

CONFLICTS IN FRANCHISED FAST FOOD RESTAURANT: A CONTENT ANALYSIS OF FRANCHISEES' LAWSUITS

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Abstract: *This paper presents findings from a content analysis performed using New York court records of lawsuits commenced by fast food restaurant franchisees against their respective franchisors. A methodological triangulation of CAQDAS and a manual coding generated a set of themes of conflicts between these fast food restaurant franchisors and franchisees. A coding matrix was developed to categorize types of conflict that led to the lawsuits filed against the franchisors. The significance of this study is that it provides potential franchisors and franchisees with types of recurrent conflict in franchise disputes, thus enabling both parties to address potential issues that foreseeably lead to such conflicts in the early stage of contract negotiation. The practical implications of this study include the recommendation for a mandatory inclusion of arbitration practices in franchise agreements in order to protect the interests of franchisees.*

Keywords: *Fast Food Restaurant, Franchising, Court Records, Content Analysis*

Introduction

Fast food restaurant is one of the most popular segments in food franchising. Food sector in general dominates 25% of the total franchise market share (Franchise Direct, 2016). Conflicts are inevitable throughout the duration of the franchisor-franchisee relationship. This is despite the fact that franchisor-franchisee relationships are heavily regulated by franchise regulations and numerous contracts. In a study by Frazer and Winzar (2005), conflict between the franchisee and franchisor has been identified as one of the factors for the collapsed relationships in franchises. Grace, Weaven, Frazer, and Giddings (2013) found that dissatisfaction and contradictory objectives of parties throughout the franchise course could spark the conflict as the franchising business are more complex than stipulated in the franchise agreement. Therefore, it is important to identify types of conflict experienced by the franchisees at litigation stage, so that the franchising industry is aware of the potential issues that could escalate into conflicts or worse, lawsuits. This paper presents types of conflict obtained by analyzing court records of lawsuits relating to fast food franchised restaurants. The objective of this study is to provide answers to this research question: What

types of conflict that gave rise to the lawsuits filed in courts by the fast food restaurant franchisees against their franchisors?

Literature Review

Franchise relationship consists of two parties, the franchisor and the franchisee, which are established by a franchise contract that legally binds their business activities and is legally enforceable to each other (Rubin, 1978). The franchisors permit their franchisees, to operate in a specific geographical location of their business. The exclusive right of territory granted by the franchisor to the franchisee is based on fair discretion of the franchisor and this condition is stipulated in the franchise agreement agreed by both parties. According to U.S. Small Business Administration (2016), franchising operates in two distinct formats: product franchising and business-format franchising. As expected, to happen in other business models, restaurant franchising is exposed to many conflicts due to their complicated activities (Tikoo, 2005). Advancing to litigation stage has become an option to the aggrieved party, either franchisors or franchisees, to find a solution to their conflicts.

In this study, the research structure is based on the franchise conflict management theory (Antia, Zheng, & Frazier, 2013). The core themes discussed under this theory were the franchise ownership structure, which varies from one entity to another, type of litigation initiation and resolution, as well as the litigation outcomes. These components are vital to prevent future disputes which may cause monetary losses and reputation damage to the franchising industry. The conflict management theory quantifies the litigation initiation process and outcomes due to conflicts between franchisees and franchisors but does not explore the types of conflict that give rise to the litigation initiation experienced by those parties.

Weaven, Frazer, Giddings, and Grace (2010) investigated the causes of conflict in the Australian franchising industry and found that conflicts may occur in two events: *ex-ante* and *ex-post*. In the *ex-ante* situation, the cause of conflict is due to poor franchisee pre-investment selection, which leads to a clash of personalities in the franchising relationship. During the *ex-post* course, conflict emerged when the franchisees experienced contradicting expectation as they failed to match the reality and expectation of operating a franchise business. Other causes of conflict were misleading advice obtained by franchisees from franchisors' advisory panel, failure of the franchisor to provide enough support throughout the business, and an inefficient communication system by the franchisor. In another study, the substantial disputes were related to a lack of system compliance by the franchisee, communication problems, misrepresentation issues, and a lack of franchisee profitability (Giddings, Weaven, Grace, & Frazer, 2011). Storholm and Scheuing (1994) found in their study that the biased nature of franchise agreements was perceived by the franchisees as the main cause of conflicts. On the other hand, the study also found that the franchisors perceived the conflicts as being caused by the non-compliance of franchise agreements by the franchisees, non-payment of royalties, and disclosure of proprietary data to the third party.

