



# Client Alert

February 22, 2011

## ***KFC National Council and Advertising Cooperative, Inc. v. KFC Corporation: A Cautionary Tale***

The Delaware Chancery Court recently issued a decision severely limiting KFC Corp.'s right to control brand marketing in a case that offers several important lessons about managing franchisee relations.

The case, *KFC National Council and Advertising Cooperative, Inc. ("NCAC") v. KFC Corporation*, involved a suit brought against the international fried chicken franchisor by a special purpose entity formed to develop and manage the chain's domestic advertising. The suit centered on the scope of the NCAC's authority to control brand advertising. KFC argued that the NCAC, which was controlled by a supermajority of KFC franchisees, only had the right to approve or disapprove on an "up or down" basis advertising proposed by the franchisor. The NCAC, in turn, argued that it enjoyed broader powers. These included, but were not limited to, the right to propose and approve alternative advertising plans even over the opposition of KFC.

The court sided with the franchisees in a ruling that provides some of the following important takeaways:

**Importance of Franchisor Flexibility:** In an era when franchisors increasingly work with franchise advisory committees ("FACs") for purposes of crafting and implementing a brand's marketing strategy, it is important for franchisors to negotiate FAC authorizing agreements that allow the franchisor to maintain sufficient control over overall advertising strategy. While franchisee input into brand marketing is no doubt critical to the long-term success of a brand, maintaining franchisor flexibility is even more important. A franchisor should maintain the ability to easily adjust its advertising strategy in response to ever-changing market conditions and consumer demands.

**Harmony is Imperative to Brand Success:** Although the KFC decision was a victory for franchisees, the fundamental lesson to be drawn from the ruling is that franchisor/franchisee harmony is imperative to brand success. While acknowledging the powers afforded to the franchisees, the court in KFC also reminded franchisees of their responsibility to be "good shepherds" for the brand. Ultimately, both the franchisor and its franchisees are hurt when a brand is forced to "go dark" because of the parties' failure to reach consensus on an advertising strategy. To avoid this scenario, franchisors and franchisees should always work collaboratively to achieve the long-term best interests of the brand. Although marketing agreements between franchisor and franchisees can add tremendous value to a brand, any power sharing arrangement should allow a franchisor to maintain maximum flexibility over a brand's overall marketing strategy. Achieving this balance begins with FAC agreements that not only consider a brand's present realities, but also afford franchisors the ability to make adjustments in the future.

---

For more information, please contact a franchise attorney in the Franchising, Distribution and Antitrust Practice Group.

**Matthew Kreutzer** / 702.473.7075  
mkreutzer@armstrongteasdale.com

**Ed Spalty** / 816.472.3112  
espalty@armstrongteasdale.com

**Brant Laue** / 816.221.3420  
blaue@armstrongteasdale.com

**Jennifer Schwesig** / 314.259.4710  
jschwesig@armstrongteasdale.com

**Dan Nelson** / 314.552.6650  
dnelson@armstrongteasdale.com

**David Jermann** / 816.472.3176  
djermann@armstrongteasdale.com

**Winston Calvert** / 314.259.4752  
wcalvert@armstrongteasdale.com

**Teresa Cauwels** / 605.271.8180  
tcauwels@armstrongteasdale.com

**Dione Greene** / 816.472.3148  
dgreene@armstrongteasdale.com

**Sarah Hanson** / 816.472.3144  
shanson@armstrongteasdale.com

**Darren Sharp** / 816.472.3174  
dsharp@armstrongteasdale.com

**Craig Moore** / 314.259.4723  
cmoore@armstrongteasdale.com

**Jeff Schultz** / 314.259.4732  
jschultz@armstrongteasdale.com

---

This alert is offered as a service to clients and friends of Armstrong Teasdale LLP and is intended as an informal summary of certain recent legislation, cases, rulings and other developments. This alert does not constitute legal advice or a legal opinion and is not an adequate substitute for the advice of counsel.

**ADVERTISING MATERIAL: COMMERCIAL SOLICITATIONS ARE PERMITTED BY THE MISSOURI RULES OF PROFESSIONAL CONDUCT BUT ARE NEITHER SUBMITTED TO NOR APPROVED BY THE MISSOURI BAR OR THE SUPREME COURT OF MISSOURI.**

**Unsubscribe** from our mailing list

Don't miss Armstrong Teasdale's news and updates — please add **armstrongteasdale@armstrongteasdale.com** to your contact list or address book.