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# ***Legal Issues and Political Developments in the Franchise Industry***

*Moderator: Grant Weaver, Bull, House & Tupper (British Columbia)*

*Presenters:*

- *Steve Caldeira, President & CEO, International Franchise Association*
- *Joseph Fittante, Larkin Hoffman (Minnesota)*
- *Rebekah Prince, Barnes & Thornburg (Indiana)*



**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