

# **THE REGULATION OF BUSINESS FORMAT FRANCHISE IN CALIFORNIA - LESSONS FOR NIGERIA**

by Sanni Segun Olumide.

LLM/MA Capstone / Final Thesis  
SUPERVISOR: Professor Tibor Tajti.  
Central European University Private University  
Quellenstrasse 51-55, 1100 Vienna  
Austria.

# TABLE OF CONTENTS

Abbreviations.....	iv
ABSTRACT.....	v
ACKNOWLEDGMENTS .....	vi
INTRODUCTION .....	1
1.2 REGULATION OF BUSINESS FORMAT FRANCHISE IN THE US.....	2
1.3 STATES AGITATION FOR IMPROVEMENT.....	2
1.4 JURISDICTIONS TO BE COVERED .....	3
1.5 RESEARCH AND METHODOLOGY .....	3
1.6 ROADMAP TO THE THESIS .....	4
CHAPTER ONE .....	6
FRANCHISE LEGAL FRAMEWORK IN NIGERIA.....	6
1.1 <i>EXAMINATION OF THE EXISTING LEGAL FRAMEWORK IN NIGERIA</i> .....	6
1.2 <i>GENERAL LAWS GOVERNING THE NIGERIAN BUSINESS ENVIRONMENT</i> .....	7
1.3 <i>SPECIFIC LAWS APPLICABLE TO FRANCHISING IN NIGERIA</i> .....	8
1.3.1 COMPANIES AND ALLIED MATTERS ACT(CAMA) 2020 .....	8
1.3.2 NIGERIAN INVESTMENT PROMOTION COMMISSION ACT .....	9
1.3.3 NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION (NOTAP) ACT.....	9
1.3.4 TRADEMARKS OFFICE .....	12

1.3.5 FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION (FCCPC) .....	13
1.3.6 PATENTS AND DESIGNS ACT .....	13
1.3.7 COPYRIGHTS ACT .....	13
1.4 <i>CHALLENGES OF THE EXISTING FRAMEWORK</i> .....	14
1.4.1 DISCLOSURE .....	14
1.4.2 MULTIPLICITY OF REGULATORY BODIES .....	14
1.4.3 LEGAL UNCERTAINTY .....	15
1.4.4 SUPPLY CHAIN MANAGEMENT .....	15
1.4.5 FRANCHISE ENCROACHMENT .....	16
1.4.6 ASYMMETRIC PROHIBITION .....	18
CHAPTER TWO .....	20
FRANCHISE IN THE UNITED STATES .....	20
2.1 <i>FRANCHISE AT THE FEDERAL LEVEL</i> .....	21
2.2 <i>FRANCHISE REGULATION IN CALIFORNIA</i> .....	22
2.3 CALIFORNIA APPROACH .....	24
2.3.1 DISCLOSURE .....	24
2.3.2 ASYMMETRY .....	25
2.3.3 MULTIPLICITY OF REGULAOTRY BODIES .....	28
2.3.4 LEGAL UNCERTAINTY .....	29
2.3.5 SUPPLY CHAIN MANAGEMENT .....	29
2.3.6 FRANCHISE ENCROACHMENT .....	31

Conclusion .....	35
Bibliography .....	39

## ABBREVIATIONS

<b>Art</b>	Article
<b>BOFIA</b>	Banks and other Financial Institution Act
<b>CAMA</b>	Companies and Allied Matters Act
<b>CDBO</b>	California Department of Business Oversight
<b>CFIL</b>	California Franchise Investment Law
<b>CFR</b>	Code of Federal Regulation
<b>CFRA</b>	California Franchise Relations Act
<b>DFPI</b>	Department of Financial Protection & Innovation
<b>FCCPA</b>	Federal Competition and Consumer Protection Act
<b>FCCPC</b>	Federal Competition and Consumer Protection Commission
<b>FDD</b>	Franchise Disclosure Document
<b>FTC</b>	Federal Trade Commission
<b>IPR</b>	Intellectual property rights
<b>MFA</b>	Minnesota Franchise Act
<b>NIPC</b>	Nigerian Investment Promotion Council
<b>NOTAP</b>	National Office for Technology Acquisition and Promotion
<b>U.S.</b>	United States
<b>USTPO</b>	United States Trademark and Patent Office

## **ABSTRACT**

This thesis is set out to evaluate the existing legal framework of franchise in Nigeria, the adequacy of these regulations compared to what is obtainable with Franchise Law practice in the United States, briefly at the Federal level and under State legislation with the focus on California. At the Federal level, the law imposes a disclosure obligation on the franchisor in the sale of a franchise which is to be done within a time limit set by the rules. This brought about the disclosure laws which unlike the state laws is applicable to the pre-sale phase of a franchise. The states, in a bid to offer more protection to franchisees, enacted statutes with more stringent disclosure requirements like the California Franchise Investment Law in 1970 followed by the California Relationship Act that governs the post-sale franchise stage.

The goal of this project is to answer the question why Nigeria needs a Franchise Law. To achieve the above stated goal, the thesis will do the following; Firstly, assess the existing laws and regulations in Nigeria, the extent of their application and identify the problems associated with the current practice with regards to Business Format Franchise in Nigeria. Secondly, it will examine Franchise business in the United States both at the Federal level under FTC Regulations and the regulatory framework in California. This work will examine how the U.S system resolve the problems highlighted in the Nigerian system. Thirdly, to ascertain whether the provisions of the U.S statutes can be wholly adopted into the Nigerian system or modified to fit the needs of the Nigerian business sphere.

Finally, recommend to Nigerian Legislature practical and legal framework to adopt in promulgating a Franchise Law.

# ACKNOWLEDGMENTS

Firstly, I would like to thank God for making this academic journey a success and the wisdom to write this academic literature and to all my academic mentors who have contributed immensely to the successful completion of this thesis.

Special thanks to my supervisor, Prof. Tibor Tajti for his patience, guidance, prompt feedback and insightful suggestions in writing this thesis. He is an exceptional teacher and father, and I will miss him immensely.

I want to appreciate my super Mom and Dad for their unwavering support, especially financially and prayers which has kept me going. I am eternally grateful for them. Special gratitude to my siblings; Sola, Tosin and Opeyemi for constantly checking up on me.

My gratitude to Mr. Ayodele Babalola, my mentor who informed me of this opportunity and supported me all the way down to Europe, I love you. To Mr. Ayobami Amire, my big brother, I am eternally grateful for your support and how you have cared for me. To RCCG Maranatha, Rennweg, I am grateful.

A special thank you to David Joseph and David Kibuuka, fellow CEU African students who gave me a family in Vienna and took adequate care of me, I love you boys and cannot thank you enough. To my amazing sisters Caroline and Tiyamike in GBLR, I am privileged to have met you. To all African students in CEU, I am grateful.

Lastly, I want to thank the University for the privilege to study in this institution and the scholarship given to me which was crucial for my sustenance, and I am grateful to have studied in this great institution.

Thank you to Lisa for her profound help in the formatting and submission of this thesis and to everyone who has influenced the success of this thesis one way or another, I would not have asked for better support.

# INTRODUCTION

A franchise is a tool for marketing and distributing a company's (franchisor's) products or services through somewhat independent distributors or service providers (franchisees). Franchisees generally receive a marketing plan or a program from the franchisor along with other rights in the franchisor's trademarks relating to the products or services.<sup>1</sup> This simple but seemingly basic postulations summarizes the whole concept of Business Format Franchise, from the nature of the relationship of the parties to the marketing plan which is the most critical element on which a franchise relationship is formed. Franchise as a business format franchise plays a significant role in the United States and this is evident in the number of franchise establishments and economic output. In 2023, it was estimated that there would be some 806,270 franchise establishments<sup>2</sup> in the United States with an economic output estimated to be roughly 860 billion U.S dollars, the number of employees working at these establishments was predicted to reach almost 8.7 million people in the same year.<sup>3</sup> These numbers show the huge potential franchise has for the economic development of a country and if properly regulated, could be a huge source of revenue to a country. Nigeria has also recognized this business model and there have been successful franchises in Nigeria mainly in the fast-food industry, hotels and supermarkets. However, notwithstanding the evidence of successful franchises in Nigeria, it lacks specific body of laws for franchise and whether the absence of this or not can affect the growth of business format franchise will be examined in this work.

---

<sup>1</sup> Jefferey A. Schneider and Robert J. Nye, *Business Franchise Law; Case and Materials*, Caroline Academic Press, 2003, page 3.

<sup>2</sup> International Franchise Association, & FRANdata, Number of franchise establishments in the United States from 2007 to 2023 with a forecast for 2024 [Graph] (February 13, 2024). In *Statista*. Retrieved June 06, 2024, from <https://www.statista.com/statistics/190313/estimated-number-of-us-franchise-establishments-since-2007/>.

<sup>3</sup> International Franchise Association, & FRANdata. (March 23, 2023). Economic output of franchise establishments in the United States from 2007 to 2022 with a forecast for 2023 (in billion U.S. dollars) [Graph]. In *Statista*. Retrieved March 06, 2024, from <https://www.statista.com/statistics/190318/economic-output-of-the-us-franchise-sector/>.



## **1.2 REGULATION OF BUSINESS FORMAT FRANCHISE IN THE US.**

Before delving into California as a case study, it is of utmost importance to state that in the U.S, the business format franchise is governed at two levels vis; the Federal and State level. To understand franchise in the U.S, the concept must first be defined and understood under the various laws that govern franchise and, in this case, we quickly look at the key elements of franchise under the Federal Trade Commission (FTC) Rule and State Franchise laws and for the purpose of this work, California. According to the FTC Rule, franchise must involve a business arrangement for a fee, the selling of goods and a franchisor must exert some significant control over the business. Any relationship that lacks any of the three elements mentioned above will not be covered by the rules. The California Franchise Law in its definition of franchise convey three elements in defining franchise with the new factor being the requirement of either marketing plan or systems as prescribed by the franchisor or a community of interest.<sup>4</sup>

## **1.3 STATES AGITATION FOR IMPROVEMENT**

The FTC rule was insufficient in its application as it only governed matters at the pre-sale stage of a franchise and does not prescribe any provisions governing the activities of the sale of a franchise nor regulate the relationship between the franchisor and the franchisee after the sale of the franchise. Even where the franchisor fails to disclose at the pre-sale stage there is no provision for penalty. The states, in a bid to protect the franchisees and cover the inadequacies of the FTC rule enacted their own franchise regulations. California in 1970, became the first state to regulate the sale of franchises when it enacted the California Franchise Investment law

---

<sup>4</sup> Cooper Distributing Co. Inc v Amana Refrigeration, Inc. 63 F.3d 262C.A.3 (N.J), 1995. August 22, 1995 gave a state definition franchise in New Jersey that as franchise exists under the New Jersey Franchise Practices Act if: (1) there is a “community of interest” between the franchisor and the franchisee; (2) the franchisor granted a “license” to the franchisee; and (3) the parties contemplated that the franchisee would maintain a “place of business” in New Jersey.

