



# The A.R.T. of Franchising

An Important Franchising Update from the firm of Jackson Walker L.L.P.

January 06, 2011

## Resources

[JW Franchise Practice Area](#)

[Contact JW](#)

[www.jw.com](http://www.jw.com)

**JW Franchise Attorneys**

**Wayne P. Bunch, Jr.**  
713.752.4333  
wbunch@jw.com

**Mark H. Miller**  
210.978.7751  
mmiller@jw.com

## Offices

**Austin**  
100 Congress Avenue  
Suite 1100  
Austin, TX 78701

**Dallas**  
901 Main Street  
Suite 6000  
Dallas, TX 75202

**Fort Worth**  
777 Main Street  
Suite 2100  
Fort Worth, TX 76102

**Houston**  
1401 McKinney Street  
Suite 1900  
Houston, TX 77010

**San Angelo**  
301 W. Beauregard  
Avenue  
Suite 200  
San Angelo, TX 76903

**San Antonio**  
112 E. Pecan Street  
Suite 2400

## The A.R.T. of Franchising Advice - Reminders - Tips

Dear Franchisor,

Welcome to the second edition of Jackson Walker's *ART of Franchising* newsletter. As always, our intention is to provide you with timely and easy-to-read franchise *advice, reminders and tips*, so that, as industry leaders, your knowledge of franchising will be continually expanding.

### Today's Advice

As the new year begins, many of you will have set ambitious goals related to the sale of many new franchises. There are numerous methodologies related to increasing franchise sales; however, I would argue that the best franchise sales tool is developing a system full of happy and successful franchisees.

So, what makes a happy and successful franchisee? Clearly, being profitable is important, but I would answer this question in the following way. Most franchisees want two things:

1. Positive brand recognition and awareness, and
2. Efficient operating systems, which insure adequate profit margins and a consistently compelling customer experience.

A powerful brand image is built through the use of a smart growth strategy, an effective marketing strategy, and by consistently meeting customer expectations. The development of high quality operating systems is the result of a determined franchisor who is focused on excellence. The operating systems will provide your franchisees with the tools for success, and generally include systems related to site selection, training, customer service, advertising, branding, purchasing, pricing, merchandising, employer/employee relationship, managing, accounting/bookkeeping and quality control, among others.

A franchisor focused on building brand recognition and creating great operating systems will develop a very healthy group of franchisees, each of whom will be your best ally during any franchise sales process.

### Today's Reminder

With the new year upon us, it is time to begin thinking of the annual update to your Franchise Disclosure Document ("FDD"). Your annual update must be finalized on or before April 30, 2011, or 120 days after your fiscal year-end. The following are things you can begin working on in order to streamline the updating process:

- Begin working with your CPA to obtain your audited financial statements. This can take longer than expected, and it helps

- to begin the conversation earlier rather than later.
- If you have brought on additional principal officers or individuals that have management responsibility related to the sale or operation of franchises, be prepared to provide biographical information on these individuals to your attorney for updates to Item 2.
  - If there has been any recent litigation, be prepared to share this information with your attorney for updates to Item 3.
  - If you wish to alter your royalty or advertising fee structure, this will result in updates not only to your FDD, but also to your Franchise Agreement. Be prepared to discuss this in detail with your attorney.
  - Make sure to review your start-up costs in Item 7, and provide your attorney with any changes.
  - Be prepared to provide your attorney with very specific information regarding any and all revenue derived from supplier rebates or from sales directly to franchisees.
  - Be prepared to provide your attorney with any changes to your computer system/point of sale system specifications and costs.
  - If your FDD contains a Financial Performance Representation (formerly known as an earnings claim), or you wish to include one, prepare the necessary information for your attorney to update or include in Item 19.
  - Be prepared to assist your attorney with the completion of the tables in Item 20, and to provide an updated list of current and past franchisees.

This is not an exhaustive list of necessary updates; however, having this information readily available for your attorney will not only expedite the updating process, but will also save your attorney time and effort, resulting in reduced legal cost.

With respect to state franchise registration renewals, it is important that you focus on the update process early to insure you aren't delayed due to the rush from other franchisors.

Lastly, going through the annual updating process is a very good opportunity to re-acquaint yourself and your sales people with the contents of your FDD. Remember, your FDD must be accurate and not be missing any important information about you, your franchise company or the franchise opportunity. Knowing the full content of your FDD is critical because in any franchise sales process, information provided to a prospect must be completely consistent with the information found in your FDD.

#### **Today's Tip**

The annual updating process is also an opportunity to review and make revisions to your Franchise Agreement. You may wish to revise your fee structure, add additional fees, or add additional protective language, among other things. And, like your FDD, it is very important that you know what your Franchise Agreement says, so you can make sure you are meeting your obligations and make sure you are holding your franchisees to their obligations.

Franchise Agreements detail the relationship between franchisor and franchisee, and are generally designed to do three very important things:

1. Protect the franchisor,
2. Protect the franchisor's brand, and
3. Minimize litigation exposure.

Franchise Agreements are always drafted strongly in favor of the franchisor, and therefore many times objected to by prospective franchisees. In the face of such objections, it is important to inform prospective franchisees that the Franchise Agreement is your tool to protect the brand from bad or free-riding franchisees. It is also important that, early in the franchise sales process, you let prospective franchisees know that your Franchise Agreement is not subject to negotiation. For the protection of your brand and the management of your system, it is critical that you have a uniform Franchise Agreement with all of your franchisees.

We welcome your comments and suggestions. Please send to [wbunch@jw.com](mailto:wbunch@jw.com) or [mmiller@jw.com](mailto:mmiller@jw.com).

---

If you wish to be added to this e-Alert listing, please [SIGN UP HERE](#). If you wish to follow JW on Twitter, please [CLICK HERE](#).

[Austin](#)

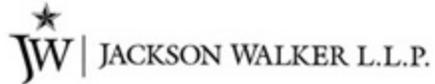
[Dallas](#)

[Fort Worth](#)

[Houston](#)

[San Angelo](#)

[San Antonio](#)



*The A.R.T. of Franchising* is published by the law firm of Jackson Walker L.L.P. to inform readers of relevant information in franchising law and related areas. It is not intended nor should it be used as a substitute for legal advice or opinion which can be rendered only when related to specific fact situations. For more information, please call 1.866.922.5559 or visit us at [www.jw.com](http://www.jw.com).

©2011 Jackson Walker L.L.P.

Click here to unsubscribe your e-mail address  
901 Main Street, Suite 6000 | Dallas, Texas 75202