



INTERNATIONAL FRANCHISE ASSOCIATION

**Franchising**<sup>®</sup>

**Building** local businesses,  
one **opportunity** at a time.

**50** YEARS  
1960-2010

43rd Annual

# LEGAL SYMPOSIUM

MAY 16-18,  
2010

JW MARRIOTT  
WASHINGTON, DC

For more information, visit [www.franchise.org](http://www.franchise.org)  
or call 202/628-8000.



**Where Legal and Business Minds Come Together.**



**Brian Schnell, CFE**



**Franchising**  
Building local businesses,  
one opportunity at a time.



Dear Colleagues:

Please join us this May in Washington, DC for the 2010 Legal Symposium. On behalf of our Legal Symposium Task Force, I invite you to take full advantage of what IFA has planned for this year's event.

I have been a franchise lawyer for my entire professional career. My first project on my first day, September 8, 1987, was for International Dairy Queen. In those early years I had the good fortune of seeing and learning first hand that franchise legal issues are rarely just legal in nature. Rather, far more often, as franchise lawyers, we must understand our client's business and business objectives, the legal pressure points and the impact that various decisions will have on the franchisor, the franchisees, and the franchise brand and system overall.

No franchise lawyer can do his or her job simply by sitting in their office reading cases or the franchise disclosure guidelines. We all need to be in the trenches, understanding the unique aspects of the franchise business model and the franchise relationship and then identifying and cultivating best practices with other franchise lawyers and franchise business professionals. That is the opportunity we will present this May.

Franchisors, franchisees, and franchising in general are encountering the same economic challenges today as all businesses. What worked in 2007 and 2008 regarding unit level economics, new franchise sales, and branding and marketing will not work in 2010. No shortcuts exist. Quick fixes will not lead to long term success. Hard work, attention to details, and all stakeholders in a franchise system pulling together will be the approach that will make a difference going forward. Companies that understand the challenges and proactively design creative solutions to confront those challenges (rather than constantly reacting to the challenges) will do so in a manner that effectively takes into account sound business and legal perspectives. Make no mistake. You cannot accomplish what is necessary without the business and legal perspectives in razor sharp focus.

Making a difference today and how that impacts tomorrow is the approach our Task Force adopted with the 2010 Legal Symposium. Each year we listen to comments from past attendees, including what they liked about that year's event, what they thought could be improved, and, most importantly, what topics the attendees wanted to hear and discuss at the next Legal Symposium. We also request that the attendees provide feedback on our Symposium speakers, as we recognize that dynamic speakers are critical to delivering value to attendees. The Task Force listened to that feedback and then through a series of meetings and follow-up actions, we designed the 2010 Legal Symposium with the key objective to make a difference in today's franchise business and legal environments.

It's all about attitude and passion. Attendees at events like the Legal Symposium can just show up for the CLE or CFE credits or they can attend with the attitude they will take away at least three or four "golden nuggets" that they can take back to implement with their companies or their clients, nuggets that can make a difference now when it matters.

On behalf of the 2010 Legal Symposium Task Force, I enthusiastically invite you to participate in this year's event. If you join us in Washington with eagerness and passion, our commitment is to deliver a program that makes a difference.

Sincerely,

Brian Schnell, CFE  
Partner, Faegre & Benson  
Chairman, 2010 Legal Symposium Task Force