(CFIL)<sup>5</sup>. This law governs the offer and sale of franchises, and it introduced the concept of registration of franchises by franchisors and mandated disclosure within a specified time, failure upon which the franchise agreement will not be approved. The California Franchise Relations Act was in large part passed to protect franchisees. The law deals with matters on termination, non-renewal and notices in a franchise relationship as it governs the post-sale aspect of a franchise. The state franchise laws provide a franchisee with a private right of action, in addition to actions that can be taken by the state authorities. And these state and private sanctions may apply to not only the franchisor but also the franchisors' officers and directors, brokers and sub-franchisors, on a joint and several basis.<sup>6</sup>

## **1.4 JURISDICTIONS TO BE COVERED**

This work will be covering the United States, examining the regulatory framework for business format franchise at the Federal level and California and then compare with Nigeria. This thesis will examine the provisions of the California Franchise Investment law and California Franchise Relationship Act and their application in case studies within the jurisdiction, also how those key provisions can be adapted to solve the problems of business format franchise in Nigeria.

In conclusion, suggestions will be made to the Nigerian legislature in drafting a suitable franchise law.

## **1.5 RESEARCH AND METHODOLOGY**

It is important to state that this thesis is touching upon uncharted waters in that, there is no franchise specific law in Nigeria which regulates the relationship between the franchisor and the franchisee as it is largely left to the realm of contract law. This thesis is limited in access to

---

<sup>5</sup> Cal. Corp. Code §§ 31000 to §§ 31513 (1970).

<sup>6</sup> Tao Xiu & Philip F, Zeidman, Global Overview of Specific Franchise Statutes and Regulations, March 16, 2023.

sources and case law on this subject presently and if there are new developments in this subject in Nigeria during the course of this thesis, same shall be effected to the extent of availability. This thesis will be comparative in its approach by comparing the regulatory framework in both jurisdictions. Also, the methodology will be normative in that the California jurisdiction will be used as a benchmark in proffering suggestions for Nigeria in its enactment of a franchise law.

## **1.6 ROADMAP TO THE THESIS**

The main questions to be answered by this thesis is why Nigeria needs a franchise law, and why the examination of the jurisdictional application of the California combined statutes in regulating franchise in California is crucial to promulgating a franchise law for Nigeria. This thesis will also strive to suggest a balanced approach to the adaptation of the California statutes into Nigeria. Thus, providing to a moderate extent a protection for the franchisor without diminishing the rights of the franchisee and holistically achieve a balanced perspective to make Nigeria a suitable franchise destination.

To achieve the above, this thesis has been divided into two chapters. Chapter one will assess the existing laws and regulations in Nigeria touching on different aspects of franchise, the extent of their application and the lacuna in their application. It will further identify the most prevalent problems associated with the present system to support the reason why there is a need for a comprehensive body of rules to solve these problems. Chapter two will examine the regulation of business format franchise in the United States, firstly at the Federal Level and then delving into California by looking at the Historical development, the regulatory bodies, analyzing its twin statutes and precedents in its application. The second chapter will conclude by looking at how the twin statutes of California address the problems associated with business format franchise in Nigeria.

The conclusion will involve recommendations based on the analysis of both systems and propose the amended suggestions to the Nigerian legislature on the drafting of a franchise law.

## **CHAPTER ONE**

### **FRANCHISE LEGAL FRAMEWORK IN NIGERIA**

#### **1.1 EXAMINATION OF THE EXISTING LEGAL FRAMEWORK IN NIGERIA**

The international franchise Association defines a franchise as “the agreement or license between two legally independent parties which gives a person or group of people (franchisee) the right to market a product or service using the trademark or trade name of another business (franchisor); the franchisee the right to market a product or service using the operating methods of the franchisor; the franchisee the obligation to pay the franchisor fees for these rights; the franchisor the obligation to provide rights and support to franchises”<sup>7</sup>. This definition succinctly captures the franchise climate in Nigeria and not as a matter of law as there is no specific franchise legislation but a matter of practice. For franchisors and prospective franchisees in Nigeria seeking to operate in Nigeria, the main question is what is the legal and regulatory framework for franchising in Nigeria? What agency or agencies regulate franchising in Nigeria. The answer to these questions will be examined shortly.

To fully grasp the laws and regulatory framework that affect franchising in Nigeria, a lot of issues and the applicable laws that affect them must be examined. These issues include: the formation of the company in Nigeria, the forms of business that can be used by franchisors, restrictions on foreign investment and investors and the sector involved. Franchising in Nigeria is governed by many legal instruments that range from those with general application such as those that apply to the Nigerian business environment and to those that specifically apply to franchising business. This is important because, the general laws affect the capacity of a

---

<sup>7</sup> Dr. Uche Eweluka Ofodile, *Franchising Law in Nigeria*, Nigerian International Franchise Association Newsletter, December 2013.

franchisor to contract with the franchisee, the business object and even extends to the support a franchisor provides to the franchisee in terms of personnel and movement of goods and services and repatriation of any funds or payment made to the franchisor.

## **1.2 GENERAL LAWS GOVERNING THE NIGERIAN BUSINESS ENVIRONMENT**

These general laws include the

1. Companies and Allied Matters Act 2020 which applies to formation of the business through which the franchise will operate<sup>8</sup>.
2. The Trademark Act<sup>9</sup> which protects the business brand, the Immigration Act<sup>10</sup> which regulates the entry of foreigners into the country and border protection.
3. The Nigerian Investment Promotion Council (NIPC) Act<sup>11</sup> which its sole purpose is to encourage investment in the Nigerian economy and allows for foreign participation in the operation of any company in accordance with the provisions of the Act which includes incorporation and obtaining the requisite licenses.
4. The Federal Inland Revenue Act<sup>12</sup> for tax compliance.
5. Banks and Other Financial Institution Act<sup>13</sup> (BOFIA) for corporate Banking and capital import/export, Small and Medium Enterprise Development Agency which seeks to develop small and medium industries where the business involves them.

---

<sup>8</sup> Hereinafter referred to as CAMA 2020.

<sup>9</sup> Trademark Act Cap T13 LFN 2004.

<sup>10</sup> Immigration Act 2015:Nigeria, <https://archive.gazettes.africa/archive/ng/2017/ng-government-gazette-supplement-dated-2017-03-01-no-25.pdf> accessed 20 March, 2024.

<sup>11</sup> See S.18-20 NIPC Act, Cap N117, LFN 2004 <https://www.nipc.gov.ng/wp-content/uploads/2021/10/NIPC-ACT.pdf> accessed 20 March 2024.

<sup>12</sup> Federal Inland Revenue Service (Establishment) Act 2007.

<sup>13</sup> Banks And Other Financial Institutions Act, 2020.

6. Federal Competition and Consumer Protection Act<sup>14</sup> (FCCPA) on restriction of competition, the Central Bank of Nigeria regulations on foreign exchange, payment systems and currency repatriation.

## **1.3 SPECIFIC LAWS APPLICABLE TO FRANCHISING IN NIGERIA**

### **1.3.1 COMPANIES AND ALLIED MATTERS ACT(CAMA) 2020**

The Act is the primary legislation on the conduct of business in Nigeria. It provides for the incorporation of all companies whether private or public, charitable, and non-profit and in whatever form they may exist before operating any business in Nigeria. The Corporate Affairs Commission<sup>15</sup> (CAC) “is a regulatory body, established to regulate the incorporation, running and winding up of companies, business names and Incorporated trustees in accordance with CAMA”<sup>16</sup>. The clear provision of CAMA states as follows:

*“subject to sections 80-83 of this Act, every foreign company which before or after the commencement of this Act was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria, shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated, the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for service of documents or processes in Nigeria for any purposes other than the receipt of notices and other documents, as matters preliminary under this Act.”<sup>17</sup>*

---

<sup>14</sup> FCCPA Act 2018.

<sup>15</sup> Section 1 CAMA.

<sup>16</sup> MN Umenweke, AR Aladegbaiye, *Powers and Duties of the Corporate Affairs Commission as a Regulatory Body in Nigeria*, Nnamdi Azikwe University Journal of International Law and Jurisprudence, vol. 2 (2011). ISSN: 2276-7371.

<sup>17</sup> Section 78 CAMA.

This section mandates every foreign company with the intention of commencing business in Nigeria in whatever form to incorporate in the country as a condition precedent.

### **1.3.2 NIGERIAN INVESTMENT PROMOTION COMMISSION ACT**

Section 20 of the Act mandates registration with the commission of any company where foreign participation is permitted or involved. The benefit of registration with the commission are provided under the Act<sup>18</sup> which provides thus:

“subject to this section, a foreign investor in an enterprise to which this Act applies, shall be guaranteed unconditional transferability of funds through an authorized dealer, in freely convertible currency, of –

- a. dividends or profits (net of taxes) attributable to the investment<sup>19</sup>;
- b. payments in respect of loan servicing where a foreign loan has been obtained<sup>20</sup>; and
- c. the remittance of proceeds (net of all taxes) and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment<sup>21</sup>.

Consequently, where there is a failure by the parties in a franchise agreement to register with the commission, the proceeds of sale, royalties and other fees due to the franchisor shall not be transferred out of Nigeria.

### **1.3.3 NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION (NOTAP) ACT**

Business Format Franchise is primarily governed by the National Office for Technology Acquisition and Promotion (NOTAP) Act<sup>22</sup>. Chapter 2 of the Act defines a franchise agreement

---

<sup>18</sup> Section 24 NIPC Act.

<sup>19</sup> S. 24(a).

<sup>20</sup> S. 24(b).

<sup>21</sup> S. 24 (c).

