

Franchisors: Beware of consumer class actions

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In *Cantin c. Ameublements Tanguay inc.*, 2016 QCCS 4546 (the Cantin Case), the Superior Court of Québec authorized a proposed class action by consumers against various respondents, including the franchisor Corbeil Électrique Inc. (Corbeil), for alleged misrepresentations in relation to the purchase of extended warranties. In doing so, it confirmed a trend that Québec courts, at least at the authorization stage, are unwilling to unpack whether or not a contractual relationship exists between a franchisor and a customer of its franchisee.

Factual background and decision

Corbeil is the owner of a franchise system in respect of the sale of household appliances. According to the claim, false representations were made to the petitioner by (1) Corbeil on its website and (2) an employee of a franchisee, Éric Dubreuil Inc. (the Corbeil Franchisee) about the need to purchase an extended warranty. Corbeil sought to have the claim against it dismissed at the authorization stage on the basis that there was no legal relationship between it and the petitioner. However, the Court rejected Corbeil's argument and authorized the class action, concluding that it would be premature at the authorization stage to attempt to unravel the legal relationships connecting Corbeil, the Corbeil Franchisee and the petitioner. Notably, at the authorization stage, the allegations of a petitioner are taken to be true, and according to the Court, the following allegations as pleaded by the petitioner created confusion as to the identity of the petitioner's co-contracting party:

1. The invoice for the purchases received by the petitioner included Corbeil's business name and logo.
2. The Corbeil Franchisee was listed as one of Corbeil's branches on Corbeil's website.
3. Corbeil did in fact offer extended warranties directly to consumers, and it was therefore impossible at the authorization stage to distinguish between Corbeil warranties and the one purchased by the petitioner from the Corbeil Franchisee.
4. The petitioner alleged that he chose to do business with Corbeil, which is why he chose to purchase his appliance from the Corbeil Franchisee.

A trend in franchise cases

This outcome is not unprecedented. In an earlier case, *Fortier c. Meubles Léon Itée*, 2014 QCCA 195 (the Fortier Case), a similar alleged confusion as to the identity of the consumer's co-contracting party led the Court to authorize a class action against Corbeil. Affirming the reasoning of the Superior Court, the Court of Appeal noted in the Fortier Case the invoice given to the consumer mentioned that Corbeil was represented by the franchisee, suggesting that the Corbeil franchisee was Corbeil's agent as opposed to an independent party.

The franchise model

The franchise business model is by its very definition one where independently operated businesses, “franchisees,” contract with a franchisor for the use of the franchisor’s established system of operations, branding and trademarks. Consumers tend to enter into transactions with the franchisee, not the franchisor. The doctrine of corporate separateness therefore dictates that, absent certain limited circumstances, a franchisor should not be held directly liable to consumers for issues that arise in their business interactions with franchisees. However, despite the corporate separateness between a franchisor and a franchisee, consumers may nonetheless assume that they are dealing directly with the franchisor given the association of the franchise business with the franchisor’s often well-known and established trademarks and brand.

The consequences

As class actions become an increasingly common recourse for consumers to enforce their rights, this assumption may have particularly detrimental consequences for franchisors, as class actions may be authorized against franchisors. The authorization decisions in the Fortier Case and, more recently, in the Cantin Case are preliminary decisions only. As such, they do not preclude franchisors from ultimately demonstrating that there are insufficient legal connections between them and the customers of their franchisees to establish liability. In addition, in the Cantin Case, Corbeil was granted leave to appeal the authorization judgment (*Ameublements Tanguay inc. c. Cantin*, 2017 QCCA 135). That being said, Justice Kasirer upon granting leave to appeal acknowledged that a consumer may have had good reasons to assume that he or she was dealing with the franchisor rather than the franchisee, which may be sufficient to establish a legal connection with the franchisor at the authorization stage of a class action.

There are various circumstances where franchisors may be liable to customers of their franchisees. One of them is when the consumer had good reasons to believe that he or she was dealing directly with the franchisor, or that the franchisee was acting on behalf of the franchisor.

The above decisions confirm that at least at the authorization stage of a class action, where the allegations of a petitioner are accepted as true, it will be difficult for franchisors to extricate themselves from actions brought against them by consumers. This signals a likely increase in the number of class actions with multiple defendants in a franchise context and more franchisors having to mount costly defences for the successful determination of these cases on their merits.

Practical implications

In order to protect themselves from consumer class actions, franchisors must ensure that their role vis-à-vis consumers is as clear as possible. For instance, a franchisor could, on documents provided to consumers by the franchisee, such as invoices, make sure that the franchisee is clearly identified as the consumers’ co-contracting party. Maintaining such clarity should increase a franchisor’s chance of defeating a consumer class action at the authorization stage, and certainly, if necessary, later on its merits.