§ 779.232 Franchise or other arrangements which create a larger enterprise.

(a) In other instances, franchise arrangements do result in bringing a dealer’s business into a larger enterprise with the one granting the franchise. Where the franchise arrangement results in vesting control over the operations of the dealer’s business in the one granting the franchise, the result is to place the dealer in a larger enterprise with the one granting the franchise. Where there are multiple units to which such franchises have been granted, the several dealers are considered to be subject to the common control of the one granting the franchise and all would be included in the same larger enterprise.

(b) It is not possible to lay down specific rules to determine whether a franchise or other agreement is such that a single enterprise results because all the facts and circumstances must be examined in the light of the definition of the term “enterprise” as discussed above in this subpart. However, the following example illustrates a franchising company and independently owned retail establishments which would constitute a single enterprise:

(1) The franchisor had developed a system of retail food store operations, built up a large volume of buying power, formulated rules and regulations for the successful operation of stores together constituting a system which for many years proved in practice to be of commercial value to the separate stores; and

(2) The franchisor desired to extend its business through the operation of associated franchise stores, by responsible persons in various localities to act as limited agents, and to be parts...
of the system, to the end that the advantages of and the profits from the business could be enjoyed by those so associated as well as by the franchisor; and

(3) The stores were operated under the franchise as part of the general system and connected with the home office of the franchisor from which general administrative jurisdiction was exercised over all franchised stores, wherever located; and

(4) The stores operated under the franchise agreement were always subject to the general administrative jurisdiction of the franchisor and agreed to comply with it; and

(5) The stores operated under the franchise agreement were always subject to the general administrative jurisdiction of the franchisor and agreed to comply with it; and

(6) The stores operated under the franchise agreed to participate in special promotions, sales and advertising as directed by the franchisor, to attend meetings of franchise store operators and to pay a fee to the franchisor at the rate of one-half of 1 percent of total gross sales each month for the privileges to them and the advantages and profits derived from operating a local unit of the franchisor’s system; and

(7) The franchisor under the franchise agreement had the right to place on a prohibited list any merchandise which it considered undesirable for sale in a franchise store, and the stores operated pursuant to the franchise agreed to immediately discontinue sale of any such blacklisted merchandise.

(c) It is clear from the facts and circumstances surrounding this franchise arrangement described in paragraph (b) of this section that the operators of the franchised establishments are denied the essential prerogatives of the ordinary independent businessman because of restrictions as to products, prices, profits and management. The last paragraph of the Senate Report quoted in §779.229 makes clear that in such cases the franchised establishment, dealer, or concessionaire will be considered an integral part of the related activities of the enterprise which grants the franchise, right, or concession.

§ 779.233 Independent contractors performing work “for” an enterprise.

(a) The definition in section 3(r) specifically provides that the “enterprise” shall not include “the related activities performed for such enterprise by an independent contractor.” This exclusion will apply where the related activities are performed “for” the enterprise and if such activities are performed by “an independent contractor.” This provision is discussed generally in part 776 of this chapter.

(b) The Senate Report in referring to this exception states as follows:

It does not include the related activities performed for such an enterprise by an independent contractor, such as an independent accounting firm or sign service or advertising company, * * *(S. Rept. No. 145, 87th Cong., 1st Sess., p. 40).

The term “independent contractor” as used in section 3(r) has reference to an independent business which performs services for other businesses as an established part of its own business activities. The term “independent contractor” as used in 3(r) thus has reference to an independent business which is a separate “enterprise,” and which deals in the ordinary course of its own business operations, at arms length, with the enterprises for which it performs services.

(c) There are many instances in industry where one business performs activities for separate businesses without becoming a part of a larger enterprise. In addition to the examples cited in the Report they may include such services as repairs, window cleaning, transportation, warehousing, collection services, and many others. The essential test in each case will be whether such services are performed “for” the enterprise by an independent, separate enterprise, or whether the related activities are performed for a common purpose through unified operation or common control. In the latter case the activities will be considered performed “by” the enterprise, rather than “for” the enterprise, and will be a part of the enterprise. The distinction in the ordinary case will be readily apparent from

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