# Where Legal and Business Minds Come Together.

## Thank you to our 2010 Legal Symposium Task Force:

### Chair

**Brian Schnell, CFE**  
Partner  
Faegre & Benson

**Arthur Anastos**  
Managing Counsel & Director  
Dunkin' Brands, Inc.

**Brian Balconi**  
VP & General Counsel  
Little Caesar Enterprises, Inc.

**Donald Becker**  
Managing Attorney, Insured Litigation  
Yum! Brands, Inc.

**Barry Blum**  
Partner  
Genovese Joblove & Battista

**Donna Christopherson**  
Senior Franchise Counsel  
The Dwyer Group

**Christine Connelly**  
Partner  
Wiley Rein LLP

**Jack Dunham**  
Chair, Franchise & Distribution Practice  
Group  
Wiggin & Dana LLP

**Marisa Faunce**  
Partner  
Plave Koch PLC

**Andraya Frith**  
Partner  
Osler, Hoskin & Harcourt

**Jan Gilbert**  
Partner  
Haynes and Bonne, LLP

**James Goniea**  
Vice President – General Counsel  
AAMCO Transmissions, Inc.

**Michael Joblove**  
Shareholder  
Genovese Joblove & Battista

**Kathie Lee**  
VP & Associate General Counsel  
Starwood Hotels & Resorts Worldwide

**Nicholas Lewis**  
Office of the General Counsel  
Choice Hotels International

**Andrew Loewinger**  
Partner  
Nixon Peabody

**Charles Miller**  
Shareholder  
Bartko, Zankel, Tarrant & Miller

**Charles Modell, CFE**  
Attorney  
Larkin Hoffman Daly & Lindgren

**Richard Morey**  
Partner  
DLA Piper US LLP

**David Oppenheim**  
Partner  
Kaufmann Gildin Robbins & Oppenheim

**Roger Schmidt**  
SVP & Chief General Counsel  
Curves International, Inc.

**Geoffrey Shaw**  
Partner  
Cassels Brock & Blackwell

**Joel Siegel**  
Partner  
Sonnenschein Nath & Rosenthal

**Andra Terrell**  
Sr. Franchise Counsel  
Pearle Vision

**Jacqueline Vlaming**  
Sr. Vice President/General Counsel  
Coverall Health-Based Cleaning System

**Will Woods**  
Partner  
Baker Botts LLP

**David Worthen**  
Principal  
Gray Plant Mooty

## Who Should Attend?

IFA's 43<sup>rd</sup> Annual Legal Symposium was designed by a task force of your peers in the field of franchise law with a particular emphasis on how legal and regulatory issues affect the everyday business operations of the franchise system. Working with a task force to develop our program helps us ensure we are featuring the most relevant topics of the day as seen by franchise law and business professionals. Our Symposium is a "must attend" event for:

- All attorneys interested in franchise law;
- In-house counsels;
- Paralegals;
- Franchise administrators;
- Franchise company CEOs;
- Franchise company development and sales executives;
- Franchise company legal and compliance officers;
- Franchisees interested in learning more about the legal and business aspects of franchising; and
- All others concerned with franchising's legal, regulatory and business issues.

## Basics Track

Our Basics Track is designed to provide those who are new to franchising, or those simply in need of a refresher course, a solid foundation in the principles of franchise law. Offered in succession over the course of Monday and Tuesday, sessions in the Basics Track include the following topics:

1. What is a Franchise? What are the Various Types of Franchise Relationships?
2. Disclosure
3. Registration
4. Financial and Financing Issues in Franchising
5. Franchise Agreement Drafting
6. Frequently Arising Issues in Litigation

Please refer to the program schedule for further details about each session.

## 43rd Annual IFA

# LEGAL SYMPOSIUM

# Schedule of Events



## FRAN-GUARD™ SESSION

IFA's new, greatly expanded franchise sales management and compliance program will help IFA members take proactive steps to reduce risks, manage growth, and build a stronger, healthier franchise system. IFA Fran-Guard™ covers both the legal and business aspects of compliance with a series of modules designed for CEOs and senior executives, franchise development professionals, in-house counsel and franchise attorneys, paralegals and compliance managers. IFA Fran-Guard™ is the culmination of months of research and planning by a task force of IFA members, including representatives of the Institute of Certified Franchise Executives (ICFE) Board and the Corporate Counsel Committee. Legal Symposium attendees are invited to an orientation session to learn more about IFA Fran-Guard™ from **3:00 p.m. to 4:30 p.m. on Sunday, May 16**. No separate registration is required to attend this program.

