

FEATURES OF REFLECTION IN SYSTEM OF THE ACCOUNT OF PRECONTRACTUAL RELATIONS BY FRANCHISING CONTRACT

© 2008 T.E. Fedorova*

Keywords: franchising, franchisor, franchisee, franchise, transaction, costs, the agreement, brand - book, royalty, the legal owner, the user.

The article deals with the the features of precontractual relations under a franchising contract. The author also offers a system of book keeping of the costs which have arisen in a precontractual period. The conclusion of the article is that precontractual relations should be necessarily documentary confirmed by the agreement and reflected in a proper way in book keeping accounts according to national standards of book keeping.

The organization of manufacture on the basis of franchising contracts is one of the most perspective directions of development of business in Russia and abroad. His feature is granting the right of use of a trade mark of the organization, features of production or rendering of services, performance of works in time using for the certain payment, a so-called royalty.

The organization - legal owner (franchisor) after the conclusion of the franchising contract except for transfer of the specified right, supervises process of manufacture on technologies of the legal owner, registration of appearance of the organization - user (franchisee), quality of made production, is trained with the personnel franchisee and renders set of additional services to the enterprise - franchisee.

According to the civil code of the Russian Federation the franchising contract is valid only after the state registration in federal enforcement authority under the intellectual property. At non-observance of this requirement the contract is considered insignificant. Thus, except for registration of the given contract in tax service, he should be registered repeatedly in Rospatent that demands additional expenses of money resources and time.

Because of duration of registration procedures, the franchisor begins work with the franchisee much more before actual registration of the contract in Rospatent, in particular during this period there is a training the personnel, manufacture is adjusted, appearance franchisee changes. However all rendered services at this time prove to be true only oral arrangement as treaty provisions have not come into force till the moment of end of process of registration in Rospatent of the Russian Federation. During this

period the franchisor than it is not protected from illegitimacy of use of his trade mark, features of the "know-how", etc. In fact the franchisee, after training can easily replace a sign-board which is distinct from recommended to the franchisor, and it is capable to continue to conduct this favourable business already under the name.

For this reason, on the basis of the lead research of foreign practice, we suggest to enter into an accounting revolution concept « precontractual attitudes» which can be certified as documentary confirmed agreement of the sides and as consequence, are capable to find reflection in the system account. Disclosing on accounts of book keeping of the information on precontractual operations is the major moment of economic reflection of economic processes under the franchising contract. At the same time in domestic practice of book keeping absence of the necessary information on the given question, is a vital issue of effective realization of similar contracts. In interests of both sides of the contract assumed to the conclusion, it is necessary to formalize and take into account their precontractual attitudes that will allow the franchisor to demand from franchisee observance of confidentiality of the transmitted information and payment of possible actual charges the franchisor on precontractual services. And franchisee - to guarantee the account and if necessary return of anyone preliminary paid franchisor the sums or offset of such sums as his introductory payment after the conclusion of the contract franchising.

Corresponding treaty obligations of one or both sides if they took place, in our opinion, it is necessary to fix in the written agreement.

* Tatyana E. Fedorova, the lecturer of Balakov Institute of Economics and Business, subsidiary of Saratov State University of Social and Economic Sciences, post-graduate student.

But such agreement if in him other is not stipulated should not oblige franchisee to conclude the “basic” contract franchising or to predetermine his essential conditions or his subject.

Legislative guidelines on precontractual disclosing the information, in our opinion, should be stated both in the special law about the franchising, and in the Civil code - as the general requirements to group of enterprise contracts which conclusion is impossible without familiarity of one of the sides with the confidential information on the rights which under the contract are given it by other side.

In particular, in France action of the law on precontractual (“preselling”) disclosing the information is distributed to the whole group of contracts, switching the franchising. In the USA known Decision FTK № 436 is designed only on the franchising whereas laws on precontractual disclosing the information in the various states USA apprehending the requirements of the Decision № 436, are addressed either only the franchising, or more to the broad audience of contracts.