The findings in the studies cited above were in agreement with the findings in several other studies, for example, non-compliance of the agreement by franchisors lead to conflict in the relationship (Brody, 2008), the existence of imbalance of power where the franchising agreements are normally biased towards the franchisor's interests instead of the franchisee's (Spencer, 2007), and incompatible goals during the business operation (Frazer & Winzar, 2005), just to name few. It should be noted that most empirical studies used survey

questionnaire to gather data on conflict experienced by both franchisors and franchisees. Some franchise research works used various types of document to investigate organizational issues and to provide organizational decision-making guidelines. A list of franchising research that analyzed various documents is shown in Table 1.

Table 1: Types of Document Used in Franchising Research

Author(s)	Issues	Type of documents
Brookes (2014)	Opportunistic behavior of franchisors and franchisees	Franchise firms' operating procedures and manuals, company newsletters, employee magazines, internal memos, financial accounts and reports
Antia et al. (2013)	Impact of regulatory on franchisor-franchisee conflict management options	411 litigation cases involving franchisors and franchisees were extracted from the PACER website
Rondán-Cataluña, Navarro-García, Gámez-González, & Rodríguez-Rad (2012)	Knowledge on ethical content outlined by franchising associations	Data used as international codes of franchising associations
Winter, Szulanski, Ringov, & Jensen (2012)	Survival consequences of accurate replication versus local adaptation on the survival chances of franchise units within a large franchise firm	Proprietary dataset of 11-year, from 1991 until 2001, extracted from a US-based franchise association
Zachary, McKenny, Short, Davis, & Wu (2011)	Franchise branding represents the organization identity in recruiting potential franchisees	The Franchise 500 list published in <i>Entrepreneur Magazine 2010</i>

From the above list, only Antia et al. (2013) examined court records in their research work. In recent years, a number of franchising research have employed content analysis approach to examine numerous documents. These qualitative studies offer rich data and provide a better understanding of operational issues at all organizational levels (Doherty, 2007). In managing conflicts within a franchising system, Combs, Michael, and Castrogiovanni (2004) suggested that future research should attempt to investigate the causes of franchise failure, thus this current study.

Methodology

This study adapts the content analysis framework outlined by Zhang and Wildemuth (2009) in the following steps: 1) decide if content analysis is the most appropriate research design; 2) identify representativeness of samples; 3) determine unit of analysis; 4) collect data from the New York State court records and IFA database; 5) analyze data using data and methodological triangulations; 6) assess the coding consistency; 7) report the methods and the findings; and 8) draw conclusions from the findings.

Representativeness of sample is critical to achieve the rigor in qualitative study. Hair, Celsi, Money, Samouel, and Page (2011) suggested that samples representativeness can be acquired by defining the target population, selecting the sampling frame, designing the sampling method, drawing the sample size, and executing the sampling plan. Spaeth (1997) opined that researchers should decide on the themes based on their research interest. That being said, this study used a purposive sampling technique to provide a representativeness to the sample selected (Babbie, 2008). In framing the research scope, the unit analysis was confined to the database of New York State.

To begin the analysis process, all court records used in this study were downloaded from the New York State Unified Court System via online access. The justification of selecting the New York State court records compared to other states is that New York State has the largest online database of franchise-related records. A content analysis framework was designed to provide answers to the research questions. As such, the court records were selected and limited to the franchised fast food restaurant only. In an effort to enhance trustworthiness of the data and to contribute to the accuracy of the study, methodological and data triangulations were employed based on the recommendation by Carpenter (2011). During data triangulation stage, the corporate data from the International Franchise Association (IFA) website was used to cross-verify the information gaps that exist in the court records. The methodological triangulation was employed to verify the themes selected in both data from court records and IFA website. The data retrieval process was accomplished in two steps consecutively, starting with data collection from the New York State court records service and followed by a validity check from corporate database via IFA website. Then, data cleaning process was performed based on the following criteria:

1. Duplicate entry of cases.
2. Cases initiated by franchisors, customers, consignees, employees, government agencies, financial institutions, and professional firms (real estate agents, accounting firms and law firms).
3. Subject matters involving personal injury claims, tax-related cases, labor relation, and deceased's estate.
4. Withdrawn, discontinued, and ongoing trials.

The data cleaning process was repeated three-time until a saturation reached. A total of 2,187 court records were identified as franchising-related within a 60-year span. However, only six cases were filed by the fast food restaurant franchisees against their franchisors. These cases were given a case identifier for easy reference. A list of case citation is available in Appendix A. A flowchart of data retrieval process of court records from New York State website is shown in Figure 1. A flowchart of data validity check process via IFA website is presented in Figure 2.