## 43rd Annual IFA

# LEGAL SYMPOSIUM

**MAY 16-18, 2010**

**JW MARRIOTT  
WASHINGTON, DC**

## Sunday, May 16

3:00 pm – 7:00 pm  
Registration Desk Open

3:30 pm – 4:45 pm  
Legal Legislative Committee

4:45 pm – 6:00 pm  
Corporate Counsel

5:30 pm – 7:00 pm  
Welcome Reception

7:00 pm  
Speakers' Dinner  
*(by invitation only)*

## Monday, May 17

8:00 am – 6:00 pm  
Registration Desk Open

8:00 am – 8:30 am  
Continental Breakfast

### 8:30 am – 10:00 am Welcome & General Session

**Welcome:**  
Matthew R. Shay  
President & CEO, International  
Franchise Association

### **Panel Discussion: A Look Back to Better Understand the Future**

Franchising is facing the same challenges in today's economy as businesses generally. Many of those legal and business challenges are not necessarily unique (we have seen them before), although the magnitude this time around may be different and the path forward still unclear. During this plenary program we will ask three franchise veterans (a franchisor CEO, an experienced franchise lawyer, and a savvy franchise economist) to discuss today's challenges in the context of the past with a focus on identifying legal and business best practices to chart the future.

**Moderator:**  
Brian Schnell, CFE, Partner, Faegre & Benson & Legal Symposium Task Force Chair

**Speakers:**  
Phil Zeidman, Partner, DLA Piper US LLP  
Darrell Johnson, CFE, President & CEO, FRANData Corporation

10:00 am – 10:15 am  
**Refreshment Break**

### 10:15 am – 11:30 am Concurrent Sessions

*(titles in italics will be offered twice)*

#### 1 ***Practical Application of Consumer Privacy Laws to Franchised Businesses***

- State privacy laws – the general requirements and a few notable variations.
- State data breach notification laws – when they are triggered and what they require.
- The Red Flags Rule – what it is and who must comply.
- Best practices – tips to avoid a consumer privacy problem.

**Moderator:**

Bob Langer, Partner, Wiggin & Dana

**Speakers:**

Tony Rodriguez, Division of Privacy and Identity Protection, Federal Trade Commission

C. Joseph Yast, General Counsel, DirectBuy, Inc.

#### 2 ***Purchasing Cooperatives – Opportunity for Immediate and Long Term Savings***

- Overview of Purchasing Co-ops – Advantages and disadvantages; purposes and structures.
- Key Business Issues - Obtaining capital, getting members, establishing relationships with suppliers, establishing roles for the franchisor and franchisees, providing for rainy days and other risks, providing for future expansion of the co-op.
- Key Legal Issues – Evaluating, planning for, and addressing key legal issues, including structural, tax, antitrust, securities, and state cooperative statutes.
- Papering the Transaction - Key agreements needed to create and operate a co-op.
- Ongoing Counsel – Preserving and strengthening franchise relationships through a collaborative co-op, antitrust compliance programs, and sharing of information between the co-op, franchisor and franchisees.

**Speakers:**

Suzanne Loonam, Associate, Haynes and Boone, LLP

Peggy Cobb, In-house Counsel, Dine Equity

# Where Legal and Business Minds Come Together.

## 3 Franchisee Receiverships & Bankruptcies: How to Balance the Rights of the Franchisor with the Rights of the Secured Lenders

- What are the early warning signs, what can or should a Franchisor do?
- An analysis of the legal implications of franchisee receiverships, bankruptcies and secured lenders' rights.
- What are some of the business considerations and how should you advise your clients?
- How should you deal with lenders, receivers, trustees and debtors in possession; what if you have comfort letters with lenders and franchisees?
- Practical drafting tips for franchise agreements and/or comfort letters to address receiverships and secured lender remedies.

### Moderator:

Kathie Lee, Vice President and Associate General Counsel, Starwood Hotels & Resorts Worldwide, Inc.

### Speakers:

Valerie Morrison, Partner, Wiley Rein LLP  
Steve Rafferty, VP, Franchising & Business Development, Burger King

## 4 The Importance of Enforcing Post-Termination Rights in a Down Economy

- What are "post-termination rights?" Why are they important to a franchise system?
- What is "enforcement?" How far should a franchisor go? Can a franchisor push too far or not far enough?
- What are the short-term consequences of inadequate or inconsistent enforcement? Long-term?
- Do franchisees benefit from a franchisor's enforcement of post-termination rights? How?
- Is assertion of these rights and enforcement to protect them even more important to the system in a struggling economy? Why?
- What are some of the challenges currently faced by franchisors in their efforts to protect their post-termination rights? How can outside counsel assist with these efforts?

