

Licensing Termination and Reflections - Recent Starbucks Brazil Case

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Recently, the Brazilian master franchisee/licensee for the well-known brands STARBUCKS, TGI FRIDAY, and EATALY, filed for judicial financial reorganization protection under Brazilian Law, on the grounds of an adverse scenario and financial difficulties for its operations in Brazil during the post-COVID19 pandemic period.

According to the court files, one of the reasons for this judicial remedy is that Starbucks headquarters in the United States sent a "termination notice" on October 13th, which declared "the immediate termination of the 'Starbucks license agreements", based on failure to receive royalties due. Nevertheless, such Brazilian Master Licensee is not recognizing such notice as valid, arguing that the termination notice was not carried out in compliance with current local legislation.

Based essentially on maintaining the agreement in force for its activities and cash flow, the local Licensee is trying to obtain an injunction on an urgent basis so that the effects of said termination are suspended at least until the end of its judicial financial reorganization claim, or a mediation between the parties.

However, in the preliminary decision, the judge in charge of this lawsuit at the Sao Paulo State Bankruptcy Courts rejected the injunction arguing that this is not the appropriate court for handling this case, since the controversy over the termination of the franchise license agreement should be discussed before a commercial/business court (or by arbitration if the parties agree).

The judge also mentioned that, in this type of agreement, a breach can occur for several reasons other than non-payment of royalties, but also due to compliance with the trademark's quality guidelines, for example. Therefore, there are other legal factors that may lead the franchisor to intend to terminate the agreement.

It is important to note that, according to the Brazilian Civil Code, the termination of agreements can be freely established by the parties and unilateral termination can be agreed, in cases where the law expressly or implicitly allows it, upon notification to the other party. As an exception, given the subject matter of the agreement, in case one of the parties has made considerable investments in its execution, unilateral termination will only take effect after a period compatible with the complexity and size of the investments made. It is based on this exception that the Brazilian Franchisee is trying to recover the Starbucks license, although it has been operating this franchise business since 2018.

This case brings to light the importance of drafting robust clauses regarding the termination of the agreement and its effects, as well as the election of appropriate forum (or arbitration/mediation) and jurisdiction to each specific case, which must respect local practice and legislation.

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