NEGLIGENCE AND THE FRANCHISOR OF GOODS AND SERVICES

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INTRODUCTION

The product liability exposure of distribution channel members has increased steadily over the past 25 years to include retailers (Chappius v. Sears 1978), wholesalers, lessors (Cintrone v. Hertz 1965), and distributors (Santor v. A. & M. Karagheusian 1965). Franchisors have been held strictly liable when their franchisees' patrons have been harmed (Kosters v. Seven-Up 1979). Given the growing importance of franchising in the United States (Evans and Walker 1985, p. 74), marketers should be knowledgeable regarding the most recent developments in negligence affecting franchising.

FRANCHISE AGREEMENTS AND NEGLIGENCE

If the consumer's injury is caused by improper behavior on the part of the defendant or if the harm is due to poorly-performed services, strict liability is normally inappropriate. Instead, the consumer will allege that the defendant was negligent. To prove negligence, the plaintiff must show that the defendant's acts were not reasonable under the circumstances existing at the time of the injury. Hence, the behavior of the defendant, not the quality of the product, are questioned.

To hold the franchisor liable for the negligent behavior of its franchisee, the plaintiff must also show that an agency relationship existed between the franchisor and franchisee. An agency relationship involves the franchisee acting on behalf of the franchisor with the explicit consent or implied authority of the latter. These two forms of agency are termed actual and implied agency, respectively.

Actual agency occurs if the franchise agreement permits the franchisor to exercise control over the daily operations of the franchisee as well as set specific performance standards (Stephens v. Yamaha 1981). The franchisor cannot avoid liability by signing an agreement with the franchisee which forbids the former from controlling the latter if the franchisee's actions indicate it is being controlled (Steele v. Armour 1978).

Apparent agency is established if the plaintiff reasonably believes that the franchisee was acting on behalf of the franchisor (Shadel v. Shell Oil 1984). If the plaintiff's claim of reliance on the franchisor is found to be unreasonable, then the franchisor is not liable for the franchisee's behavior (Cullen v. BMW 1982).

Franchisors have been held liable when their franchisees violated building codes (Kuchta v. Allied Builders 1971), harrassed customers (Billops v. Magness 1978), or filled prescriptions incorrectly (Drexel v. Union Prescription Centers 1978).

Franchisors have also been found negligent when the acts of their franchisees caused people to be injured due to falls (Murphy v. Holiday Inns 1975; Hayward v. Holiday Inns 1978) and killed in auto accidents (Fernandez v. Thigpen 1982).

REFERENCES

Billops v. Magness Construction Co. (1978), 391 A.2d 196 (Del.).

Chappius v. Sears, Roebuck & Co. (1978), 349 So.2d 963 (La. Ct.App. 1977), 358 So.2d 926 (La.).

Cintrone v. Hertz Truck Leasing & Rental Service (1965), 45 N.J. 434, 212 A.2d 769.

Cullen v. BMW of North America (1982), 531 F.Supp 555 (E.D. N.Y.).

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Murphy v. Holiday Inns, Inc. (1975), 216 Va. 490, 219 S.E.2d 874, 81 A.L.R.3d 756.

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Steele v. Armour & Co. (1978), 583 F.2d 393 (8th Cir.).

Stephens v. Yamaha Motor Co., Ltd. (1981), 627 P.2d 439 (Okla.).