At the enterprises the costs arising in precontractual period, under the economic contents can be quite related to transaction costs.

Originally a transaction costs have been determined by R.Kouzom as «costs of using a market mechanism». Later this concept has got wider sense. It began to designate any kinds of the costs accompanying interaction of economic agents irrespective of, where it proceeds - in the market or inside the organizations, as business cooperation within the framework of hierarchical structures (such as firms) also is not free from *тpений* and losses. By the definition which has won the greatest recognition of K.Dalmana, a transaction costs include costs of gathering and processing of the information, carrying out of negotiations and decision-making, the control over observance of contracts and compulsion to their performance.¹

The concept of transaction for the first time has been entered into scientific revolution J. Kommons.

Transaction is not an exchange of the goods, and alienation and assignment of the property rights and freedom created by a society.

Kommons distinguished three basic kinds of transaction:

1) Transaction of the agreement - serves for realization of actual alienation and assign-

ment of the property rights and freedom, and at its realization the mutual consent of the sides based on economic interest of each them is necessary.

In transaction of the agreement the condition of symmetry of relations between contractors is observed. A distinctive attribute of transaction of the transaction, in Kommons’s opinion, manufacture, and transfer of the goods from hands in hands is not.

2) Transaction of management - in it key is the relation of management of submission which assumes such interaction between people when the right to make of the decision belongs only to one side. In transaction of management the behaviour is obviously asymmetric, that is investigation asymmetric positions of the sides and accordingly asymmetric legal relations.

3) Transaction of rationality - at it is kept asymmetric a legal status of the sides, but the place of the managing side borrows the collective body which is carrying out function of the specification of the rights. The rationality it is possible to relate to transaction: drawing up of the budget of the company by board of directors, the federal budget the government and the statement body of representative authority, the decision of arbitration court concerning the dispute arising between working subjects by means of which the riches are distributed. In transaction of rationality there is no management.

Through such transaction investment with riches of this or that economic agent is carried out.²

Developing analysis of Kous, supporters the approach of transaction have offered various classifications the transaction costs. According to one of them are allocated:

1) Costs of information search (an expense of time and resources for reception and processing of the information on the prices, the available goods, suppliers and consumers);

2) Costs of negotiating;

3) Costs of measurement of amount and quality of the goods entering an exchange and services;

4) Costs under the specification and protection of the property rights (charges on the contents of courts, arbitration, state bodies, and also expenses of time and the resources, necessary for restoration of the broken rights);

5) Costs of opportunistic behaviour which is understood as the unfair behaviour breaking conditions of the transaction or directed on reception of unilateral benefits.

The problem of opportunistic behaviour in the theory the transaction costs possesses one of the central places. Under this heading various cases of lie, a deceit, бездельничанья, манкирования obligations taken on get. Distinguish two basic forms of opportunism, first of which the second is characteristic for relations inside the organizations, and for market transactions.

Shirking - represents work with smaller feedback and the responsibility, than follows under treaty provisions. When there is no opportunity of an effective control for the agent, it can start to operate proceeding from own interests which are not necessarily conterminous to interests of firm which have employed him. The problem becomes especially sharp when people work together ("command") and the personal contribution of everyone to determine very difficultly.

Extortion - is observed when somebody of agents makes investments into specific actives. Then his partners have an opportunity to apply for a part of the income of these actives, threatening otherwise break of relations (with this purpose they can start to insist on revision of the price of a received product, increase of his quality, increase in standard item, etc.). Threat of "extortion" undermines stimulus to investment in specific actives.

Thus, transaction costs under the contract franchising, are the costs connected to the conclusion of this contract, granting of the information on the franchise, with preservation of confidentiality of the given information, and also the charges connected to preparation franchisee to subsequent use of the franchise. Thus, it is necessary to distinguish *транзакционные* and administrative costs.

