



## **Incorrect turnover projections can justify damages claims - Franchise law**

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - [www.grprainer.com/en](http://www.grprainer.com/en) conclude: In its judgment of January 17, 2014 (Az.: 332 O 249/12), the Regional Court of Hamburg (RC) clarified that from the submission of incorrect or merely estimated turnover projections follows a pre-contractual breach of duty on the part of the franchisor which entails claims for damages. A franchisee raised an action before the RC Hamburg, pursuant to which the turnover achieved fell far short of the forecasted figures. The defendant franchisor had allegedly failed to point out to the plaintiff during the contractual negotiations that the submitted turnover figures were based only on estimations.

The RC followed the franchisee's pleading and granted it the claim for damages. In the instant case, it did not come down to whether the plaintiff ought to have informed itself of the risks and prospects of the undertaking, as the defendant's breach of duty was based on the use of unrealistic and inaccurate data for the turnover projection. The only circumstance in which this would not have led to a pre-contractual breach of duty is if the franchisor had drawn attention to this fact.

However, this duty to inform on the part of the defendant franchisor was not complied with and thus the plaintiff was given erroneous perceptions with regard to the development of turnover. Furthermore, in the view of the Court, the plaintiff also had no duty to mitigate damages in terms of changing the concept at his own risk and expense.

Franchise concepts represent attractive prospects both for franchisors and franchisees in many fields. In the course of this, the franchisee runs an independent business but distributes the goods or services of the franchisor. For this purpose, it makes recourse to the distribution channels and marketing concept of the franchisor. However, the difficulty that often emerges for the parties involved is one of legal classification, as different elements from various types of contracts are incorporated.

Against the background of this complex legal subject matter and the frequently not inconsiderable contractual sums, those affected should turn to a lawyer. He can examine the franchise agreement having regard to the current case law or suspend an effective agreement. Additionally, he can be of assistance in enforcing any claims or regarding problems arising from the franchise relationship.

<http://www.grprainer.com/en/Franchise-Law.html>

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Anlage: Bild

