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○ Issue 1 | ○ Volume 1 | ○ Winter, 2007/2008



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FRANCHISOR? 1



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Franchisor *Law Update*

The Franchisor Law Update
is published by Robbins Equitas, P.A.
(800) 934-5999
www.RobbinsEquitas.com

FTC Order Requires All Franchisors to Update Offering Documents

All franchisors who file or renew after July 1, 2008 must comply with new rules. This may be in addition to state registration guidelines.

By Bradford A. Patrick, Esq.
Franchise Law Attorney

For the first time since the 1970s, the Federal Trade Commission (FTC) has changed its Franchise Rule (16 C.F.R. 436).

As a result of the changes, the familiar UFOC is obsolete. A new Franchise Disclosure Document (the "FDD") has taken its place.

The FDD format, which tracks the requirements of the new FTC rule, is optional at this time. But the federal government will require FDDs from everyone starting on July 1, 2008.

Who is Affected?

Any franchisor or potential franchisor may be affected. The FTC Rule also has new definitions and disclosure requirements. Therefore, even if someone once told you that a UFOC was not required, you should now ask if an FDD is required.

The Old Law

Before the change, you could choose your format for making the required disclosures.

FTC Rules, continued on Page 2



Advertisement

The Penny-Wise, Pound-Wise Franchisor

You have a business and want to expand it. Your Google search for "franchise consultant" yields 322,000 hits . . . and within the first 100, not a single one is a lawyer. Does this mean you don't need a franchise lawyer? The Florida Attorney General's Office advises, "Get professional advice if you need it. Don't lose your life savings just because you failed to spend a few hundred dollars to talk to a lawyer, an accountant or other expert."

Pound-Wise, continued on Page 2

FTC Rules . . .

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You could choose between the FTC Rule format (sometimes called the Franchise Disclosure Document or "FDD") prescribed by the Federal Trade Commission or the Uniform Franchise Offering Circular ("UFOC") format prescribed by the North American Securities Administrators' Association ("NASAA"). Many franchisors preferred the UFOC, because they felt it was more likely to be accepted by state regulators in states where registration was required.

Registration After the Change

All franchisors who file or renew after July 1, 2008 must use the new FDD guidelines. The FDD is different from the UFOC in several ways. The new FTC Rule requires, among other things:

- New State Cover Page
- New Franchisor Advertising and Operations Assistance Disclosure
- New Financial Performance / Earnings Projections Disclosures
- New Sponsorship or Endorsement Disclosures for Franchisee Associations

In addition, the new FTC Rule may allow individual states to require additional, or different, disclosures that are not covered by the FDD.

Next Steps for Franchisors

If you are a new franchisor, you should talk to counsel about setting up the new FDD immediately and should not use the UFOC. If you already have a UFOC, you should talk to counsel about when to start using the FDD.

Every new and prospective franchisor should discuss with counsel whether their state is a registration state and whether it accepts the FDD at this time. ■■

Pound-Wise . . .

Continued from Page 1

Both franchise consultants and franchise lawyers have their places. Knowing what a franchise lawyer can do will help you be both penny-wise and pound-wise.

Know What You Need

When you walk into a shoe store, you know what kind of shoe you need. Likewise, when you search for franchise advice, you should know what kind of advice you need.

Some of the basic steps of setting up your franchise include: determining whether franchising is for you (as opposed to licensing, distribution agreements, or another arrangement); choosing an appropriate corporate structure; creating an operations manual and sales plan; identifying future expansion opportunities; documenting your internal management operations; registering with the U.S. Government; and, if applicable, registering with your state government.

Along the way, you need to learn the rules and regulations that govern your new business. You are about to become a seller of business opportunity. That means, in many cases, your product is heavily regulated by both the state and the federal government. If you are investing your hard-earned money into the process, you also should invest in an expert to help you through it.

Know What You are Buying

You are purchasing a professional service, and you should know exactly what is included. Most franchise consultants focus on your marketing plans. But many are not prepared to be a "one-stop-shop" to protect your business interests and help you comply with applicable law. By

contrast, a franchise law firm may offer many services under one roof:

- Evaluating franchise agreements
- Discussing your employee arrangements
- Identifying non-disclosure and non-competition concerns
- Protecting customer lists and leads
- Negotiating leases
- Drafting your agreements with vendors and suppliers
- Organizing your partnership agreements, if you are in business with partners

Also, as your legal representative, a franchise lawyer can handle negotiations on your behalf. This includes everything from prospective franchisees to a prospective landlord.

Plan Your Spending Wisely

You might be surprised to find that many franchise lawyers will help you set your priorities and will work within your budget. A franchise lawyer in a full-service law firm can offer you a number of options to help you complete all the above steps and more.

In contrast, many franchise consultants will ask you for a one-time payment. They may promise a number of up-front services without a continuing relationship. If something goes wrong in the future, you want to be sure you have the support you need.

In the best of all worlds, a franchise consultant and a franchise lawyer will work together to meet your legal and business needs. Carefully read the claims and offerings from various franchise consultants. Then carefully research the services a legal professional can offer. Commit only when you know what you are purchasing, and you will be a pound-wise buyer. ■■



Meet Bradford A. Patrick, Esq.

Brad Patrick is a senior attorney in the Franchise Law practice at Robbins Equitas. Prior to joining the firm, Mr. Patrick served as litigation counsel for Dunkin' Donuts and as interim Executive Director and General Counsel for the Wikimedia Foundation, the non-profit organization which runs Wikipedia. Mr. Patrick has a wide range of corporate and intellectual property experience including trademark litigation, corporate formation and governance, technology licensing, Internet law, technology litigation, and complex tort litigation. His prior employers include AV-rated law firms in Seattle, Washington and Tampa, Florida. He graduated from Boston College Law School and Colgate University, cum laude, and is admitted in Washington as well as in Florida's state and federal courts. Brad is available to speak to you if your company needs franchise counsel or has a legal matter or project to discuss. E-mail Brad at bpatrik@robbinsequitas.com or call him, toll free, at (800) 934-5999.

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