the Franchisee was providing identical services under another name. The Court determined that there was unfair competition, since the agreement had not been terminated, and even if it had been, the non-competition covenant was perfectly valid and applicable beyond the duration of the agreement.



Balearic Islands Provincial High Court Judgement of 17thOctober 2014:As a consequence of the collapse of the real estate system, it was resolved to apply the *rebus sic stantibus* clause and reduce the fees of the franchise agreement.

Valencia Provincial High Court Judgement of 19thJanuary 2015:Since this was a dispute in which trading companies, rather than consumers, were involved, the trading companies should be the ones to submit to the debate and discussion in the proceedings the European Union provisions that were allegedly infringed in relation to the facts discussed. Since the defendant, in its counter claim, confined itself to invoking the non-application of the non-competition clause, not because of its unlawfulness, but because of its lack of relevance, the Court on appeal was unable to declare anything in that regard.

Castellon Provincial High Court Judgement 22ndJuly 2015:The Franchisee's claim was dismissed by the Court stating that certain behaviours, having been declared encroachment in the United States, were valid and fair pursuant to Spanish legislation. The Provincial High Court accepted that the White Book allowed Franchisees to ascertain the requirements that they must meet in order to be eligible to sign a new franchise agreement, but the Provincial High Court also recognised that even if a Franchisee were to meet all the requirements, the Franchiser was not required to grant the Franchisee a new franchise agreement, because this was part of the Franchiser's freedom to contract. This ruling was the first and most comprehensive precedent in Spain and probably in Europe in relation to encroachment and the non-binding nature of the Franchiser's internal policies. [Defended by Jordi Ruiz de Villa].

Madrid Provincial High Court Judgement of 12thFebruary 2016:Within the framework of a unilateral termination of agreement the Franchisee could not prove that the Franchiser had imposed a damaging pricing policy on it. If the prices that were imposed were abnormal in all the establishments that competed offering low prices, which was not proven, only then could the business intent have been considered breached.

Las Palmas Provincial High Court Judgement of 14thMay 2016:Professional negligence occurred on the part of a doctor who did not provide a patient with due information about the consequences of the treatment the patient received. The civil liability of the Franchiser against the Franchisee was declared in this case, given that it acted under the Franchiser's instructions in using its material and techniques.

Madrid Provincial High Court Judgement of 19thOctober 2016: The nullity of the franchise agreement was claimed due to the non-existence of know-how, but it was considered inappropriate since the fact that the business did not have long-term experience was not equivalent to a lack of know-how or the existence of error or deception, just as there was no claim of defect due to lack of accounting data available showing some success in the business when this was also unknown to the Franchiser at the start of the activity. The Franchisee had access to this information before the signing of the agreement, so it was not possible to assess these reasons as valid for the termination of the agreement.

Supreme Court Judgement, Civil Chamber of 16th January 2017: The Franchisee requested the termination of the franchise agreement requesting, in addition, compensation for damages, since the Franchiser had granted a franchise to a competitor, which sold similar products from other brands in the area of exclusivity of the plaintiff. In short, there was a discussion about whether the franchise agreement granted an exclusive area for all similar products or specifically for those that were detailed in the franchise agreement. Finally, the Court ruled that the exclusivity had not been infringed, since, from the agreement, the circumstances and the background of the case, it followed that the exclusivity only affected the products and brands that were detailed in the agreement, and not others that had not been included.

Valencia Provincial High Court Judgement of 17th February 2017: Within the framework of a cosmetic surgery operation carried out in a franchised clinic, certain damages were caused to a patient who made a claim against the Franchiser for medical liability. The Franchiser opposed this by claiming lack of passive legitimation, since the Franchiser and the franchised clinic were independent companies. The High Court confirmed the Judgement of the Court of First Instance and understood that the Franchiser was also responsible for the damage caused, despite the Franchiser not being part of the agreement between the patient and the Franchisee. The franchise agreement imposed on the Franchisee a certain way of acting towards third parties, moreover in this case the Franchiser appeared at all times as the entity that provided the services, leading the patient to trust in the prestige and commercial name of it as a guarantee of success for the operation. It should be noted that in the agreement between the Franchisee and the patient it was stipulated that, in order to cancel the operation, the Franchiser had to be contacted directly.