The point of distinction transaction and administrative costs should be counted the moment of the conclusion of the transaction or the contract. It testifies that up to the conclusion of the transaction prevail *транзакционные* costs, and after its conclusion - administrative costs.³

Book keeping transaction costs is necessary for considering from two positions, from the side of franchisor and from the pside franchisee. In the given situation, in favourable con-

ditions is franchisee. Precontractual charges it takes into account in structure of charges of the future periods, as the charges connected to development of the enterprise. The franchising contract will be without dependence made whether or not, franchisee receives enough information for the further development of business, thus not encroaching on the confidential information of the enterprise - of franchisor and many other things.

In precontractual the period vulnerable there are rights of franchisor, in fact he at own risk carries out preparation of the partner for the future business dealing. Therefore, special attention, in our opinion, it is necessary to give economic reflection of precontractual relations in system of book keeping on balance of the organization - legal owner.

Subject of the contract is realization of cooperation and association in manufacture and selling of financial assets and a manpower of the legal owner and the user with use of a uniform complex of exclusive rights which represents the complex of the blessings consisting of rights of use by a brand and business - system of franchisor, being object of the franchising contract.

As up to the conclusion of the contract assumed franchisee should familiarize with the offered franchise, with features of manufacture, franchisor faces a problem of preservation of a trade secret about features of manufacture and business dealing, therefore in precontractual the period such information should be protected by the agreement of the sides on nondisclosure of a trade secret. In precontractual the period is necessary for acquainting franchisee with a so-called Brand - beech which is included in structure a franchising package. The brand - beech is a management to a brand, the book with the detailed description of a brand. She is necessary for correct using franchisee a trade mark and preventions of not realized infringement from his side in relation to franchisor.

The franchising package represents a package of documents for franchisee, and also documents of internal using franchisora and will consist of the following basic documents: the Brand - beech, the Manual on management the franchising enterprise, Politics franchising and the Complete set of the legal documents which are making out the franchising relations.

In book keeping cost of services which are rendered by the enterprise - franchisor according to conditions of the precontractual agreement in our opinion is necessary for reflecting in the separate subaccount «Calculations under precontractual relations» to account 76 « Calculations with different debtors and creditors». In the analytical account under the given subaccount the concrete information on the rendered services, the executed works or the transferred property should be opened. These obligations franchisee before to franchisor do not oblige the side to conclude further the franchising contract. Thus if the franchising contract will be made, the given kind of debts will be included in a total sum of debts under the franchising contract by the following posting:

The debit 76 subaccount «Calculations under the contract franchising»

The credit 76 subaccount « Calculations under precontractual relations»

If the contract does not consist in the subsequent, franchisee will be obliged to extinguish these debts when due hereunder, and the following record will be specified in book keeping the legal owner:

The debit 51 «The settlement account»

The credit 76 subaccount « Calculations under precontractual relations».

Thus, franchisor can compensate the charges which are connected to his mutual relations with assumed franchisee.

The same transaction expenses which cannot be compensated due to the potential partner, can be written off in structure the general economic charges.

The precontractual period is rather responsible for both sides of the forthcoming transaction. The competent account of the operations which are carried out during the given period, enables the organizations to protect the interests independently as legislatively these relations are not considered also the state has no opportunity to protect the right of franchisor and franchisee till the moment of registration of the contract in Rospatent. And introduction in legislative base of concept «precontractual agreements » can promote the decision to a line of the legal and economic problems connected to mutual relations under the franchising contract where the intellectual property of the enterprise requires adequate registration reflection and the control. And documentary made out protection of the information on the intellectual property franchisee from a wrongful encroachment on its use, will promote development in Russia franchising relations.

1. *Sorvina G.N.* Economic idea of the XX century: history pages: Lections. M., 2000.

2. The landmarks of economic idea. Company theory. Volume 2 / Edited by V.M. Galperin, 2000.

3. *Lazarev V.N.* About transactional, managerial and industrial costs // Vestnik of Samara State University of Economics, 2007. № 10 (36).