### Moderator:

Jim Susag, Partner, Larkin Hoffman Daly & Lindgren

### Speakers:

Paul Reeve, Attorney, MBE, a UPS Company  
Mike White, Counsel, Stites & Harbison

## 5 Planning for International Expansion – Things to Consider Before Expanding

- How do you assess your readiness for international expansion?
- What do you need to do internally to prepare for international expansion?
- How do you evaluate potential markets for international expansion?
- How do you structure your international franchise relations?
- How to find/choose the right "partners" for international expansion?

### Moderator:

Tao Xu, Associate, DLA Piper US LLP

### Speakers:

Bruce Harsh, Distribution and Supply Chain Team Leader, Office of Service Industries Manufacturing and Services, International Trade Administration, U.S. Department of Commerce  
Timothy Hardy, Director, International Franchising & Operations, Build-A-Bear Workshop

## 6 Dealing with Thorny Transfer Issues

- The consent and approval process – what should your franchise agreement say?
- How involved should the franchisor be in the transfer process?
- What if the franchisor believes the purchase price is too high?
- What should the franchisor do if the transferring franchisee has failed to disclose full and accurate financial information to the buyer?
- How can franchisors proactively use the transfer process to deal with non-compliant and financially distressed franchisees?
- What documents should be used to paper the transfer process?
- Best practices for managing the transfer process in-house.

### Moderator:

Frank Zaid, Partner, Osler, Hoskin & Harcourt

### Speakers:

Mark Dely, Vice President & General Counsel, The ServiceMaster Company  
Amy Cheng, Partner, Cheng Cohen LLC

## 7 Incurable Defaults and Good Cause Requirements – Can Sound Drafting Reconcile the Two?

- Survey of state relationship laws with good cause requirements for termination.
- Survey of recent case law on good cause and incurable breaches.
- Best practices – drafting the good cause termination clause.

### Moderator:

Frederick F. Simmons, Jr., Senior Vice President, General Counsel and Corporate Secretary, Precision Auto Care Incorporated

### Speakers:

David C. Gurnick, Partner, Lewitt, Hackman, Shapiro, Marshall & Harlan  
C. Griffith Towle, Bartko, Zankel, Tarrant & Miller

## 8 Basics Track: What is a Franchise? What are the Various Types of Franchise Relationships?

- This session will focus on the elements of a franchise under federal and state law, as well as the business relationships that are excluded or exempted from the definition of a franchise.
- The session will discuss how franchising differs from business opportunities, multi-level marketing and licenses. Attention will be spent on hybrid multi-level structures and how they incorporate franchise or business opportunity attributes.
- The session will also explore various franchise relationships including unit franchising, master franchising, sub-franchising, development agreements, joint ventures, and area representation. The session will touch upon the combination of franchise sales and capital raises by franchisors.

### Moderator:

Robert Smith, Partner, Wiley Rein, LLP

### Speaker:

Mary Ann O'Connell, CFE, President, Franwise  
Scott Weber, Partner, Phelps Dunbar, LLP

11:45 am 1:45 pm

Luncheon & General Session

## IFA Government Relations Update

### Speaker:

David French, Vice President, Government Relations, International Franchise Association

### Panel Discussion

**"The New Normal": How the impulse to regulate will impact franchise development in the near and long-term**

The financial meltdown of 2008 and the 2008 elections triggered a fundamental reassessment of the American laissez-faire approach to marketplace regulation. The renewed faith in the power and role of government intervention is not likely to stop at financial services, and virtually every sector of the US economy is facing a new regulatory agenda that increases costs and increases the threat of litigation and enforcement. In our session, Mr. French will lead a panel discussion of franchise executives to examine how these regulatory impulses will affect franchised businesses and franchising in the coming years, and attempt to give some insight into the most effective course forward for franchise business development. Big regulatory agenda topics for discussion will include:

- (1) Financial Service regulation and the impact on credit availability.
- (2) Workforce regulation and the impact on labor costs.
- (3) Health, Lifestyle and Environmental Regulation and the impact on operating costs.