<sup>22</sup> NOTAP Act Cap N68, LFN 2004 [https://notap.gov.ng/new\\_dev/wp-content/uploads/2022/03/notap\\_tech\\_trans\\_agreement\\_revised\\_guidelines.pdf](https://notap.gov.ng/new_dev/wp-content/uploads/2022/03/notap_tech_trans_agreement_revised_guidelines.pdf) accessed 20 March 2024.



as a business arrangement whereby the franchisor grants the right to exploit the system developed by the franchisor which is generally a package including the intellectual property rights (IPR) to another party, the franchisee, to conduct the business or provide and sell the associated goods or services. Usually, a franchise agreement includes the right to use the trademarks, trade secrets, name or logos and designs associated with the business; patents and know-how of the business and any other relevant brochures, advertising or copyright works related to the manufacture, sales of goods or the provision of services to customers.<sup>23</sup>

Section 4 (d) of the Act empowers the National Office with the registration of all contracts or agreements which wholly or partially are in connection with the following purposes.

- i. the use of trademarks.
- ii. the right to use patented inventions.
- iii. the supply of technical expertise in the form of preparation of plans, diagrams, operating manuals or any other form of technical assistance of any description whatsoever.
- iv. the supply of basic or detailed engineering.
- v. the supply of machinery and plant.
- vi. the provision of operating staff or managerial assistance and the training of personnel; and
- vii. the monitoring, on a continuous basis, of the execution of any contract or agreement registered pursuant to this Act.

The import of stating the powers of the office is to highlight that they perform similar roles as the Federal Trade Commission and the Department of Financial Protection and Innovation (DFPI) in the registration of franchises and as such there is no lacuna in the regulation of Business Format Franchise in Nigeria. However, later in this chapter, we will analyze whether the Office has been effective in its administration of franchises in Nigeria and given the present

---

<sup>23</sup> Chapter 2.2.7 NOTAP Revised Guidelines Revised Guidelines for Registration and Monitoring of Technology Transfer Agreements in Nigeria, February 2020 [https://notap.gov.ng/new\\_dev/wp-content/uploads/2022/03/notap\\_tech\\_trans\\_agreement\\_revised\\_guidelines.pdf](https://notap.gov.ng/new_dev/wp-content/uploads/2022/03/notap_tech_trans_agreement_revised_guidelines.pdf) accessed 20 March 2024.

state, there is a need to promulgate a new franchise legislation or a new administrative body for franchise regulation.

### ***1.3.3.1 GROUNDS FOR REFUSAL***

The director shall refuse registration where there is an obligation to acquire equipment, tools, parts or raw materials exclusively from the franchisor or any other person or source<sup>24</sup>. The director of NOTAP shall also refuse registration where the transferee is obliged to submit to foreign jurisdiction in any controversy arising for decision concerning the interpretation or enforcement in Nigeria of any such contract or agreement or any provisions thereof.<sup>25</sup> Payment shall be made in Nigeria to any person outside Nigeria by the Ministry of Finance, the Central Bank or any Licensed bank in Nigeria in respect of any due payments under a contract or agreement provided under section 4 (d) unless a certificate of registration and a copy of the franchise agreement certified by the National Office is presented.<sup>26</sup>

The NOTAP Act also empowers the office to cancel the registration of any agreement where the contract or agreement has been amended or modified in contravention to the provision of the Act<sup>27</sup>. Thus, any agreement that has not been registered or made in accordance with the provision of this Act is null and void and the obligations therein unenforceable. In *Stanbic IBTC Holdings Plc v Financial Reporting Council of Nigeria & Anor*<sup>28</sup> and *Esdee Food Products (Nig.) Ltd v Beecham Group Limited*<sup>29</sup>, the Court of Appeal held that failure to register an agreement that is required to be registered under the NOTAP Act would result only in preventing payment of money in Nigeria to any person outside Nigeria for financial obligations related to that contract or agreement but such agreements will be valid and legally

---

<sup>24</sup> S. 6(2) (f) NOTAP Act.

<sup>25</sup> S. 6(2) (R) NOTAP Act.

<sup>26</sup> S. 7 NOTAP Act.

<sup>27</sup> S. 8 NOTAP Act.

<sup>28</sup> (2018) LPELR-46507(CA).

<sup>29</sup> (1985) 3 NWLR (Pt.11) 112.

enforceable in Nigeria. The Court of Appeal by this decision has rendered any financial claim on the part of a foreigner on any agreement within Nigeria invalid unless it is registered.

By implication, any fees due to the franchisor under the franchise agreement in terms of payment of license fees, money for importation of materials and personnel payments will not be remitted by the Nigerian government unless the franchise agreement is registered with NOTAP. The franchisor is most concerned with his license and royalties' and as such even though by contract law, such agreement is valid under Nigerian law, the franchisor is not entitled to payment in his home currency unless the agreement is registered where it involves transfer of technology.

A franchise agreement is usually accompanied by different proprietary rights including know-how, training, operating manuals, etc. in case of franchise for a departmental store (Retail shops), there must be evidence of the local sourcing of the raw materials from local producers<sup>30</sup>.

### **1.3.4 TRADEMARKS OFFICE**

The Trademarks, Patents and Designs Registry (which is under the Ministry of Industry, Trade and Investment) also known as the (the Trademarks Registry) also play a vital role in franchise agreements. The role of this office is the review and approval of all trademark applications for use by franchisees as part of the franchisor's brand and the registration of such trademarks in the trademark register<sup>31</sup>. Thus, once a trademark is registered, the operation now shifts to NOTAP which regulates the operation of trademarks as transfer of technology by virtue of the NOTAP Act.

---

<sup>30</sup> Chapter 2.2.7 NOTAP Revised guidelines (Act).

<sup>31</sup> S. 2(1) Trademarks Act, CAP T13 Laws of Federation of Nigeria 2004.

### **1.3.5 FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION (FCCPC)**

The role of this commission is to prevent unfair competition and market practices by companies and also protect consumers by virtue of the provisions of the Federal Competition and Consumer Protection Act 2019 (FCCPA)<sup>32</sup>. The FCCPC is empowered to make regulations with regards to unfair competition,<sup>33</sup> restrictive agreements,<sup>34</sup> and monopolies<sup>35</sup> and these are matters that come to the forefront in franchising. Clauses in franchise agreements which seeks to maintain a minimum resale price for goods and services to be supplied are held to be unlawful and void.<sup>36</sup> This is similar to the role played by the Federal Trade Commission (FTC) in the U.S. in the enforcement of antitrust laws and for the protection of consumers<sup>37</sup>.

### **1.3.6 PATENTS AND DESIGNS ACT**

Section 1 and 3 of this Act mandates the registration of all patents and Section 12 deals with the registration of designs in Nigeria<sup>38</sup>. This regulation does not directly regulate franchise as most of all the regulatory bodies and laws in Nigeria, but patents and designs are usually the subject of a franchise agreement and as such fall within the scope of this Act.

### **1.3.7 COPYRIGHTS ACT**

The Copyright Commission is responsible for copyrights registration and violation in Nigeria. Usually, operations manual and proprietary software developed by franchises are regarded as literary works under the Copyrights Act<sup>39</sup>. Section 2 (2) (a) of the Act defines literary work to

---

<sup>32</sup> <https://fccpc.gov.ng/wp-content/uploads/2022/07/FCCPA-2018.pdf> accessed March 27, 2024.

<sup>33</sup> Part XIV, FCCPA.

<sup>34</sup> Part VIII FCCPA.

<sup>35</sup> Part X, FCCPA.

<sup>36</sup> Section 63(1) FCCPA.

<sup>37</sup> S. 5(a) FTC Act, 15 U.S.C.

<sup>38</sup> <https://lawsofnigeria.placng.org/laws/P2.pdf> accessed 27 March, 2024.

<sup>39</sup> <https://placng.org/i/wp-content/uploads/2023/04/Copyright-Act-2022.pdf> accessed March 27, 2024.  
Copyrights Act 2022 Cap C28, Laws of the Federation of Nigeria, 2004.

eligible for copyright where effort has been made on the work and it is fixed in any medium of expression from which it can be perceived or reproduced notwithstanding the quality<sup>40</sup>.

## **1.4 CHALLENGES OF THE EXISTING FRAMEWORK**

### **1.4.1 DISCLOSURE**

It is evident from the analysis that there is no franchise specific legislation in Nigeria. The NOTAP's provisions only deal with some aspects of franchise and one notable omission is the absence of provision on failure to comply with disclosure of documents on the part of the franchisor even where there is a disclaimer on misrepresentation in the franchise agreement. The Supreme Court of Nigeria in *Kuforji & Anor v. V.Y.B Nig. Ltd*<sup>41</sup>, held that where pre-contractual misrepresentation induces the party to whom such representation is made to enter into a contract, a valid cause of action arises. This shows that notwithstanding this omission, the Nigerian court is not lenient with contractual misrepresentations. But in practice there is no penalty for non-compliance with disclosure and the seemingly available remedy for a franchisee is in the realm of contract. The legal uncertainty can be cured by the adoption of disclosure laws enshrined in the franchise legislation. However, such law must state when disclosure is to be made, the items to be disclosed, prescribe penalties for non-disclosure and how stringent they should be. Nigeria must adopt a legislation that answers the postulations above. Finally, as stated in the introductory part of this work, we shall examine the Franchise regulatory framework in the U.S at the Federal level and California in a bid to find a suitable solution to this problem in the Nigerian system.

### **1.4.2 MULTIPLICITY OF REGULATORY BODIES**

In the product (goods and services) marketing and production activities are numerous regulatory bodies with a multiplicity of operation standards. These regulatory bodies are

---

<sup>40</sup> S. 2 (3) Copyrights Act 2022.

<sup>41</sup> (1981) LPELR-1716(SC).

established by various laws (codes) governing their operation. These confuse the producers, marketers (vendors) as well as consumers and this is because of the differences in expectations of the various groups as regulatory bodies<sup>42</sup>. It is worse in case of franchise in Nigeria due to the plethora of regulatory bodies, laws and approvals a franchisor has to comply with, and even Local, State and Federal governments' laws and regulations enforced by governmental institutions, operating concurrently in making demands of the franchisor and the franchisees at the same time, majorly in areas of tax and land use and this discourages the creation of franchise relationships to the disadvantage of the economic development of Nigeria<sup>43</sup>.

### **1.4.3 LEGAL UNCERTAINTY**

This also evinces the lack of legal certainty in Nigeria due to the multiplicity of regulatory bodies with their differing standards and this makes Nigeria an unsuitable destination for franchise business. The fact that there is no franchise specific regulation serves as a limitation on the rights of the parties under the agreement in that there is no provision on the consequences of breach of obligations under the franchise agreement and the inadequacy of remedies provided under contract law given the peculiar operation of franchise business.

