

FRANCHISE



A PUBLICATION OF
FISHER ZUCKER, LLC



FisherZucker

LITIGATION

Business Lawyers

TRANSACTIONS

We Know Franchising.

REGISTRATIONS

FRANCHISE CONSULTING AND DEVELOPMENT

FisherZucker LLC is a full-service law firm with a national practice dedicated almost exclusively to franchise, distribution and licensing matters

At FisherZucker, we provide value to our clients by assisting them with creative, expeditious and cost-effective legal solutions to business problems. We are an alternative to large law firms, which have considerable overhead costs and high hourly rates. We represent some of the nation's largest franchisors, many start-up and growing franchise systems. Our clients receive the benefit of a personal relationship, and the efficiency and cost-consciousness that is available only in a boutique practice.

We recognize that businesses are managed through budgets, so our goal is to distill legal issues and objectives into a form which can be considered in the context of all other management and budgetary decisions. Please contact us to discuss our flat, capped and other flexible fee arrangements.

FisherZucker LLC provides the initial services necessary to structure and establish a franchise system and ongoing day to day advice in the operation of the system. Please contact us for a free consultation about whether franchising is an appropriate vehicle for expanding your business.



New franchisors often spend too little time thinking about the best way to structure and launch a successful franchise program.

Over the last 20 years, the firm and its principals have gained substantial expertise in helping companies with strong unit economics and good concepts use franchising as a means of rapidly growing their concepts. The firm has worked with multiple startup franchisors in the retail and service industries, and has considerable expertise in structuring successful franchise programs. The firm has worked with hundreds of retail and service franchisors and know what systems work.

Although we provide most of the services you need to commence franchising, there are some non-legal functions, like operations manuals, advertising and public relations, which are best provided by experts in those areas. Some franchise consultants purport to have expertise in all industries and methods of expansion, but experience tells us that no one person is a jack-of-all-trades. As a result of our activity in the franchise trade association and other industry sponsored conferences and events, we have developed a vast network of suppliers with the right experience who we call upon to perform non-legal tasks. Knowing who is the best at each function for our clients makes us indispensable to your team.

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Trademarks identify your brand to the public and must be protected against unauthorized use or infringement. In our trademark registration and licensing practice, we regularly search proposed business names, provide legal opinions on their registrability and register them in the U.S. and abroad.



We generally recommend that new franchisors form a separate entity to conduct their licensing activities in order to insulate existing operations from liability and minimize the cost of the required accounting audit. We assist franchisors in forming these new entities and negotiate and draft the governing documents which define the rights and obligations among the parties and their relationship to the existing business entities.

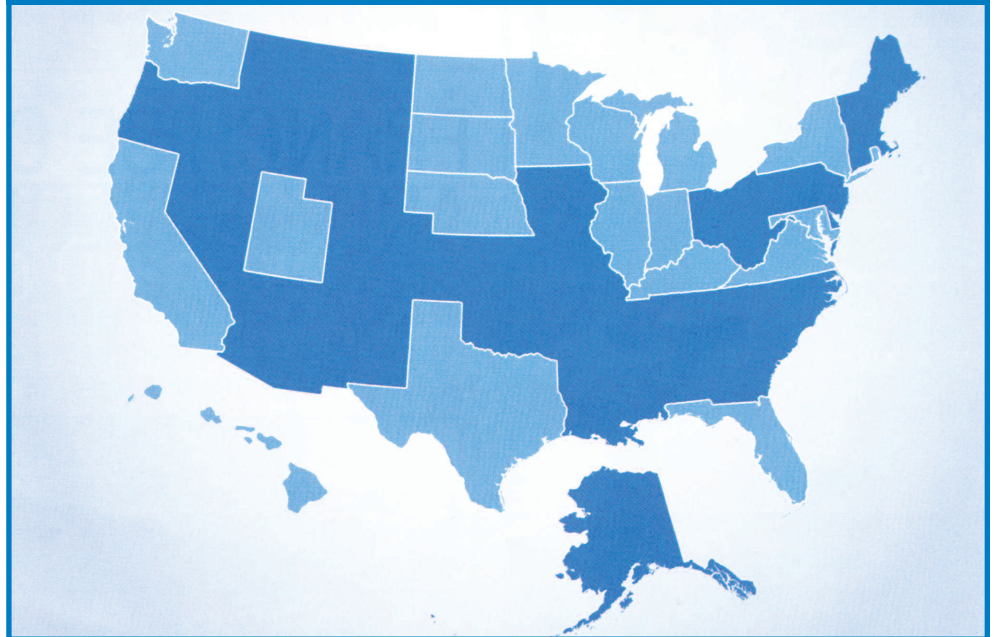


The FTC Rule on Franchising requires pre-sale disclosure on 23 items of information and has certain timing, delivery and updating requirements and also requires that all agreements and audited financial statements be attached. We prepare legally compliant state-of-the-art franchise agreements and Franchise Disclosure Documents. Certain states require pre-registration of franchise offering documentation prior to offering or selling a franchise in that state. The

states that require a pre-sale filing or registration are: California, Florida, Hawaii, Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, Nebraska, New York, North Dakota, Rhode Island, South Dakota, Texas, Utah, Virginia, Washington and Wisconsin. We offer flat fees to prepare the required disclosure document, franchise agreement and other ancillary agreements as you may need to begin franchising and to register them with the states.



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ONGOING FRANCHISE ADVICE



DAY-TO-DAY ADVICE

Once a system is established, questions arise daily on the best way to accomplish franchise sales and operational compliance. As a result of our focus on franchising, distribution and licensing matters, our attorneys can promptly and efficiently give instructive and experienced advice.