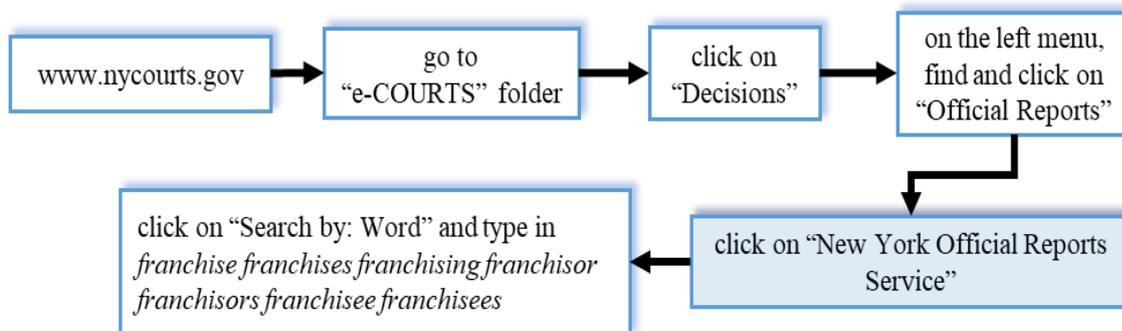


Figure 1: A Flowchart of Data Retrieval Process of Court Records From New York State Website

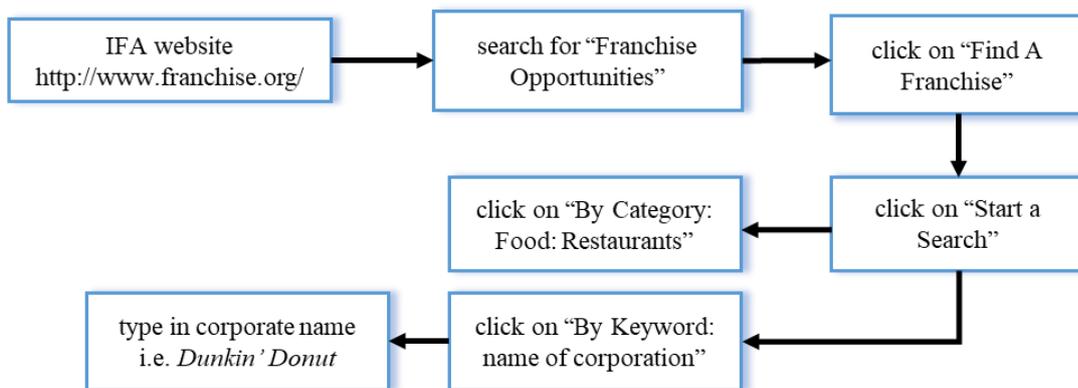


Figure 2: A Flowchart of Data Validity Check Process Via IFA Website

Yin (2016) recommends five analytic phases in the fifth stage of analyzing data using the data and methodological triangulations: compiling, disassembling, reassembling, interpreting and concluding. The first three analytic phases were performed in two major stages: manual coding and CAQDAS. Manual coding performed in the first stage consisted of four cycles. In the next phase, the data coding process used CAQDAS, for example Excel and NVivo, to cross-verify the themes selected in the study and to reduce the threats to validity (Siccama & Penna, 2008). A coding matrix was created to frame the selected themes based on the data and the literature (Strauss & Corbin, 2008). This coding matrix aims to address the research question. Table 2 depicts the coding matrix for theme conflict and its sub-themes.

Table 2: Coding Matrix of Themes for Conflict

Main theme	Sub-themes
Conflict	Non-compliance
	Fraud

Krippendorff (2013) was of view that an intercoder reliability test should be implemented to produce appropriate reliability coefficients for each theme coded. The first coder is the PI herself and the second coder is a former legal practitioner for many years. The first coder briefly trained the second coder. An online calculator – ReCal2 was used to compute the reliability coefficient for coded data. In order to run ReCal2 tool, several requirements are

outlined including use only nominal data, codes must be in numerical form, data coded by the two coders should appear in similar unit of analysis, and input file should be formatted accordingly (Freelon, 2011). Lombard, Snyder-Duch, and Bracken (2002) recommended that the acceptable intercoder reliability index is .70 and above. Each code value for themes was represented as 1 if the theme appeared in the unit of analysis and as 0 for absent. Some contradictory coded themes were corrected by consulting the second coder. Table 3 reports the intercoder reliability test result for conflict sub-themes.