### **1.4.4 SUPPLY CHAIN MANAGEMENT**

Under the existing regulatory framework, acquisition of equipment, tools, parts or raw materials exclusively from the franchisor is prohibited<sup>44</sup>. This prohibition also applies to the recruitment of personnel provided by the supplier whether on a temporary or permanent basis<sup>45</sup>. However, given the nature of a business format franchise, it involves a large corporation franchisor with a proven and successful business model and product within a defined territory

---

<sup>42</sup> Oko A. E. Ndu, Ogwo EO. *Self regulation in the marketing services in Nigeria: Study of selected firms in the service industry*. Global Journal of Emerging Trends in e-Business and Consumer Psychology, 2014; 1(2):94-117.

<sup>43</sup> Oko Augustine, Okonkwo Raphael, *Franchise Relationship in Nigeria: Implicit Challenges to Role Performance as Franchisor*, British Journal of Economics, Management & Trade Vo.10, 2015, Pg. 6 accessed 27 March, 2024.

<sup>44</sup> 6 (2) (f) NOTAP Act.

<sup>45</sup> 6(2) (i) NOTAP Act.

or territories secured by its own personnel and equipment or tools which has produced uniformity in standard and quality of service it offers to the public as against a naïve franchisee in that industry. The strict application of this provision hinders a franchisor willing to invest in Nigeria, not only does it hamper the contractual freedom of the parties, but it also robs the franchisor the opportunity of maintenance of its business reputation.

### 1.4.5 FRANCHISE ENCROACHMENT

The Black's Law Dictionary<sup>46</sup> defines encroachment as “an unlawful gaining upon the right or possession of another”.<sup>47</sup> To encroach in action means to enter by gradual steps or stealth into the possessions or rights of another; to trespass; intrude<sup>48</sup>. In Business Format Franchise, territorial exclusivity is one crucial provision which parties are usually conscious about. For the franchisor, it helps with market concentration in an unfamiliar international market. Also, for the franchisee encroachment is important as it could determine the level of revenue generated by the franchisee. Territorial exclusivity, however, only protects a franchisee from competitors under the same brand and not outside competitors.

The existing regulatory framework in Nigeria does not deal with this issue. Apart from the apparent failure of any regulation dealing with franchise encroachment, even where they are provided for in the contracts with the franchisors, there is no mechanism in place to monitor compliance with the clause against encroachment and provide remedy in event of breach. Interestingly, a sample of responses conducted among some anonymous franchisees in Nigeria revealed that except for systems in the transportation industry, all franchise brands in Nigeria make explicit provisions for exclusive territory in their contracts. For most quick service restaurants systems, the coverage is typically based on areas<sup>49</sup>. The experiences of some of the

---

<sup>46</sup> Thomson West, 10<sup>th</sup> Edition, May 1, 2014. ISBN-10 0314613005.

<sup>47</sup> Ibid.

<sup>48</sup> Miami Corporation v State, 186 La. 784, 173 So 315, 318.

<sup>49</sup> Adams Adeiza, Marlin PhD, Noor Azizi Ismail PhD, A *Qualitative Analysis of the Influence of Exclusive Territory and Tying Clauses on Franchisees' Business Performance and Overall Satisfaction*, Journal of Marketing and Consumer Research, Vol. 30, 2016, at 52. [www.iiste.org](http://www.iiste.org).

responses also reveal that the provision is just a formality and never really operates in practice. This is because according to the franchisees, their franchisors opened a company-owned unit in a location that obviously should be part of their own territory as one of the informants puts it *“they opened a new outlet close to me... I stopped paying them... they stopped providing me the quality of support they promised. They stopped giving me promotional materials. They became arrogant in relating with me.”*<sup>50</sup>

Another franchisee described the current situation thus: *“as we speak, we are in court. As you can see from the outside, we have removed the name sign from our door.”*<sup>51</sup>

Consequently, while many franchisees in Nigeria may share the same sentiments as the above, on the other side of the survey are those who do not really care as they stated it does not affect their business performance. Their assertions are below:

*“But I don’t think it helps to improve our performance in any way. The competition is everywhere”.* (Informant 10).<sup>52</sup>

*“So, I don’t see any connection between the so-called exclusive territory and my outlet performance”.* (Informant 1).<sup>53</sup>

*“Yes, there is exclusive territory. I really cannot say whether it has had positive impact on our performance or not”.* (Informant 4)<sup>54</sup>.

The nonchalance of many franchisees as to the exclusivity and encroachment drama is evident in the establishment of many branches of the same brand within the same geographical area, this is very common with the Chicken Republic and Tantalizers franchise in Nigeria. From the foregoing, it is evident that there is need for a regulatory remedy against encroachment because contractually, there is an utmost disregard for this provision by franchisors aided by the lack of

---

<sup>50</sup> Ibid at 52.

<sup>51</sup> See also Ibid at 52.

<sup>52</sup> Ibid at 53.

<sup>53</sup> Ibid at 53.

<sup>54</sup> Ibid at 53.



legislative consequence. As stated earlier in this work, the lack of franchise related disputes in courts of law in Nigeria could be evidence of nonchalance by the franchisees towards seeking redress. In the next chapter, we would examine how the U.S system tackles the issue of encroachment and how Nigeria can best adapt these provisions.

#### 1.4.6 ASYMMETRIC PROHIBITION

Franchise asymmetry has been a subject of debate in the realm of business format franchise. According to Tajti<sup>55</sup> a closer look at Business Format Franchise shows that asymmetry is an important characteristic which the Business world would argue that it is important for the protection of intellectual property rights and is the key to the success of the entire system.<sup>56</sup> While some arguments exist about asymmetry as an integral part of the franchise agreement, others have been about what level of asymmetry is allowed given that it is almost impossible to eliminate asymmetry. Some authors have described franchise as a one-sided contract which is between the franchisee and the more powerful franchisor and on this basis abuse is inevitable.<sup>57</sup> This position though still valid till today has taken a divide in the US. There are authors who are pro industry<sup>58</sup> (franchisor) and others pro-franchisee<sup>59</sup>. The divide is further made complex due to the lack of any test to determine the level of asymmetry which is acceptable.<sup>60</sup> The U.S regulatory framework at the Federal level and California does not directly address this issue but the adoption of more stringent laws for the protection of franchisees in California suggests that there has been an indirect assumption of asymmetry as an integral part of the Business Format Franchise. In Europe, the soft law instrument, the Draft

---

<sup>55</sup> Tibor Tajti, *Franchise and Contract Asymmetry: A Common Trans-Atlantic Agenda*, Loyola of Los Angeles International & Comparative Law Review, Vol. 37, 2015, no. 2. at 249.

<sup>56</sup> Ibid at 249.

<sup>57</sup> Pannal Alan Sanders, "At Will" Franchise Terminations and the Abuse of Rights Doctrine, 42 LA. L. REV. 209, 215 (1981).

<sup>58</sup> Paul Steinberg & Gerald Lescatre, *Beguiling Heresy: Regulating the Franchise Relationship*, 109 PENN. ST. L. REV. 105, 113 (2004). Id at 271.

<sup>59</sup> Peter C. Lagarias and Robert S. Boulter, *The Modern Reality of the Controlling Franchisor: the Case for More, Not Less, Franchisee Protections*, FRANCHISE L.J. 139 (2010).

<sup>60</sup> NOTE Tajti at 56, 250-251.

Common Frame of Reference (DCFR)<sup>61</sup> provided for rules on asymmetry and its provisions recognizes a franchisor-favouring asymmetry<sup>62</sup> which is further proof of the same premise on which the California laws were enacted. Three main types of asymmetries have been identified: those resting on legal tools (law-based asymmetries), information asymmetry and asymmetry derived from superior financial or strategic positions of franchisors (superior strategic position-based asymmetries)<sup>63</sup>. The franchisor, through their superior position controls a franchisee through direct involvement in the franchisee's decision making (which may occur via imposing) opening hours, design and salaries to employees at each station.<sup>64</sup> The sole aim from the franchisor's point of view is to ensure the uniformity of quality and brand reputation. The line between abuse and administrative support in terms of asymmetry is quite blurry, and this begs the question: what to do with asymmetry and what level of asymmetry should be tolerated?<sup>65</sup> The NOTAP Act expressly allows the director to refuse the registration of any franchise agreement that include the following:

*“where provisions are included therein which permit the supplier to regulate or intervene directly in the administration of any undertaking belonging to the transferee of the technology and are, in his opinion, unnecessary to the implementation or execution of such contract”*<sup>66</sup>

This expressly prevents franchisors from providing continuous support and ensuring uniformity and standard goal particularly in the early years of the franchise, but also gives the director, who is naïve in this sphere of business too wide a discretion to exercise. Under the

---

<sup>61</sup> On the features, fate and a discussion on the DCFR franchise law, see Tibor Tajti, *Systemic and Topical Mapping of the Relationship of the DCFR and Arbitration* KAZIMIRO SIMONAVICIAUS UNIV., VILNIUS, LITHUANIA, (2013).

<sup>62</sup> Id Tibor Tajti at 56, Pg. 250.

<sup>63</sup> See Philip Mark Abell, *The Regulation of Franchising in the European Union* 59 (published thesis, Queen Mary, Univ. of London) (2011) note 59 at 76.

<sup>64</sup> Uri Benoliel, *The Behavioral Law and Economics of Franchise Tying Contracts*, 41 RUTGERS L.J 527, 533-34 (2010).

<sup>65</sup> Ibid Tajti at 270.

<sup>66</sup> Section 6 (2) (c) NOTAP Act.

extant legal regime, it would discourage a lot of franchisors from investing in Nigeria and would also explain the lack of growth of local franchise.

In the next chapter, we will examine the reaction of the U.S system to asymmetry and the approaches taken to even out the interest of both parties to the franchise agreement.

In conclusion, Nigeria lacks a franchise specific law which deals with the relationships between the parties but regulates franchise indirectly through many laws and regulatory bodies. This lacuna does not come without its problems as has been identified above, consequently, in the next chapter, we would look at franchise under the US system both at the Federal level and California being our focus, on the state level and how the system has tackled some of the problems in Nigeria highlighted above.

