



Sole discretion and your franchise agreement

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Many, if not all, franchise agreements have provisions giving the franchisor sole and absolute discretion to take or approve some action. Classic examples of these clauses allow for a franchisor's sole discretion in advertising fund spending, approval of location, or approval of a franchise unit sale by a franchisee.

On its face, an agreement in which the parties agree in advance to give sole discretion in decision making would appear to be virtually bullet proof from attack. And, generally it is. However, because the franchise agreement allows the franchisor to exercise their discretion to promote their own self-interest, the law may impose a duty to act in good faith so as not to contravene the reasonable contractual expectations of the other franchisee.

Numerous cases discuss the varied contexts in which courts have allowed lawsuits to proceed even in the face of "sole discretion" language in the franchise agreement. Fact scenarios of those cases include advertising money spent on areas other than where a franchisee conducts business, disapproval of a location because the franchisor wishes to compete, disapproval of a sale when the prospective purchaser is in better financial condition than the selling franchisee.

Like many areas of the law, legal decisions on this issue vary by state, by court, or even by judge. What doesn't vary is the general misunderstanding of how to apply a sole discretion clause. Because the law imposes reasonable expectations of the parties with respect to the entire contractual relationship and not just the clause which may be subject to a sole discretion standard, before acting on a clause, consultation with counsel should be considered.



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