Legal Issues and Political Developments in the Franchise Industry

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Welcome to the Springfield Franchise Expo!
A Brief History of Franchising...

• Modern franchising blossomed in the post-war 1950’s and 1960’s
• Growing pains were evident –
  – Focus on sales and not supporting and operating successful systems
  – Misrepresentations made to prospects
  – Pyramid/ponzi schemes of 1970’s
• International Franchise Association (“IFA”) formed in 1960 to accredit reputable franchisors and discredit unethical sales people
Statutory/Regulatory Overview

• Self regulation of IFA was not enough...

• California Franchise Investment Law – 1970
  – Legislature sought to curb fraudulent sales or likelihood that franchisor’s promises would not be fulfilled
  – Loosely based on federal securities laws...

Registration and Disclosure Obligations
• Register with state before offering or selling franchise;
• Provide disclosure document to prospects prior to signing agreement or taking payment

– Precursor to other state and federal regulatory schemes
FTC Rule

• Federal Trade Commission trade regulation rule became effective in 1979 (and was amended in 2007 – “The Amended Rule”)

• Unlike CFIL and other states – FTC Rule includes no filing requirements and no process for governmental review

• Pre-sale disclosure obligation (absent an exemption – i.e. large or sophisticated franchisee, large investment among others)
State Registration and Disclosure Laws

• Following California’s lead, several states adopted franchise registration and disclosure laws

• Today 15 states have some form of franchise disclosure/registration laws

• Regulatory framework is anything but uniform...
Business Evolution of Franchising

• Historically single unit operators
• Franchisors usually larger, more sophisticated
• Multi-unit operators, area developers, multi-brand operators more common now
• Private equity investments in both franchisors and franchisees
• More money...more problems...
As franchise systems evolve, so do franchise problems...

• Minimum Wage
• Joint Employer
The Current Political Landscape
The Path Foreword

• Political
• Legal
Legal

• Wise Counsel – The Golden Rule
  – Ok to mandate what customer can see – For example, uniforms, menus, décor
Document Changes

- **Manuals**
  - Employment Sections – Recommendations only
  - Training – Train the trainer
  - Employee Relations – Are a No, No

- **FDD**
  - Training – No training of rank and file employees

- **Franchise Agreement**
  - Clarify no control of employees, hiring, firing, discipline
  - Manuals intended to protect goodwill of Brand
  - No day to day operational control
In The Field

- Train Operations Personnel
  - Address issues that affect goodwill of the Brand
  - Communicate only with management
  - Stay way from employment issues

- Ok to Mandate P.O.S.
  - Not employee or employment related software

- Ok to take resumes
  - No screening of resumes

- Ok to provide sample handbook

- Use common sense