## CHAPTER TWO

### FRANCHISE IN THE UNITED STATES

*“The concept of business format franchising originated in the United States of America in the late 1950’s and saw rapid expansion there in the 1960s and 1970s. As the phenomenon of business format franchising has taken hold in many countries around the globe regulation of the sector internationally has increased with a trend toward regulation that has been particularly notable in the years since 1990”<sup>67</sup>*

In a significant number of countries, the main source of franchise law is a form of industrial self- regulation- codes of conduct or codes of ethics- drafted by the industry itself (i.e. trade

---

<sup>67</sup> Elizabeth Crawford Spencer, *the Regulation of Franchising in the New Global Economy* (Edward Elgar, 2010), at 1.

associations).<sup>68</sup> The U.S has federal and state level regulations on franchise governing many areas from disclosure to the regulation of the relationship between the franchisor and the franchisee. The enforcement of these regulations is entrusted to established federal or state level agencies that monitor the disclosure of information at various levels of the agreement both at registration and during the actual relationship.<sup>69</sup>

## 2.1 FRANCHISE AT THE FEDERAL LEVEL

The Federal Trade Commission (FTC) rule<sup>70</sup> developed at the federal level to govern franchise in the U.S. The FTC rule defines franchise to mean any continuing commercial relationship or arrangement, whatever it may be called, in which the terms specify that<sup>71</sup> :

- i. The franchisee will obtain the right to operate a business that is identified or associated with the franchisor's trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor's trademark;<sup>72</sup>
- ii. The franchisor will exert or has authority to exert a significant degree of control over the franchisee's method of operation, or provide significant assistance in the franchisee's method of operation; and<sup>73</sup>
- iii. As a condition of obtaining or commencing operation of the franchise, the franchisee makes a required payment or commits to make a required payment to the franchisor or its affiliate<sup>74</sup>.

The FTC rule is a disclosure rule in that it imposes an obligation on the franchisor to furnish the franchisee with a copy of the franchisor's disclosure document before the sale of the franchise<sup>75</sup>. The purpose of this is to enable the franchisee make an informed decision before

---

<sup>68</sup> On Models of Franchise specific legislation. See Elizabeth Crawford Spencer, *the Regulation of Franchising in the New Global Economy* (Edward Elgar, 2010), at page 221.

<sup>69</sup> See FTC Rule, Item 17 Table (u). Also Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunities <https://www.ecfr.gov/current/title-16/part-436> accessed 28 March 2024 3:29:32 PM.

<sup>70</sup> <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-D/part-436>.

<sup>71</sup> 16 CFR 436.1(h).

<sup>72</sup> 16 CFR 436.1(h)(1).

<sup>73</sup> 16 CFR 436.1(h)(2).

<sup>74</sup> 16 CFR 436.1(h)(3).

<sup>75</sup> 16 CFR 436.2.

signing the franchise documents based on the information available for perusal. The list of items to be disclosed are prescribed under the rules<sup>76</sup>. However, the FTC rule was inadequate in its application in that it did not disclose the penalty in event of non-disclosure nor provide any form of regulation on the post-sale matters of the franchise agreement or regulate the relationship between the parties. Thus. The states in the US, due to the inadequacy of the FTC rule developed their own franchise regulation and California became the first state to adopt the registration and disclosure law on the sale of franchise when it enacted its own franchise law. California is the most franchise-protective regulation system, and thus, the best model for emerging jurisdictions whose primary goal is to provide local franchisees with heightened protections. Consequently, the statutory provisions of this system will be examined below.

## 2.2 FRANCHISE REGULATION IN CALIFORNIA

Due to the failure of Congress to fill in the gap left by the FTC rule, various states in a bid to afford more protection for franchisees developed their own laws governing franchise, and California became the first state to regulate the sale of franchises by adopting a franchise disclosure law. California enacted the California Franchise Investment Law<sup>77</sup> (CFIL) in 1970 to regulate franchise, it is a franchise disclosure law which mandates the registration of a franchise disclosure document without which there is no sale of a franchise. This law is administered by the California Department of Business Oversight (CDBO) which is headed by a commissioner and given inherent powers by the law to take certain actions. In 1981, the California Franchise Relations Act (CFRA) was enacted to further protect the interest of franchisees<sup>78</sup>. Simply put, it was directed at solving the imbalance in the bargaining power

---

<sup>76</sup> 16 CFR 436.5.

<sup>77</sup> California Corporate Code. Division 31000-31019 [https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?tocCode=CORP&division=&title=4.&part=&chapter=&article=&nodetreepath=6](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CORP&division=&title=4.&part=&chapter=&article=&nodetreepath=6) accessed 29 March, 2024 6:40PM.

<sup>78</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?lawCode=BPC&division=8.&title=&part=&chapter=5.5.&article=6.&goUp=Y](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?lawCode=BPC&division=8.&title=&part=&chapter=5.5.&article=6.&goUp=Y) accessed 29 March 2023 7:01:06 PM.

between franchisor and franchisees. As the CFIL dealt with registration and disclosure issues, the CFRA addressed the issue of termination and non-renewal, and it regulated the post-sale franchise relationship. The purpose of the CFIL is to ensure that prospective franchisees are provided with all information required to make a decision regarding the franchise<sup>79</sup>. The CFIL defines a franchise to mean a contract or agreement, either expressed or implied, whether oral or written between two or more persons by which:

- i. A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and
- ii. The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logo type, advertising or other commercial symbol designating the franchisor or its affiliate; and
- iii. the franchisee is required to pay, directly or indirectly, a franchise fee.

In summary, this section extends the scope of a franchise agreement to include oral representations made by a franchisor to a prospective franchisee even where same has not been reduced into writing<sup>80</sup>.

The Nigerian regulatory framework under NOTAP presumes the existence of a franchise only where same has been registered with the office. The franchise regulatory framework involves a lot of filings with different institutions which shifts the focus of the Nigerian system to only recognize franchise agreements in writing. Thus, it allows a franchisor to negotiate and conclude initial agreements with as many potential franchisees without any form of commitment even where some might have altered their stance subject to the signing of a formal contract.

---

<sup>79</sup> 31001 CFIL.

<sup>80</sup> 31005 (a) CFIL.

Flowing from the foundation laid above, we will now delve into the regulatory framework for business format franchise in the US that is, California and how they tackle some of the problems associated with Franchise in Nigeria.

## **2.3 CALIFORNIA APPROACH**

### **2.3.1 DISCLOSURE**

The CFIL provides that before any franchise agreement can be registered, the franchisor must at least 14 days before the execution of the franchise agreement by the franchisee or any other agreement or 14 days before the payment of the franchise fees whichever occurs first, furnish the franchisee with a copy of the franchise disclosure document<sup>81</sup> which could be physical copies or electronic where it is permitted by rule<sup>82</sup>. The law made the franchise disclosure document a condition precedent for the registration of a franchise agreement as it must accompany the application for registration else the commissioner will refuse registration<sup>83</sup>. To further protect the franchisee, the CFIL gives the commissioner the power among other reasons to investigate beyond the franchise disclosure document to check if the involvement of any person(s) on the side of the franchisor is likely to cause harm to the franchisee and upon confirmation, issue a stop order denying the effectiveness of the registration of the franchise agreement<sup>84</sup>. This extended investigative power acts as an extra layer of protection for the franchisees provided by the department.<sup>85</sup>

The regulatory framework in Nigeria does not mandate a franchise disclosure document nor registration of same as is obtainable in the US. System. Though, the main documents required for disclosure are the franchise agreement itself and the transfer of technology agreement

---

<sup>81</sup> 31119 (a) CFIL.

<sup>82</sup> 31119 (b) CFIL.

<sup>83</sup> 31114 CFIL.

<sup>84</sup> 31115 CFIL.

<sup>85</sup> Franklin L. Damon, *Franchise Investment Law*, 2 PAC. L. 27 (1971). Available at: [https://scholarlycommons.pacific.edu/mlr/vol2/iss1/6?utm\\_source=scholarlycommons.pacific.edu%2Fmlr%2Fvol2%2Fiss1%2F6&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](https://scholarlycommons.pacific.edu/mlr/vol2/iss1/6?utm_source=scholarlycommons.pacific.edu%2Fmlr%2Fvol2%2Fiss1%2F6&utm_medium=PDF&utm_campaign=PDFCoverPages) at 34.

detailing the specific services to be rendered<sup>86</sup>. However, Section 15<sup>87</sup> prescribes a fine of 1000 naira or six (6) months imprisonment or both for failure to disclose any information required by the director or an officer of the National Office provision.

We can see in both jurisdictions that the disclosure laws are quite different, while the Nigerian system does not specify the disclosure of facts relating to the franchise business, financial health of the franchisor and other details of the franchisor, the US system, both at the Federal and State level, requires sufficient disclosure about the franchisor and the cost of business be made to the franchisee in order to make an informed decision. California, under the CFIL even goes further into investigation of persons affiliated and in control of the franchisor that could infringe upon the interest of the franchisee. As stated earlier, the only consequence of an unregistered agreement as decided by the Nigerian Court of Appeal lies in the refusal of the Central Bank to make any payment due to the franchisor but does not in itself render the agreement void. As a result, franchisees in Nigeria are at a big disadvantage when negotiating contracts for a business format franchise unless a regulatory backing is provided mandating disclosure and a comprehensive list of essential documents to be disclosed by the franchisor in the continuous effort to cure the imbalance already associated with the Franchise system.

### **2.3.2 ASYMMETRY**

Asymmetry generally means the state of not having balance, where one part is more than the other. The concept of franchise asymmetry is difficult to define without power dependence, they are inseparable<sup>88</sup>. Franchisors by virtue of the position usually exercise some form of control over the franchisees and the business franchise to maintain the reputation of the business and other standards which has led to the success of their business in different

---

<sup>86</sup> Chapter 2.2.7 Revised NOTAP Guidelines.

<sup>87</sup> NOTAP Act.

