

requires that the licensor aid or assist the distributor or licensee in training, obtaining locations or facilities for operation of the franchisee's business or in marketing the franchisor's product or service.

(7) "Published in this state" within the meaning of s. 553.59 (4), Stats., may be determined by the commissioner to include, but not be limited to, advertising circulated for particular regional use within this state by residents of this state although printed outside of this state and mailed to residents of this state located at a Wisconsin address.

(8) The commissioner shall, in any determination he shall make as to whether a marketing plan or system of a franchisee is "substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising or other commercial symbol" within the meaning of s. 553.03 (4) (a) 2., Stats., include, but not be limited to, consideration of the following factors:

(a) Whether the identification of the licensor's business or utilization of his trademark, service mark, trade name, logotype, advertising or other commercial symbol is utilized either by the licensor or the licensee to enhance the chances of licensee's success in respect to licensee's transactions with persons dealing in or purchasing licensor's product or service.

(b) Whether the agreement provides for the distributor or licensee to contribute a portion of his operating revenue to the licensor for advertising expense or representations made by the licensor or his agents or employees suggest payment by the licensee for advertising conducted, managed or prescribed by the licensor.

(9) The commissioner shall, in determining whether a marketing plan or system of a manufacturer, licensor or a franchisor is a "bona fide wholesale transaction" or a series thereof within the meaning of s. 553.03 (5m), Stats., consider the following factors, among others:

(a) Whether, in connection with an agreement to process, resell or otherwise distribute a manufacturer's or licensor's product or service, consideration in purchase transactions thereunder is solely for the payment of goods, services, equipment, inventory or real estate and such consideration does not reflect, in part or in whole, payment for the right to continue such purchase transactions or business whether on the same or different terms than those stated in the subject agreement.

(b) Whether, in connection with an agreement to process, resell or otherwise distribute a manufacturer's or licensor's product or service, a purchase of goods, services, equipment, inventory or real estate is required in connection with the subject agreement.

(c) Whether, in connection with an agreement to process, resell or otherwise distribute a manufacturer's or licensor's product or service, the cost of goods, services, equipment, inventory or real estate thereunder to the seller thereof is reasonably related to the price of the same to the distributor or licensee, taking into account the respective circumstances in the market of both the seller and buyer thereof.

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(10) "Timely" within the meaning of s. 553.41 (4), Stats., means at least 10 business days prior to the execution of an agreement or the taking of consideration constituting the sale of a franchise.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (10), Register, December, 1981, No. 312, eff. 1-1-82; correction in (2) (intro.) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1985, No. 360; am. (2) (b), Register, May, 1986, No. 365, eff. 6-1-86; am. (9) (intro.), Register, December, 1986, No. 372, eff. 1-1-87.