

Waiting and cooling off periods in franchise contracts

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The subject of this research is the timing and approach to pre-contractual waiting and cooling off periods in business format franchise negotiations. The purpose of my dissertation is to better understand the role and effectiveness of the periods and their impact on the pre-contractual negotiations. The importance of this research is recognized through the reality that the majority of franchise disputes occur in the pre- or early contractual stages.

I have identified that the current understandings of the provisions are inadequate and there is not an identifiable policymaking rationale or justification for the inclusion or duration of the period in the majority of jurisdictions with a domestic franchise law worldwide. I sense that this may be due to their perceived failings in other commercial domains and a lack of statistically verifiable utility. The specific conditions surrounding the exercise of a franchisee's withdrawal rights, including the impact on both the franchise system and the franchisee's investment will be investigated through the legal, economic and behavioural lenses. My thesis will seek to account for the full range of international approaches to pre-contractual timing and remedy the assumption of ineffectiveness of both the cooling off and waiting periods through the identification of NEW measures of success and utility.

Receiving the SRA grant enabled me to travel to France and the United Kingdom to conduct my research. I worked on an international franchise disclosure database at a French law firm. The purpose of my trip to France was two-fold and the findings were imperative to the completion of the first two phases of my research methodology, which will be a triangulated approach. The internship at GM Avocats involved the creation of an international franchising disclosure database.

Through my participation in the creation of the franchising disclosure database I gained an understanding of the approaches integrated in various domestic statutes around the world. Whilst working on this project, I realized that the existing scope of my dissertation was too narrow and did not encompass the full range of issues pertinent to the pre-contractual period in business format franchise negotiations. I had initially only intended on researching the Australian and French jurisdictions. The Australian statute requires a separate waiting and cooling off period be provided to prospective franchisees. In the French jurisdiction the Loi

Doubin requires a period of time to pass that has the combined purpose of both the waiting and cooling off periods. Exposure to a range of international legislative practices was facilitated through the time spent creating the international database. This enabled me to recognize and account for the full spectrum of international approaches. From this, I identified four attitudes towards the timing of events during pre-contractual franchise negotiations. These include:

- The provision of both a waiting and cooling off period (For example Australia)
- The provision of one period with the combined purpose of a waiting and cooling off period (For example France)
- The provision of one period; either the cooling off or the waiting period (For example South Korea)
- The provision of neither, instead a reliance is placed on good faith obligations. (For example the United Kingdom)

During the internship I was also able to attend the French Franchise Exposition, the largest of its kind in Europe.

Following the conclusion of the internship, I conducted a series of in-depth interviews with experts from France and the United Kingdom. These discussions facilitated an insight into of the expert's perceptions of the effectiveness of their legislation and potential improvements. The new scope of my dissertation is encompassing of all international approaches to pre-contractual timing in franchise negotiations. In combination with the third stage of my research methodology, the quantitative survey, I anticipate that an international best practices model will be identified. I then intend on presenting my findings to the International Institute for the Unification of Private Law (UNIDROIT) for incorporation into their Model Franchise Disclosure Laws. Findings will also be valuable for domestic policy amendments in those jurisdictions that are identified to be operating inefficiently.