<sup>88</sup> Courtenay Atwell & Jenny Buchan, *The Franchise Fulcrum: The Legal System's Contributions to Research about Power and Control in Business Format Franchising* Journal of Marketing Channels, 21:3, 180-195.



jurisdictions. This, however, could lead to the occurrence of fraudulent practices in relation to disclosure, unfair terms in contract due to the Franchisor's advantageous position and in recent times, encroachment. In the U.S, two franchise regulatory models have been designed: the weaker disclosure laws and their stronger kin, the franchise relationship laws<sup>89</sup>. Both laws aim to provide some balance to the franchisor-benefitting asymmetry in franchising. Worthy of note is the fact that none of the franchise laws deny the legitimacy of franchise asymmetry. This includes even the farthest-reaching relationship laws, which aim only to counter and prevent potential abuses by franchisors rather than swinging back the pendulum.<sup>90</sup>

The issue is further compounded where upon examination, it is evident that the US has successfully tackled only the most obvious form, which is information asymmetry. The FTC rule and the Franchise Disclosure laws of California have ensured that the franchisee is furnished with all necessary information required to make an informed decision before the sale of a franchise. The focus on information asymmetry has been on the imbalance in the flow of information from a franchisor to the franchisee before completing the franchise agreement. However, commonly ignored is the upward flow of information from the franchisee by way of strategic position to the franchisor especially in unfamiliar overseas market<sup>91</sup> on the customer behaviour, market secrets etc. which are essential to the continuous success of the business. Here, the franchisee stands at an advantage due to the strategic position in the market in which the international franchisor lacks experience. The US regulatory response to asymmetry is not to prohibit but instead they try to shield the inherently weaker franchisee with increasingly more efficient legal tools in order to prevent franchisor abuses and over-reach.<sup>92</sup> Since the US is the world's leading system for business format franchise and many jurisdictions base their

---

<sup>89</sup> Larry .A. DiMatteo, *Strategic Contracting, Contract Law as a Source of Competitive Advantage*, 47 Ann. Bus. L.J, 727, 749 (2010).

<sup>90</sup> Id. Tibor Tajti, *Franchise and Contract Asymmetry*, at 256-258.

<sup>91</sup> Alfred R. Oxenfeldt, Anthony Kelly, *Will Successful franchise systems ultimately become wholly-owned chains?*, Journal of Retailing, 44 (4) (1968), pp. 69-87.

<sup>92</sup> E. ALLAN FARNSWORTH, *CONTRACTS* 533-34 (Apen Pub., 4<sup>th</sup> ed. , 2004).

laws on the US approach, it signals that this issue is a global phenomenon. However, many theories have been proposed as solutions to franchise asymmetry, one of the theories which the author of this work deems key to solving asymmetry is the principal-Agency theory relationship.

### **2.3.2.1 PRINCIPAL – AGENT RELATIONSHIP**

In simple terms, this relationship exists where the principal (franchisor) must depend on the agent (franchisee) to undertake some action on the principal's behalf.<sup>93</sup> Franchise asymmetry occurs at the pre-sale and post-sale stage of the franchise and the power dynamics keeps shifting depending on the circumstances between the parties. The franchisee can be likened to the eyes and ears of the franchisor in the distant market who knows the market, the purchasing power, market behaviour and integral knowledge. Two techniques have been advocated to ensure effective result and combat asymmetry under this theory:<sup>94</sup>

1. Monitoring – This is simply the process of observing and measuring the performance of an agent by the principal. It could involve various methods including reports, inspections, and audits. It could be direct through random inspections or indirectly through the use of reports from the franchisee or on a comparative analysis with competitors in the same geographic area. It ensures that the agent/franchisee is acting in the interest of the principal/franchisor and reduces opportunistic behaviour on the part of the franchisee. The downside to this technique is that it can be expensive as it requires resources and money to monitor the agent effectively. It may also create tension between the parties as it can send distrust signals to the franchisee.
2. Incentives – Principals can use incentives to align the interests of the agents with their own. One of the effective ways to use this is to base it on the performance of the agent. This ensures

---

<sup>93</sup> Mark Bergen, Shantanu Dutta, Orville C. Walker, Jr, *Agency Relationships in Marketing: A Review of the Implications and Applications of Agency and Related Theories*, Journal of Marketing, Vol. 56, No. 3 (Jul. 1992), pp. 1-24.

<sup>94</sup><https://fastercapital.com/content/Cracking-the-Code-of-Information-Asymmetry-in-Principal-Agent-Theory.html>. Accessed 5/29/2024, 11:48:43 AM.

that the agent works in the best interest of the principal as their own financial gain is tied to the success of the investment. This approach is also not fool proof as opportunistic franchisees may cut operation cost or quality in order to make illicit gains, however, this technique if used over time will enhance the free flow of information between the parties.

Thus, for the Nigerian franchise atmosphere, an application of the incentive technique under this theory would combat the issue of asymmetry under the business format franchise. The implementation of this technique is subject to contract between the parties, however, a regulatory requirement for a minimum threshold in remuneration of franchisees depending on the industry will go a long way in incentivizing franchise business in Nigeria and provide franchisees with better profits which consequently builds trust and could be a major enhancer in tackling the issue of information asymmetry.

### **2.3.3 MULTIPLICITY OF REGULAOTRY BODIES**

The Federal Trade Commission is responsible for the regulation of franchises at the federal level with the disclosure laws. California, like many other states, also has its own state regulation on franchise which regulates the relationship between the parties thereby complementing the federal rule. The Department of Financial Protection & Innovation (DFPI) formerly called the Department of Business Oversight is the state agency charged with enforcing the Franchise Investment law. It mandates the registration with the department before a franchisor can offer franchises for sale. The California franchise Relationship Act which deals with post-sale activities also falls within the scope of the DFPI and they ensure that the protections afforded to franchisees are enforced. Although, the information is not available for the purposes of this work, franchises that involves the use of trademarks and other regulated documents still must file separately at the United States Trademark and Patent Office (USTPO) and other regulatory bodies respectively.

### **2.3.3.1 LESSONS FOR NIGERIA**

To the extent of the creation of a singular franchise regulatory body tasked with the enforcement of a unified franchise investment law in Nigeria, the NOTAP office can still be maintained. The office has the closest function of regulating franchises in Nigeria with regards to registration, but it needs wider powers for enforcement which should be enshrined in the Franchise law to be enacted in Nigeria. Unlike the practice in California, the law should provide for a unified process/platform where concerned agencies due to the nature of the application and business can give their approvals on one unified approval document and this will eliminate the bottle necks with setting up a business format franchise in Nigeria with multiple regulatory bodies.

### **2.3.4 LEGAL UNCERTAINTY**

The crux of this work has been on the lack of franchise specific regulation in Nigeria. The suitability of Nigeria as a franchise friendly destination rest on the promulgation of laid down rules which prescribes the obligations of franchisors and franchisees accordingly. The U.S success as the biggest franchise market in the world lies in the comprehensive and robust franchise regulations it has both at the Federal and state level. This is even more reassuring for franchisees with the constant amendments<sup>95</sup> made to franchise laws (including franchise relations Act) at the state level in California which affords more protection to franchisees and ensuring a balanced market.

### **2.3.5 SUPPLY CHAIN MANAGEMENT**

As discussed earlier, one of the challenges of the Nigerian system is the express prohibition of support exclusively from the franchisor without providing any form of discretion for the franchisee whatsoever. The NOTAP Act prohibits acquisition of equipment, raw materials and

---

<sup>95</sup> <https://dfpi.ca.gov/whats-new-in-2023-for-franchisors/> accessed 5/29/2024, 3:45:49pm.

even the supply of personnel by the franchisor on a temporary or permanent basis.<sup>96</sup> This provision presents a serious challenge to a prospective franchisor in Nigeria, particularly given the nature of Business Format Franchise where a large franchisor wants to ensure the uniformity of standards and maintenance of business reputation by providing support in various forms to the franchisee to achieve this goal. The regulatory framework in California with all its stringent protection for franchisees recognizes the concept of ongoing support in the franchise business and it enacted rules to this effect with a balanced approach.

The application for registration of the franchise in California must be accompanied by the franchise disclosure document.<sup>97</sup> Part of the items of the disclosure documents are items 8 and 11 which deals with restrictions on sources of products and services and Franchisor's assistance.

Under item 8, the franchisor must disclose to the franchisee any restrictions as to the source of materials or products needed for the franchise. Whether the franchisor is the supplier or if the supplies will be coming from another affiliate, the disclosure must be made and even extends to any profits or benefits accrued to the franchisor for purchasing from the recommended supplier to the franchisee. Also, ongoing support which has been broken down into pre- and post-opening obligations of the franchisor ranging from hiring and training of staff, provision of equipment, signs, locating a site, to developing prices, improving and developing the franchised business respectively. The law recognizes the naivety and vulnerableness of a new franchise system in its early years and makes provisions for assistance from the franchisor to help the franchise develop subject to sufficient disclosure.

The disparity with the Nigerian system is the outright prohibition of any form of franchisor assistance support with the underlying rationale being to promote local support.<sup>98</sup> It is

---

<sup>96</sup> Section 6(2) (i) & (f) NOTAP Act.

<sup>97</sup> S. 31114 Cal. Corp. Code.

<sup>98</sup> Ibid 96.

submitted that this approach is too rigid and not franchise friendly. The purpose of disclosure is to make all material facts known to the franchisee, and as such the prohibition of ongoing support from franchisor lacks any justification as the purpose of such support is usually disclosed to check against any unfair terms of business. What constitutes unfairness to the franchisee should only be determined upon the consideration of the business plans for the franchisee and not a presumption of disadvantage through outright ban.

### **2.3.6 FRANCHISE ENCROACHMENT**

As we have seen from the last chapter, franchise encroachment occurs where a franchisor invades a franchisee's territory either by placing new units unreasonable close to an existing unit, by placing temporary or seasonal outlets near the franchise, or by selling over the internet into the franchisee's territory.<sup>99</sup> Franchisors want to expand their business, increase their revenue and promote their brand. This involves the opening of many outlets in as many possible geographic locations. Franchisees on the other hand are against intra-band competition which could relatively impact their revenues by taking away their customers.<sup>100</sup> There have been various discussions about the best approach to solving encroachment. While some have argued for a contractual approach, others have advocated for a regulatory intervention in solving this issue. In Nigeria, as stated earlier, the problem is not a contractual one, firstly, due to the proliferation of similar franchises in the same geographical location, secondly, based on the survey cited in this work, the franchisees really did not seem to care as they allege it does not affect their business. The feelings of the franchisees notwithstanding, it is clear that there is an encroachment problem in Nigeria which affects the revenue of a franchisee.

---

<sup>99</sup> <https://www.garnerlegal.com/lawareas/franchise-encroachment-territory-protection/> accessed 5/29/2024, 3:55:26pm.

<sup>100</sup> Charles S. Marion (Blank Rome LLP), Philadelphia, Pennsylvania, Daniel J. Oates (Miller Nash Graham & Dunn, LLP) Seattle, Washington, Ari N. Stern (O'Hagan Meyer, PLLC) Boston, Massachusetts, *Stepping on Toes: Territorial Rights and Encroachment*, American Bar Association 42<sup>nd</sup> Annual Forum on Franchising, 2019.