Barcelona Provincial High Court Judgement of 30th June 2017: The Franchisee terminated a franchise agreement alleging several contractual breaches such as lack of transfer of know-how, delay in the supply of inventory and increase in the specified investment. The Court ruled that the termination of the agreement was not correct, as these wrongdoings had not been proven. The Franchisee was aware of the details of the franchise with which it was going to associate; among other things, the Franchisee knew that it was a novel franchise. It cannot be required that every business system the object of a franchise must have such a proven experience so as to eliminate practically any risk for the Franchisee.

Valencia Provincial High Court Judgement of 10th July 2017: a few months after the end of the franchise contract, the Franchisee started a business which offered identical services to those carried out previously. The agreement specified a 10-year contractual and post-contractual non-competition covenant. Likewise, in the event of non-compliance, a penalty clause of €600 per day was specified. The Court understood that the behaviour of the former Franchisee was contrary to competition law, although it determined that the duration of the contractual non-competition covenant was excessive, as was the penalty clause. The Court ruled that the period of non-competition would be 2 years and that the penalty clause would be €600 per month.

Burgos Provincial High Court Judgement of 10th April 2018: the Provincial High Court declared unilateral termination of the franchise agreements concluded to be in accordance with the Law. The franchise was fictitious or merely nominal, since the two essential elements of it did not concur, namely, the existence of an original or novel business model or business activity created or carried out by the Franchiser and the existence of a know how or expertise arising from the business experience derived from the creation and development of the business.

Badajoz Provincial High Court of 17th May 2018: The Provincial High Court concluded that the franchise agreement was null and void when the Franchiser imposed fixed sales prices under the conditions stipulated in the agreement, as this conduct was prohibited by law. A defective legal transaction did not produce any effects at any time. The contracts were born with an innate defect, hence the sanction should and could be applied from the very moment the agreement had been concluded.

Supreme Court Judgement, Civil Chamber of 11th July 2018: The Franchiser filed a lawsuit for contractual termination for a sum of €61,585.71 for the unpaid royalties, €90,000; for advertising fees and unpaid return expenses; and compensation for the non-return of the Franchise Manuals that included the know-how to the amount of €90,000 and, likewise, the amount of €12,000 for not withdrawing the brands and symbols. Both the Court of First Instance and the Ávila Provincial High Court rejected the Franchiser's claims for not having complied with the contractual information obligations regarding sales forecasts. Finally, the Supreme Court dismissed the cassation appeal and indicated that it was badly formulated by not referring expressly to the consequences of the infractions of the Franchiser's duty of pre-contractual information, which suggests that the Supreme Court would have liked to rule on this issue.

Madrid Provincial High Court Judgement of 4th October 2018: The Judgement of the Court of First Instance ruling partially admitted the lawsuit presented by the Franchiser, declaring the franchise agreement terminated and ordering the Franchisee to the payment of an amount of €18,966. The Franchisee then filed an appeal alleging error in the evaluation of the evidence, as the evidence of the plaintiff's breaches was not considered sufficient. The Court observed negligence on the part of the Franchiser, since it did not attend to the electrical installation of the premises, generating difficulties in the progress of the business and forcing the Franchisee to deploy a series of costly efforts. Therefore, the Court accepted the defence of "non rite adimpleti contractus", since the Franchiser committed negligence in the matter relating to the electrical installation. Finally, the Court reflected on the Case Law of the Supreme Court regarding the principle of preservation of contracts, which gives an adequate response to the vicissitudes presented by the contractual dynamics; therefore, it upheld the appeal of the Franchisee, declaring the termination of the franchise agreement inappropriate.