Table 3: Percentage Agreement of Intercoder Reliability for Conflict Sub-Themes

Sub-themes	Percentage agreement
Non-compliance	78.3%
Fraud	73.9%

Findings and Discussion

All six cases in fast food restaurant franchising were initiated by the franchisees against their franchisors. Using the categorization matrix to classify the themes, it appeared that all conflicts originated from various franchising agreements. By referring the coding matrix, most of the lawsuits were filed based on non-compliance (Case01, Case02, Case04, Case05, and Case06). Only Case03 claimed fraud committed by the franchisor. The excerpts from the court records are presented in Table 4.

Table 4: Categorization Matrix of Types of Conflict Extracted from The Court Records

Case(s)	Excerpts from the court records	Types of conflict(s)
Case01	“The lease was purportedly terminated by the petitioner because of the respondent’s failure to make certain payments under the franchise agreement. The petition however fails to indicate which payments under the franchise agreement were delinquent and constituted basis of the notice of termination.”	Non-compliance
Case02	“...a failure to complete construction in a timely fashion resulted in a loss to the Yuans [respondents] of their lease, franchise, and approximately \$90,000 already paid to Sbarro organization [appellant].”	Non-compliance
Case03	“...period of time set forth in the franchise agreement was unreasonably short...that the claim accrues at such time as all of the facts establishing the alleged fraud...”	Fraud
Case04	“Contending that plaintiff had reneged on its promise to make contractually-fixed contribution on behalf of four of its franchise...those agreements require plaintiff to spend at least 3% of its monthly gross sales for advertising and to contribute of that sum to the advertising cooperative...”	Non-compliance
Case05	“...Market development agreement (MDA) which authorized them [plaintiffs] to open three restaurants...they failed to open any additional restaurants within the time	Non-compliance

allotted...”

Case06 “Petitioners failed to show that the petition was served on a Non-compliance person authorized to receive service of process...commencement of the proceeding was untimely.”

The findings in this study prove that non-compliance of provisions in the franchise agreement by the franchisors is a recurring cause of conflicts. It indicates that the franchisees were the aggrieved party whereby they alleged that the franchisors did not comply with the provisions as stipulated in the agreements. In franchise practices, agreements in franchise businesses are usually biased toward safeguarding the franchisor’s interests instead of franchisees’ (Kashyap, Antia, & Frazier, 2012). In most cases, the franchisors are the party who breached or violated the agreements. In order to minimize the possibility of litigation, Alternative dispute resolution (ADR) should be mandated by the lawmakers as a mandatory clause in the franchise agreement. Currently, the inclusion of ADR clauses in the franchising agreements is optional and most of the franchisors attempt to escape from the arbitration process. As a matter of fact, initiating a lawsuit is time-consuming, depressing, and costly. The findings show that most franchisees had opted for litigation as they perceived that lawsuits were the only way to solve their conflicts.

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Appendix A: List of New York State Court Cases

Case identifier	Case citation
Case01	Chicken Delight E. v Wenke 27 A.D.2d 537, 275 N.Y.S.2d 291, N.Y.A.D. 2 Dept., December 05, 1966
Case02	Matter of Sbarro Holding (Shiaw Tien Yuan) 91 A.D.2d 613, 456 N.Y.S.2d 416, N.Y.A.D. 2 Dept., December 06, 1982
Case03	Protter v Nathan's Famous Sys. 246 A.D.2d 585, 667 N.Y.S.2d 301, 1998 WL 34519, 1998 N.Y. Slip Op. 00449, N.Y.A.D. 2 Dept., January 20, 1998
Case04	B&R Mgt. & Leasing Corp. v Triarc Rest. Group, Arby's 269 A.D.2d 804, 703 N.Y.S.2d 635, 2000 WL 175789, 2000 N.Y. Slip Op. 01310, N.Y.A.D. 4 Dept., February 16, 2000
Case05	Yamin v Moe's Southwest Grill, LLC 85 A.D.3d 1381, 924 N.Y.S.2d 226, 2011 WL 2224943, 2011 N.Y. Slip Op. 04803, N.Y.A.D. 3 Dept., June 09, 2011
Case06	Bletas v Subway Intl. B.V. 96 A.D.3d 442, 946 N.Y.S.2d 130, 2012 WL 2036410, 2012 N.Y. Slip Op. 04388, N.Y.A.D. 1 Dept., June 07, 2012