California does not have any law governing encroachment, but rather the most notable effort of California on tackling encroachment is the California Superior Court decision in *BRYMAN VEL POLLO LOCO INC.*<sup>101</sup> where the court held that the franchisor's opening its location, or allowing another franchisee to open a location in close proximity to an existing franchisee's business, constitutes a breach of the covenant or duty of good faith and fair dealing that is implied in all contracts, including the franchise agreements. Laudable as this decision is, this issue cannot be left entirely to the courts, even though courts largely rely on precedents, but a court's decision are made on a case-by-case basis. To avoid this uncertainty in the franchise industry, there is need for statutory protection spelling out requirements and rules governing encroachment. Consequently, we will examine a few states' approach to encroachment and the statutory protections offered to franchisees.

### **2.3.6.1 STATE SPECIFIC ENCROACHMENT RESTRICTIONS**

#### **1. HAWAII**

The legislature declared that it is an unfair method of competition for a franchisor to establish similar business or grant a franchise for the establishment of a similar business, at any location within an existing franchisee's territory.<sup>102</sup> A territory is exclusive only if it is expressly created in the existing franchisee's franchise agreement.<sup>103</sup> The statute also provides flexibility to franchisors by granting them the right to open additional outlets within an exclusive territory if the agreement permits it under certain conditions. The Act prohibits the sales of goods or

---

<sup>101</sup> Case No. MC026045 (Cal. Super. Ct. Los Angeles Cnty. Aug. 1, 2018) (appeal docketed, *Handlers-Bryman v. El Pollo Loco*, Case No. B292585 (Ca. Ct. App. Feb. 5, 2019)).

<sup>102</sup> HAW. REV. STAT. S. 482E-6.

<sup>103</sup> *Id.*

services by the franchisor to customers within the exclusive territory of an existing franchisee.<sup>104</sup>

## 2. IOWA

The state of Iowa has comprehensive anti-encroachment protections for franchisees physically located within the state.<sup>105</sup> Under Iowa's 2000 Franchise Act, if a franchisor decides to open a new franchised outlet that sells essentially the same goods or services, under the same trademark, as an existing franchised outlet, it cannot do so within "unreasonable proximity" to the existing outlet if doing so has an adverse impact on the existing outlet's gross sales.<sup>106</sup> The franchisee shall have a right of cause of action for monetary damages if the franchisor violates this provision.<sup>107</sup> The franchisee could be entitled to recover up to three years of lost profits calculated based on the franchisee's annual gross sales during the twelve month period immediately preceding the opening of the new franchise outlet.<sup>108</sup>

## 3. MINNESOTA

The Minnesota Franchise Act (MFA) prohibits any unfair or inequitable conduct by franchisors.<sup>109</sup> The regulations makes it unfair and inequitable for any franchisor to compete with the franchisee in an exclusive territory or grant competitive franchises in the exclusive territory previously granted to another franchisee.<sup>110</sup>

### 2.3.6.2 INDUSTRY SPECIFIC ENCROACHMENT RESTRICTIONS

---

<sup>104</sup> 5 Id. ("The fact that other franchisees or the franchisor may solicit business or sell goods or services to people residing in such geographical territory shall not constitute the establishment of a similar business within the exclusive territory.").

<sup>105</sup> Iowa has two franchise relationship laws, the first passed in 1992, the second in the year 2000. See, e.g., IOWA CODE § 523H.1 et seq. and Iowa Code § 537A et seq. The 1992 Act applies to franchises entered into before January 1, 2000. The 2000 Act applies to all franchises entered into on or after January 1, 2000. Although there are slight differences in the encroachment protections between the two Acts, for purposes of this article, the authors have confined their analysis to the protections afforded by the 2000 Act.

<sup>106</sup> IOWA CODE S. 537A. 10(6)(a).

<sup>107</sup> Id.

<sup>108</sup> Id., § 537A.10(6)(d). The franchisee must also subtract six percent from the annual gross sales for that immediately preceding year, and actual gross sales for the twelve-month period immediately following the opening of the new outlet. Id., § 537A.10(6)(d)(1)(a)–(b). Practically speaking, this means that a franchisee's claim is likely not fully ripe until at least one year has passed since the opening of the new outlet.

<sup>109</sup> MINN. STAT. § 80C.14 Subdiv. 1.

<sup>110</sup> Id., 2860.4400(C).



Many states have adopted laws regulating encroachment in specific industries. For example, since the beginning of 1960s, states in the US began passing laws to protect automobile dealerships from market oversaturation.<sup>111</sup> These laws typically require automobile manufacturers to notify existing dealers before opening a new outlet in the existing dealer's market area.<sup>112</sup>

In conclusion, the industry specific and state protection against franchise rests on the existence of an exclusive territory and a direct or indirect encroachment. Even where the exclusive territory is not expressly stated, the laws have been given a broad application to extend to unfair and inequitable conduct for the protection of franchisees. In adopting a franchise legislation covering the issue of encroachment, the law should mandate the description of a defined territory in the franchise agreement and even where same is not specified, recourse must be given to the proximity of the outlets and the hardship or injustice suffered by the existing franchisee to determine the extent of damage.

In summary, this chapter has been able to elucidate on the California approach in solving the problems associated with the Nigerian regulatory system on franchise and proposing solutions adapted to meet the Nigerian system. These solutions if properly promulgated and applied will make Nigeria a suitable destination for business format franchise thereby enhancing economic growth.

---

<sup>111</sup> Uri Benoliel, *Criticizing the Economic Analysis of Franchise Encroachment Law*, 75 ALB. L. REV. 205, 210–11 (2012); W. Michael Garner, 2 *FRANCHISE AND DISTRIBUTION LAW AND PRACTICE* § 14.34 (2017-2018) (“The purpose of such statutes is to prevent oversaturation of an area with dealers in a particular line of cars.”) (citing *New Motor Vehicle Bd. Of California v. Orrin W. Fox, Co.*, 439 U.S. 96 (1978)).

<sup>112</sup> Benoliel, *supra* note 56 at 210–11.

## CONCLUSION

Franchise in Nigeria for the past five years has grown at an exponential rate characterized with the establishment of many new US franchises like Burger King, KFC and others. However, with projections on the future impact of franchising on the economic development of Nigeria as a whole, laws can be passed to fit into the future projection and all the areas of development it foresees to affect such as intellectual property laws and labor laws or local content, asymmetry, and encroachment. Local franchisees should be encouraged by creating an enabling business environment tackling market instability and market uncertainty, promoting regulatory transparency and prevention of their exploitation.

Though it seems that from the present regulatory framework, Nigeria is not facing any problem associated with franchise due to lack of proper records. According to World Bank's report on Nigeria in 2015<sup>113</sup>, because certain regulations are not in place and those in place are not duly enforced, the full effect of the current problems in franchising cannot be accurately determined. To worsen the problem, in 2020<sup>114</sup> Nigeria was ranked at 131 on the ease of doing business which set the country back by two places as against 2015. This could largely be responsible for the non-increase of franchises in Nigeria in recent years and the flagrant violations of franchise agreement provisions by franchisors.

To conclude and make recommendation, it is clearly grasped that the business realities of Nigeria and U.S are different. While the U.S system governing business format franchise at the federal and California afford strict protection for franchisee as evident in the provisions of the

---

<sup>113</sup> On the World Bank ranking of doing business in Nigeria. Though there has been improvement of what franchising used to be in 2014. The improvement from 138/183 in 2014 to 129 in 2015 and though insignificant to a business man shows that conscious effort are made to create a better business environment for business generally in Nigeria. More information available at: <https://www.doingbusiness.org/media/giawb/doing%business/documents/profiles/country/MGA.pdf> > visited June 3, 2024.

<sup>114</sup> Doing Business 2020 (Economy Profile Nigeria), *Comparing Business Regulation in 190 Economies*, World Bank Group <https://archive.doingbusiness.org/content/dam/doingbusiness/country/n/nigeria/NGA.pdf> ISBN 978-1-4648-1440-2 accessed June 11, 2024 12:29:45PM.

law, Nigeria must find a balanced approach into solving the friction between franchisors and franchisees, a literal adoption of the California system would do the country no good in its bid to become a suitable investment destination. Therefore, the regulations must not be too restrictive to discourage prospective franchisors and not too loose to allow franchisees to neglect their duties under the franchise agreement. The focus of the parliament should therefore be a regulation that provides a proper balance of the interest of the franchisor and franchisees instead of tilting towards the franchisees like the California regulatory framework.

Firstly, the franchise disclosure document must be made mandatory before any approval by the proposed franchise regulation. The required documents to be disclosed under items 8 and 11 of the California Investment law as stated earlier should be adopted into the Nigerian system as they are comprehensive enough to give franchisees enough information about the franchisor and the franchise business to make an informed decision. Any franchise agreement which fails to comply with the above proposed provision should not be registered. The goal of legislation is to enlighten parties subject to it on their duties and consequences upon failure. The disclosure documents would enable local franchisees to have a fair idea of the nature of the business involved and if they want to really commit to same and ultimately avoid their exploitation.

Secondly, the NOTAP should be maintained but operate more as a “one stop shop”. In the sense that, since the office offers the same functions as the FTC and DFPI with regards to franchise at the federal and state level respectively in the US, it should be interconnected with every agency whose approval is needed under the franchise agreement. Franchise involves trademarks, copyright etc. as the case may be, this will ensure a unified and harmonized process and eliminate any bottle necks for approval while also providing legal certainty as the institutions are already a creation of law themselves.

Thirdly, unlike California which does not have a legislation to tackle the issue of franchise encroachment, Nigeria should take a cue from Iowa, Hawaii and the few states in the US by

providing a franchise legislation on Encroachment and putting the burden of proof on the franchise to justify the creation of another outlet in the already demised area to the franchisee. With the registration of all franchisees, regular inspections should be conducted to ensure there are no unsanctioned franchise outlet in any geographical territory at any time. Given the nature of franchise encroachment in Nigeria, an industry approach would work best to tackle this problem.

Fourthly, as stated earlier on the techniques to tackle asymmetry, a minimum threshold of remuneration for franchisees should be established for the incentivization technique. This would ensure that all franchisees across board have a level of certainty as to their level of profits and the transparency it offers to both parties in the agreement. The Nigerian International Franchise Association could also play a key role in providing quarterly reports on the market which would ensure free flow of information between franchisors and franchisees in a bid to balance the scale of asymmetry.