Barcelona Provincial High Court Judgement of 19th November 2018: The Franchisee filed an appeal against the Judgement of the Court of First Instance, which declared the franchise agreement terminated and ordered the Franchisee to pay €63,794.63. The Franchisee based the appeal on failure to receive adequate information (defect in consent) of the franchise agreement at the time of signing, which would determine the nullity of the agreement and an abuse of right by the Franchiser. The Court finally ruled in favour of the Franchiser establishing: (i) the Franchisee could not be considered a consumer, ergo, the abuse of right alleged by the claimant could not be appreciated; (ii) the alleged nullity of the agreement could not be considered, as this would require the omission of all information, which had not happened; (iii) and, in principle, all the allegations set out should not be taken into account, in any case error and fraud, as a defect of consent, had to be alleged by means of an action, not of a defence, and this was not the case.

Madrid Provincial High Court Judgement of 11th March 2019: the Franchiser initiated an action, demanding the termination of the franchise agreement due to a breach by the Franchisee. It demanded compensation of €682,546.00 of which €81,546.26 corresponded to the incurred debt in terms of owed invoices and €601,012.10 corresponded to the application of the penal clause. The breach was that the Franchisee was accused of having made sales outside its area of influence. The Court concluded that the established termination clause in the agreement could only be understood from the perspective that what it was trying to avoid was that the actions outside the area of influence could harm another Franchisee, so the Franchiser is obligated to protect the latter's territorial scope. It was not proven here that the sale made outside the area of influence affected another Franchisee, therefore it cannot be accepted that the cause for termination provided in the contract concurs. Thus, the Franchisee was charged with paying the amount of €81,546.26 corresponding to the unpaid invoices.

Madrid Provincial High Court Judgement of 29th April 2019: this Judgement is notable because of the analysis carried out by the High Court on the penal clause, specifically in reference to its functions, interpretation and moderation. The High Court established that the general Case Law of these clauses was contained in the Supreme Court Judgement of 30th March 2016, indicating that penal clauses had two essential functions, these are, firstly, coercive or of guarantee and, secondly, compensatory or liquidatory. The function of guarantee intervenes because the penal clause warns the debtor to meet its obligations in view of what obligations it would be required to meet if the penal clause operates. The penal clause fulfils also a liquidatory function, which is referred to in Article 1152 of the Civil Code as the penalty replaces the compensation of damages in case of breach, by exempting the damaged party from proving the existence and quantity of harm. In the case under discussion, it was considered that the agreed penal clause was disproportionate and excessively severe, there was no real relation with the economic scope of the agreement that was grossly overestimated, such that moderation of it of up to €10,000 was considered appropriate.



Seville Provincial High Court Judgement of 29th March 2019 The Franchiser initiated an action claiming an amount against the Franchisee and the application of the penal clause, all of this for the amount of €106,935.43 The passive legitimation of the partners of the franchised company was discussed in this case. The High Court concluded that by signing the agreement, the Franchisees accepted that status with all the consequences and all the obligations in the specific contract, not just the legal entity but all those who were sued as partners. Thus, in the heading of the contractual document at the time of identifying the contracting parties, after doing so in respect to the Franchiser, under the title “on other side” the names of all the defendants identified by their I.D., their address and even noting the percentage of shares in the co-defendant legal entity appear, and after this “hereinafter the Franchisee” was added, that is to say that those who were referenced and associated as a contracting party, not only were they listed as such but they were named as Franchisees, moreover at the end of the agreement under the Franchiser’s signature and under the name “the Franchisee” was the signature and the names of the individual partners who signed and initialled all the pages of the contract. Consequently, the penal clause was applied to them.

