



The A.R.T. of Franchising

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

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

Dear Franchisor,

I hope you enjoy this 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, it is a good time to examine the strength of your franchise program. Many consider franchising to be an industry, when in fact it is a growth strategy. It is important to view your franchise program in this light, meaning your franchise model should be providing effective and successful growth opportunities.

Many of my clients expect franchise growth to happen very quickly, and for some it does. In most cases, however, it happens gradually at first and then as brand recognition increases and economies of scale improve, growth begins to ramp up at a more significant pace. Some have described this type of growth to be in line with a hockey stick. The advantage, of course, is that you are able to build a very strong operational foundation before significant growth occurs. By the time the increased growth happens, your team and systems should be fully prepared.

So, while taking a very determined look at your decision to grow through franchising is critical, don't be in too much of a hurry to hit the handle of that hockey stick!

Today's Reminder

With the new year upon us, it is again time to begin thinking of the annual update to your Franchise Disclosure Document ("FDD"). Under the Federal Trade Commission Franchise Rule, your annual update must be finalized on or before April 30, 2013, 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.

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- 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. I suggest you take care to provide a range of estimated start-up costs with the higher end of the range being numbers that you are very sure no franchisees will exceed, while the lower end of the range being numbers franchisees may be more probable to expend.
- Be prepared to provide your attorney with specific information regarding any and all revenue derived from supplier rebates or from sales directly to franchisees.
- Be prepared to assist your attorney with updates and/or changes to your trademarks and USPTO registration information.
- 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 or FPR (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. A FPR is a disclosure of company-owned and/or franchisee unit financial performance information. There is a great deal of flexibility in terms of how this financial information can be presented, so work with your attorney to provide a FPR that will be of value to your prospective franchisees.
- 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 will not only expedite the updating process, but also save your attorney time and effort, resulting in reduced legal cost.

Today's Tip

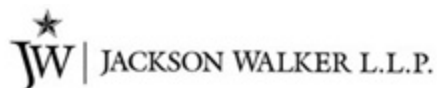
Lastly, going through the annual updating process is a good opportunity to re-acquaint yourself and your sales people with the contents of your FDD. Remember, your FDD must be accurate and not be missing any important information about you, your franchise company or the franchise opportunity. Knowing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

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 important that you know what your Franchise Agreement says, so you can make sure you are meeting your obligations and are holding your franchisees to their obligations.

We welcome your comments and suggestions. Please send to wbunch@jw.com or mmiller@jw.com.

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