Fifthly, supply chain management on the part of the franchisor cannot be excluded. It is an equitable right of the franchisor in the maintenance of its business reputation, model, and product quality which has led to its success. Any attempt to exclude same would amount to an injustice on the franchisor. This exclusion as provided for in the NOTAP Act should be expunged under the new franchise legislation to the extent that the supply contract should be such as does not cause fraud, deceit or exploitation of the franchisee. Adequate disclosure must be made by the franchisor, or any affiliates recommended by the franchisor in the provision of ongoing support for the franchisee.

Finally, no system is foolproof or perfect, but the hallmark of an efficient system is the certainty of laws and amendments of such laws where necessary to tackle problems as they occur. Thus, Nigeria should mirror its franchise legislation in line with the U.S law which is similar in their provisions to promote local franchisees but however, with the modifications suggested

touching upon key issues in franchise. This will ensure a balanced perspective and will make franchise business attractive to the franchisor and franchisees in Nigeria. It will also encourage the emergence of more professionals in the field of franchising since there are very few specialized legal practitioners who are well-versed in the field.<sup>115</sup>

---

<sup>115</sup> Franchising Law in Nigeria-Part II FRANCHISING LAW: *Does Nigeria Need One? Do other countries have them?* Dr. Uche Eweluka Ofodie, LLB. (Nig), LL.M (London), LL.M (Harvard), SJD (Harvard), Professor, University of Arkansas School of Law. [http://nigerianfranchise.org/images/NiFA\\_Newsletter\\_03\\_05\\_14.pdf](http://nigerianfranchise.org/images/NiFA_Newsletter_03_05_14.pdf).

# **BIBLIOGRAPHY**

## **CASES**

1. Bryman V El Pollo Loco Inc. Case No. MC026045 (Cal. Super. Ct. Loas Angeles Cnty. Aug. 1, 2018).
2. Cooper Distributing Co. Inc v Amana Refrigeration, Inc. 63 F.3d 262C.A.3 (N.J), 1995. August 22, 1995.
3. Esdee Food Products (Nig.) Ltd v Beecham Group Limited (1985) 3 NWLR (Pt. 11) 112.
4. Miami Corporation v State, 186 La. 784, 173 So 315, 318.
5. Kuforji & Anor v. V.Y.B Nig. Ltd (1981) LPELR-1716 (SC)
6. Stanbic IBTC Holdings Plc v Financial Reporting Council of Nigeria & Anor (2018) LPELR-46507 (CA).

## **STATUTES**

1. California Corporation Code (1970).
2. California Franchise Investment Law, 1970.
3. California Franchise Relations Act.
4. Companies and Allied Matters Act, 2020.
5. Copyrights Act 2022.
6. Federal Competition and Consumer Protection Act.
7. Federal Trade Commission Act 1914.
8. Hawaii Revised Statute – HRS Chapter 482e; Franchise Investment Law.
9. Immigration Act 2015.
10. Iowa Franchise Act (2000).
11. Minnesota Statutes 2023.
12. National Office for Technology Acquisition and Promotion Act Cap N68, Laws of Federation of Nigeria (2004).
13. Nigerian Investment Promotion Council Act (2004).
14. Trademarks Act, cap T13 Laws of Federation of Nigeria 2004.

## **BOOKS**

1. E. Allan Farnsworth, *CONTRACTS*, Aspen Publishers, 4<sup>th</sup> Edition, 2004.
2. Elizabeth Crawford Spencer, *the Regulation of Franchising in the New Global Economy* (Edward Elgar, 2010), at 1.
3. Jefferey A. Schneider and Robert J. Nye, *Business Franchise Law; Case and Materials*, Caroline Academic Press, 2003 at Page.3.

## INTERNET RESOURCES

1. <https://dfpi.ca.gov/whats-new-in-2023-for-franchisors/>
2. <https://fastercapital.com/content/Cracking-the-Code-of-Information-Asymmetry-in-Principal-Agent-Theory.html>
3. <https://fccpc.gov.ng/wp-content/uploads/2022/07/FCCPA-2018.pdf>
4. <https://lawsofnigeria.placng.org/laws/P2.pdf>
5. [https://notap.gov.ng/new\\_dev/wp-content/uploads/2022/03/notap\\_tech\\_trans\\_agreement\\_revised\\_guidelines.pdf](https://notap.gov.ng/new_dev/wp-content/uploads/2022/03/notap_tech_trans_agreement_revised_guidelines.pdf)
6. <https://placng.org/i/wp-content/uploads/2023/04/Copyright-Act-2022.pdf>
7. <https://archive.doingbusiness.org/en/data/exploreeconomies/nigeria>
8. <https://www.ecfr.gov/current/title-16/part-436>
9. <https://www.doingbuisiness.org/media/giawb/doing%business/documents/profiles/country/MGA.pdf>
10. <https://www.garnerlegal.com/lawareas/franchise-encroachment-territory-protection/>
11. International Franchise Association, & FRAN data. (March 23, 2023). Number of franchise establishments in the United States from 2007 to 2022 with a forecast for 2023 [Graph]. In *Statista*. Retrieved March 06, 2024, from <https://www.statista.com/statistics/190313/estimated-number-of-us-franchise-establishments-since-2007/>
12. International Franchise Association, & FRANdata. (March 23, 2023). Economic output of franchise establishments in the United States from 2007 to 2022 with a forecast for 2023 (in billion U.S. dollars) [Graph]. In *Statista*. Retrieved March 06, 2024, from <https://www.statista.com/statistics/190318/economic-output-of-the-us-franchise-sector/>

## ARTICLES AND JOURNALS

1. Adams Adeiza, Marlin PhD, Noor Azizi Ismail PhD, A Qualitative Analysis of the Influence of Exclusive Territory and Tying Clauses on Franchisees' Business Performance and Overall Satisfaction, *Journal of Marketing and Consumer Research*, Vol. 30, 2016, at 52.
2. Alfred R. Oxenfeldt, Anthony Kelly, Will Successful franchise systems ultimately become wholly-owned chains?, *Journal of Retailing*, 44 (4) (1968), pp. 69-87.

3. Charles S. Marion (Blank Rome LLP), Philadelphia, Pennsylvania, Daniel J. Oates (Miller Nash Graham & Dunn, LLP) Seattle, Washington, Ari N. Stern (O'Hagan Meyer, PLLC) Boston, Massachusetts, Stepping on Toes: Territorial Rights and Encroachment, American Bar Association 42<sup>nd</sup> Annual Forum on Franchising, 2019.
4. Courtenay Atwell & Jenny Buchan, The Legal System's Contributions to Research about Power and Control in Business Format Franchising' *Journal of Marketing Channels*, 21:3, 180-195.
5. Dr Fatima Bello, Towards and Enabling Legal and Regulatory Framework for International Franchising Business in Nigeria, *ABUAD Law Journal* Vol. 9, No. 1 2021.
6. Dr. Uche Eweluka Ofodile, Franchising Law in Nigeria, *Nigerian International Franchise Association Newsletter*, December, 2013.
7. Dr. Uche Eweluka Ofodie, LLB. (Nig), LL.M (London), LL.M (Havard), SJD (Havard), Professor, University of Arkansas School of Law, Franchising Law in Nigeria-Part II FRANCHISING LAW: Does Nigeria Need One? Do other countries have them?, 2014.
8. Franklin L. Damon, *Franchise Investment Law*, 2 PAC. L. 27 (1971).
9. Larry.A. DiMatteo. Strategic Contracting, Contract Law as a Source of Competitive Advantage, 47 *Ann. Bus. L.J.*, 727, 749 (2010).
10. Mark Bergen, Shantanu Dutta, Orville C. Walker, Jr, Agency Relationships in Marketing: A Review of the Implications and Applications of Agency and Related Theories, *Journal of Marketing*, Vol. 56, No. 3 (Jul. 1992).
11. MN Umenweke, AR Aladegbaiye, Powers and Duties of the Corporate Affairs Commission as a Regulatory Body in Nigeria, *Nnamdi Azikwe University Journal of International Law and Jurisprudence*, vol. 2 (2011). ISSN: 2276-7371.
12. Oko A. E. Ndu, Ogwo E.O, Self regulation in the marketing services in Nigeria: Study of selected firms in the service industry. *Global Journal of Emerging Trends in e-Business and Consumer Psychology*, 2014; 1(2):94-117.
13. Oko Augustine, Okonkwo Raphael, Franchise Relationship in Nigeria: Implicit Challenges to Role Performance as Franchisor, *British Journal of Economics, Management & Trade* Vo.10, 2015, Pg. 6.
14. Otitoni Aromoke Popoola, Franchise Information Asymmetry In The U.S: Lessons For Nigeria, LL.M Short Thesis, Central European University, 1051 Budapest, Nador utca 9., Hungary, March 27, 2015. Pg. 50-51.
15. Philip Mark Abell, The Regulation of Franchising in the European Union 59 (published thesis, Queen Mary, Univ. of London) (2011) note 59 at 76.
16. Pannal Alan Sanders, "At Will" Franchise Terminations and the Abuse of Rights Doctrine, 42 *LA. L. REV.* 209, 215 (1981).
17. Paul Steinberg & Gerald Lescatre, Beguiling Heresy: Regulating the Franchise Relationship, 109 *PENN. ST. L. REV.* 105, 113 (2004). Id at 271.



18. Peter C. Lagarias and Robert S. Boulter, The Modern Reality of the Controlling Franchisor: the Case for More, Not Less, Franchisee Protections, *FRANCHISE L.J.* 139 (2010).
19. Tao Xiu & Philip F. Zeidman, Global Overview of Specific Franchise Statutes and Regulations, March 16, 2023.
20. Tibor Tajti, Franchise and Contract Asymmetry: A Common Trans-Atlantic Agenda, *Loyola of Los Angeles International & Comparative Law Review*, Vol. 37, 2015, no. 2. at 270.
21. Tibor Tajti, Systemic and Topical Mapping of the Relationship of the DCFR and Arbitration KAZIMIRO SIMONAVICIAUS UNIV., VILNIUS, LITHUANIA, (2013).
22. Uri Benoliel, The Behavioral Law and Economics of Franchise Tying Contracts, 41 *RUTGERS L.J.* 527, 533-34 (2010).
23. Uri Benoliel, Criticizing the Economic Analysis of Franchise Encroachment Law, 75 *ALB. L. REV.* 205, 210–11 (2012).
24. W. Michael Garner, 2 *FRANCHISE AND DISTRIBUTION LAW AND PRACTICE* § 14.34 (2017-2018).