Rioja Provincial High Court Judgement of 2nd October 2019: the Franchisee initiated a contractual termination procedure. It was discussed who should bear the burden of proof to prove the breach for which termination was sought. The ruling in respect to the burden of proof established that proof of breach was the responsibility of who alleged it, therefore, it fell to the plaintiff to prove that the defendant fundamentally breached the franchise agreement between the concerned parties and obstructed the purpose of the agreement, and that the plaintiff had met the contractual obligations which corresponded to it. Likewise, the ruling showed the differences between initiating a nullity procedure because of error in consent and a contractual termination procedure, concluding that the deduced action was a contractual termination one because of a breach, not a nullity one because of error in consent and the breach, by its nature, must relate to the performance of the agreement, and what was alleged was a lack of veracity in the pre-contractual information which would have affected consent, which was connected with the pre-contractual phase of intent formation prior to the conclusion of the agreement and affected the validity of the agreement, therefore it could not effect termination of the agreement, as the termination operated at a later stage, that of implementation of the agreement, when there was a breach of a contractual obligation.

Tarragona High Court Provincial Judgement of 16thOctober 2019:the Franchiser initiated a contractual termination procedure and a claim of payment for the default of certain invoices by the Franchisee. The Franchisee initiated an action of nullity of the franchise agreement due to a lack of truthfulness in the pre-contractual information. The ruling covered three aspects: civil fraud, pre-contractual information and territorial exclusivity. The Judgement of the Court of First Instance was approved in terms of declaring the nullity of the franchise agreement due to a lack of pre-contractual information provided to the Franchisee, however the ruling said that the declaration of nullity of the franchise contract did not prevent the Franchiser from claiming payment for defaulted invoices and it partially upheld the appeal, ordering the defendant to paying the amount claimed due to default of invoices. On the other hand, the Franchisee's counter claim appeal was partially upheld and the Franchiser was order to pay a compensation of damages caused by the termination of the contract which had been declared null.

Barcelona Provincial High Court Judgement of 16thDecember 2019:the Franchiser filed an action demanding the termination of the franchise agreement due to a breach of the Franchisee. The consequences of the termination of the franchise agreement and the difference between concession and franchise were discussed in the ruling. The High Court concluded that concession and franchise were two forms of doing business through partnership with a company that was already established in the market, but they differ in : (1) the form in which they are carried out: a concession is directed by an independent company, whilst a franchise is administrated by a Franchiser. (2) Franchises have to pay their parent companies monthly quotas to be able to use the trademark and moreover, the majority of the franchises also have to pay their "umbrella" companies a predetermined percentage of their total monthly sales, which does not apply to the owner of a concessionaire. (3) In the case of franchise, the manager has to pay franchise fees, equipment, and other licences. The owner of a concessionaire, in contrast, does not have to worry about such costs. They mainly incur costs in obtaining a licence and purchasing products. (4) The aim of a franchise is to meet the goals established by the Franchiser. However, the owner of a concessionaire sets its own aims and achieves them by itself.

Conclusions

1) From a quantitative point of view, it is observed that the degree of litigiousness in the field of franchising is very low in relation to the percentage of establishments under franchise, maintaining an average litigiousness of 0.09%.

2) On the basis of the rulings, it can be seen that the greatest number of procedures were initiated by the Franchiser with an average of 62.2%, the main action being termination of the franchise agreement for breaches (post-contractual non-competition covenant), payment of royalties and claim of amounts owed.

3) A trend of terminations in favour of the Franchiser is maintained at an average percentage of 67.72%

4) Even though in the year 2016, there was a notable upturn in terminations in favour of Franchisees with 43.59%, in the following years this percentage had fallen to 38% and finally reaching 26.79% in 2019.

5) In numerical terms, it can be seen that the number of judgements issued at a Franchiser's request tends to decrease, while procedures commenced by Franchisees gradually increase.

