

Distribution agreements and contractual trial periods

In a decision dated June 21, 2017^[1], the *Cour de Cassation* (French Supreme Court) ruled that the termination of a distribution agreement during the contractual trial period could not be considered as abusive.

It follows from this decision that the parties are free to include in a distribution agreement a trial period during which each of them has a unilateral termination right.

In the matter at hand, almost nine months after the signature of a 5-year franchise agreement, the franchisor informed the franchisee of its decision to end their collaboration during the trial period provided for in the agreement.

This distribution agreement provided for a 2-year trial period during which either party was entitled to terminate the agreement without justification and indemnity, subject to a three-month notice period.

The franchisee challenged the conditions in which the termination took place. It sued the franchisor and sought damages for abusive termination of the distribution agreement.

In its appeal before the *Cour de Cassation*, the franchisee complained that the appellate judgment held that the termination of the agreement had been validly implemented during the trial period, without indemnity. He contended that the appellate judges had failed to ascertain whether the franchisor had not abused its right of termination by knowingly placing the franchisee in the position of being unable to amortize the investments that he had been imposed to make at the time the agreement was concluded, and claimed that nothing justified the decision to terminate such agreement.

The *Cour de Cassation* recalled the terms of the contractual clause that provided for a trial period and dismissed the appeals, considering in particular that “(...) pointing out that the franchisee had committed itself, with full knowledge of the precarious nature of its agreement and having accepted its terms of performance, the Court of Appeals (...) held that (...) the termination was not abusive and that [the franchisor]

could not be ordered to repay to [the franchisee] the amount of its initial investments, [the Court of Appeals concluded that] none of the limbs of the legal argumentation is founded."

It follows from this decision that the parties are free to include in a distribution agreement a trial period during which each of them has a unilateral termination right, without having to state reasons for the termination or to pay compensation to the terminated party.

The termination of the agreement as per such contractual provisions cannot be held abusive and give rise to damages.

Regarding specifically franchise agreements, even if the franchisee has not amortized the investments made during the trial period, the exercise of the termination right by the franchisor in such circumstances neither confers to the termination an abusive nature nor justifies the payment of a compensation, according to this decision.

The approach adopted by the *Cour de Cassation* should be seen in the light of a similar position adopted in relation to agency agreements. In a decision dated June 23, 2015, the *Cour de Cassation* recalled that the status as commercial agents, the application of which requires that the agency agreement be definitively concluded between the parties, does not preclude the provision of a trial period, and that the commercial agent is not entitled to the statutory termination indemnities wherever the agency agreement is terminated prior to the expiry of this trial period^[2].

^[1] Commercial Chamber of the *Cour de cassation*, June 21, 2017, n°16-15.365

^[2] Cf. article entitled « Legal status of commercial agents: contractual trial period and termination indemnity » dated August 2015 : <https://www.soulier-avocats.com/en/legal-status-of-commercial-agents-contractual-trial-period-and-termination-indemnity/>

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