

## Franchising - Sweden

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### Franchisee must prove sales report is correct

Contributed by **Sagell and Co**

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#### Introduction

#### Decision

#### Comment

#### Introduction

A cornerstone of franchising is that the franchisee must pay royalties to the franchisor for the right to use the franchise concept. The calculation of royalties can differ between different franchise systems, but one common calculation method is based on the price at which the franchisee sells the concept products to its customers.

But what happens when a franchisor and a franchisee cannot agree on how many products have been sold over a specific period, and thus how much royalty the franchisee must pay to the franchisor?

#### Decision

Such a dispute has yet to be judged by a Swedish court. However, in 2013 the Swedish Appeal Court (T 2290-12) decided on a dispute between a wholesaler of postboxes and the postbox designer.

Based on an agreement between the two parties, the designer was entitled to a royalty for every postbox that the wholesaler sold to its customers.

The wholesaler cancelled the agreement, in accordance with the terms, as it had sold its stock of postboxes. The designer sued the wholesaler claiming that the wholesaler should pay a higher royalty amount than the designer had received. The wholesaler claimed that the amount paid was correct. The designer argued that the wholesaler had sold more boxes than had been accounted for.

The court ruled in favour of the designer based on the principle of the burden of proof. Swedish law states that the burden of proof in a commercial dispute rests on the party for which it is easier to gather and secure evidence, or that has special reason to do so. In this case, the parties could not agree on how many postboxes had been sold. The court decided that the wholesaler was the party which could most easily gather evidence, in this case in the form of sales reports and customer invoices. As the wholesaler failed to present such evidence accurately, the court found that the amount of postboxes sold as alleged by the designer was correct and it granted the designer the royalty sum claimed.

#### Comment

By applying this ruling to a franchisor-franchisee relationship, it appears that in a royalty dispute between parties where the franchisee is the seller and the franchisor is the receiver of royalty based on that sale, it is the franchisee which must provide evidence in support of its sales and royalty statement. Failing this, the franchisor's royalty claim will prevail.

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