Madrid, Barcelona, July 2020

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FERRETTI gelato e caffè
FERSAY
FOSTER'S HOLLYWOOD
GENERAL ÓPTICA
GINOS
HAACEN DAZS
INGREDIENTS CAFE
INTERDOMICILIO
KENTUCKY FRIED CHICKEN
KIDSAUS School of English
KIDSBRAIN METHOD
LA BOTICA DE LOS PERFUMES
LA CHELINDA
LA DESPENSA EXPRESS
LA MAFIA SE SIENTA A LA MESA
LA TAGLIATELLA
LA VENTANA NATURAL
LASER 2000 CENTRO MÉDICO
ESPECIALIZADO (MYVANTA)
LIZARRÁN
LLAOLLAO
LOOK & FIND
MAIL BOXES ETC.
MANCO-MNC
MAYORAL
MCDONALD'S
MIDAS
MUERDE LA PASTA
MUY MUCHO
NACEX
NASCIA

DULZIA, chuches & things
ESCALOPE FACTORY
FAST FUEL
CELATITALLY
GEOGRAPHICAL NORWAY
holaMOBI, Telefonía Global
HOMEBOX
IAG7 VIAJES
LIJYISHOU HOTPOT
MARÍA PADILLA
MARTONELA

CONSULTA FRANQUICIAS
CRECEM ABOGADOS
CUATRECASAS
EN FRANQUICIA
ERNST & YOUNG
ESTUDIO JURIDICO V2C ABOGADOS
EXCLUSIVAS ENERGÉTICAS
EXPANDE NEGOCIO
EXPOFRANQUICIA
FERIA VALENCIA (SIF)
FIELD FISHER JAUSAS
FISUR
FRANQNORTE
FRANQUATLANTICO
FRANQUISHOP
CARRIGUES, Abogados y Ases.
Tributarios
HOTEL INTERCONTINENTAL MADRID
HUMANITY INTERNACIONAL
IBERTECH
INTERECONOMIA.COM
INVESPROMO CONSULTING S.L.

NECESITO UN TRAISTERO
NO-VELLO
NOCTALIA
NOSTRUM
OCTOBER
OH MY CUTI PANNUS
PANS & COMPANY
PASTA CITY
PIZZA MOVIL
POMODORO pizza pasta burritos
PRESTTO
RE/MAX
REGUS
REPSOL
RES TRADICIÓN EN CARNES
RIBS La Casa de las Costillas
ROCKRIBBS
SANTAMARÍA
SERHOGARSYSTEM
SMOOY
SPEEDY
SUBWAY
TEA SHOP
TELEPIZZA
THE NEW KIDS CLUB
TINTAREO
TOMMY MEL'S
TONY ROMA'S
VIPS
VIPSMART
WAFFLE BUBBLE COMPANY
WHAT'S UP
YOCURTERIA DANONE
YVES ROCHER

MASKOPAS LOW COST BAR L.C.B.
ORIGINAL COFFEE BY 1889
PDEPA BAKERY
PERCENT SERVICIOS INMOBILIARIOS
PROPERTY BUYERS by SOMRE
TELELAVO
TERRAMINIUM
VILALTA CORP.
VITALIA Tu Centro de Día
VOMOBIL

JURISFRANQUICIA WE KNOW HOW
LABE ABOGADOS
LAWDWELL-PWC
LLORT ABOGADOS
LUMINARE 360o
MUNDO FRANQUICIA
MUNDOFRANQUICIA.COM
ODF ENERGIA
ORGANIZACION INTEGRAL BÁSICA
PYMESYFRANQUICIAS.COM
PYV TECNOLOGIA
QBS
RETAIL & TRADE MARKETING S.L.
RMB DESIGN SOLUTIONS
RSM SPAIN
SOEYF CONSULTORES
SERVAR
SERVIASISTENTE
SOBREFRANQUICIAS.COM
SOPORTE PARA TU EMPRESA
T4 FRANQUICIAS
THE SOCIAL MEDIA FAMILY
TUS IDEAS

INSTITUCIONALES

ASOCIACIÓN CATALANA DE FRANQUICIAS (ACF)

FRANCHISE OF CASE LAW OBSERVATORY IN SPAIN