ENFORCEMENT

Unfortunately, some franchisees will not comply with their obligations under their franchise agreement. When a franchisee is not in compliance with his or her obligations under the franchise agreement, the decision to terminate, along with a thorough analysis of all pre-termination options, is critical. In most cases, there are options short of termination which, under the right circumstances, may motivate a franchisee to cure or transfer the franchise, and thereby save the relationship and protect the cash flow associated with the franchise.

DISPUTE RESOLUTION

Our lawyers have business backgrounds, and therefore give advice calculated to reaching business-like resolutions, rather than maximizing conflicts. In addition to litigating matters in various state and federal courts around the country, we are experienced and particularly adept in using arbitration and mediation as offensive mechanisms to achieve an early resolution of disputes.

FINANCIAL PERFORMANCE REPRESENTATIONS

An Item 19 Financial Performance Representation permits a franchisor to answer the question every prospect wants to know and limits its exposure to liability in the process. Our attorneys are skilled in preparing financial performance representations for systems of all sizes and ages.

REAL ESTATE

Many franchisors secure a franchisee's performance under the Franchise Agreement by taking certain rights in the real estate. Our attorneys have experience in negotiating and concluding commercial real estate transactions. We also assist clients in preparing the necessary financial documents related to the purchase.

BANKRUPTCY

In the unfortunate event that a franchisee becomes insolvent during the term of the franchise agreement we provide advice to our clients with respect to working through challenging financial circumstances, with the goal of preventing the assets of the franchise from becoming part of the debtor's bankruptcy estate. If bankruptcy has already been filed, we assist franchisors in garnering post-petition contractual compliance and protecting the franchisor's interests.

INTERNATIONAL

We provide advice concerning overseas expansion through franchising and protection of intellectual property rights abroad. We have relationships with attorneys in other countries who assist us in ensuring local law compliance. This provides us with the local perspective on expansion within a particular country.

MERGERS/ACQUISITIONS

There is consolidation evident in every industry; franchising is no exception. Franchisors, alone and in connection with private equity firms, are purchasing franchise systems in record numbers. Clients engage us to provide advice on the best method and manner for acquiring or selling assets.

FOCUS REVIEW

In our Focus Review, we offer a compliance review and competitive analysis for franchisors with existing franchise disclosure documentation. For a flat fee, we will review existing franchise documents for regulatory compliance and other business or operational issues. We also compare the major terms and obligations of your disclosure document to certain identified competitors in order to ensure that your document remains competitive.

HOW DO YOUR DOCUMENTS STACK UP?

OBTAIN A COMPREHENSIVE
FOCUS REVIEW
FOR REGULATORY COMPLIANCE,
ESSENTIAL CONTRACT TERMS
AND A COMPETITIVE ANALYSIS

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PRE-SALE STATE REGISTRATIONS

We offer a flat fee schedule to register your FDD in those states that require pre-sale registration.

TRAINING PROGRAMS

Ask yourself whether your existing franchise sales training is adequate in light of our incredibly litigious society,

and the fact that a vast majority of claims asserted by franchisees against franchisors include claims of: (1) improper disclosure; and (2) improper earnings claims.

Given the recurring nature of these claims, we began offering our franchisor clients a comprehensive training seminar. We use a proprietary comprehensive workbook known as the Franchise Sales Desk

Reference, and we instruct your staff on regulatory compliance, including compliance with the FTC Rule and state statutes governing the sale of franchises. Our Franchise Sales Desk Reference has become a valuable resource for many of our firm's clients.

We can tailor a training program to your specific needs.

FisherZucker: An Overview

An attribute that sets FisherZucker apart from other firms, and makes its success hard to copy, is Lane Fisher and Jeff Zucker's personal participation in all aspects of the operations of the firm.

Most people evaluate a business by what you can take out; the firm's principals are equally as concerned with what we give back. Each year the firm devotes hundreds of billable hours to researching complex legal issues and preparing updates, newsletters, and programming to keep the franchise community informed on what others are doing in franchising. In the last ten years, members of the firm have moderated, facilitated, and presented more than 40 franchise programs and have written more than twenty articles on every conceivable topic, but most often, earnings claims and multi-unit and multi-brand

franchising. To give as much take-home value as possible, the firm has created and constantly updates extensive written Operating Manuals, sample drafting guides, and hundreds of articles intended to educate the entire community with information we have learned in our practice. In addition, we have presented in house franchise sales compliance, franchise enforcement and termination programs for single and multi branded franchisors.

The time involved in planning and making presentations pales in comparison to the number of non billable hours devoted to assisting people in "finding their way" in franchising, or getting their franchise systems to the next level. This assistance takes many forms at our firm, and covers many means of communications, from industry list serve postings and responses, private

emails, being a sounding board for other practitioners dealing with new or novel areas of the law, or just giving opinions to those who call on the telephone.

Lane and Jeff were identified as "SuperLawyers" in franchise and distribution law in *Philadelphia Magazine's* June 2005, 2006, 2007, 2007, 2008 and 2009 issues and were included in the top 101 franchise lawyers in *Franchise Times* April 2005 issue. FisherZucker's other partner, Joe Dunn, was named a "Rising Star" in *Philadelphia Magazine's* December 2005, 2006, 2007 and 2008 issues. Lane also serves as a member of the International Franchise Association's ("IFA") Board of Directors and chairs IFA's Membership Committee as well as its regional Meeting Subcommittee.



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