

Restriction of the use of customers' data by retailers and franchisees after contract termination: possible risks on goodwill?

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Customer Data and Personal Data

If customer data contains personal data (e.g. contact details of names individuals):

- Role of the parties to be defined also from a privacy viewpoint, since it has an effect on the restrictions of use of the data:
Under the GDPR: data controller / data processor
- Obligations to be complied with from a privacy viewpoint on the use of the data after contract termination and related risks

Franchisees' Post-Term Use of Customer Data - the US Perspective

Can the franchisor prevent the franchisee from accessing and using the data?

- Non-compete/non-solicitation
- Trade Secret
- Ownership

Is there a goodwill related to the value of data that can be claimed by franchisees at the end of the contract?

- Customer Data and Goodwill
- Goodwill and US Franchise Laws
- M&A Valuation; Master Franchising

Customer Data = Right to goodwill indemnity?

Poland:

- no rules regarding goodwill indemnity for distributors;
- no court verdicts/practice;
- customers data issue – irrelevant

Germany:

- confirmed practice;
- customers data – one of the conditions for payment of goodwill indemnity

Authorised dealer compensation in Germany:

Analogue application of Section 89b HGB (German Commercial Code).

Section 89b HGB essentially corresponds to Articles 17 to 19 of the Council Directive for Commercial Agents.

Prerequisite for authorised dealer compensation under German law:

1. integration of the authorised dealer in the same way as a commercial agent in the distribution system of the entrepreneur
2. contractual obligation to transfer the customer base. An implied obligation is sufficient.

Authorised dealer compensation in Germany:

The second requirement, namely the contractual obligation to transfer the customer base, is problematic in connection with data protection law.

In order to fulfil this obligation, the authorised dealer must make the customer data available to the entrepreneur in such a way that he can use it without significant further intermediate steps.

Problem: Is the transfer of customer data permissible under data protection law?

The transfer is permitted under data protection law in accordance with Art. 6 para. 1 sentence 1 GDPR.

The retailer has a legitimate interest in forwarding the customer's contact data to the manufacturer.

This transfer of data has been recognized and permitted for decades and forms the basis of the right to compensation.



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Thank you!