# Where Legal and Business Minds Come Together.

Monday, May 17 (continued)

2:00 pm – 3:15 pm

Concurrent Sessions

(titles in italics will be offered twice)

## 1 *The Evolving Franchise System: How to Guide an Emerging System from Baby Steps to a Grown Up System*

- The “Infant” Years: Creating and nurturing the framework for a new franchise program.
- The “Pre-School” Years: Implementing franchise disclosure, registration, marketing, administration, and compliance programs; selecting the right franchisee.
- The “Big Kid” Years: Taking franchise sales to the next level, including multi-unit development strategies, non-traditional development, international sales, financial performance representations, franchise brokers, and lead referral networks.
- The “Teenage” Years: Controlling angst in franchise relationships, including strategies for handling franchisee gripes and defaults, enforcing system standards, dealing with encroachment issues, and avoiding litigation.
- The “Adult” Years: Taking advantage of size and experience by using franchise registration exemptions, modernizing prototypes, implementing system-wide changes, updating agreements, and handling renewal and transfer issues.

### **Moderator:**

Kay Ainsley, CFE, Managing Director,  
Michael H. Seid & Associates

### **Speakers:**

David Koch, Partner, Plave Koch PLC  
Debra Harrison, Partner, McDermott Will & Emery

## 2 *Franchisor as Finance Coach: Finding Options and Solutions for Franchisee Funding in Today's Market*

- A view of the financing landscape – today and in the near future.
- Where's the money now? New sources/relationships/roles and new twists on the old ones.
- A sampling of leading edge and alternative programs to assist franchisees.
- Disclosure and other legal issues created when franchisors become involved in franchisee financing.
- Drafting for the new lending paradigm.

### **Moderator:**

Charlene York, Attorney, Akerman Senterfitt

### **Speakers:**

Scott Pressly, CFE, Managing Partner, Van Ness Capital Advisors  
Tim Miller, Director of Franchise Finance, Marco's Pizza

## 3 *E-Discovery – Rules and Best Practices*

- What is eDiscovery & why should I care? (terminology, sanctions, pitfalls)
- What is the eDiscovery Process?
- How can I make eDiscovery cost effective and efficient along the way?
- Litigation Holds: When to issue? To whom? What does it look like?
- What can I do right now to prepare?

### **Moderator:**

Robyn Fuller, Vice President & Assistant General Counsel, La Quinta Inns

### **Speakers:**

Leanna Anderson, Partner, Sonnenschein Nath & Rosenthal  
Jeff Cowman, Partner, Ballard Spahr Andrews & Ingersoll

## 4 *Ask the Regulators: Current Franchise Disclosure and Registration Issues*

- Hot topics from the 2010 franchise filing season.
- Disclosure issues arising from the economic downturn.
- Status of NASAA exemption project.
- Technological changes affecting filing and comment procedures.
- Update from the Federal Trade Commission.
- State progress on implementing federal delivery requirements.

### **Moderator:**

Karen Satterlee, CFE, VP & Sr. Counsel,  
Global Franchise Development,  
Hilton Hotels Corporation

### **Speakers:**

Dale Cantone, Deputy Securities Commissioner, Maryland Attorney General's Office  
Theresa Leets, Senior Corporations Counsel, California Department of Corporations  
Timothy O'Brien, Chief Examiner, VA Division of Securities & Retail Franchising

## 5 *Top 5 Changes to Consider Making to Your Franchise Agreement (Advanced Session)*

- In-term non-compete covenants - Dealing with Atlanta Bread and Jimmy John's, are there business solutions?
- Arbitration clauses - Is it possible to draft a meaningful and enforceable arbitration clause?
- Choice of law and venue clauses - Include it and then exclude with a disclaimer— that the clause(s) may not be enforceable under a given state's law; does this tactic preclude a “meeting of the minds?”
- Exculpatory Language - Given the Amended FTC Rule's prohibition on disclaimers, is there still a role for exculpatory clauses, and how should franchisors draft them?
- Internet Advertising and Social Networking - Should your franchise agreement address these new communication tools? Can these dynamic tools be managed in a way that's best for the system?

### **Moderator:**

John Fitzgerald, CFE, Partner, Gray Plant Mooty

### **Speakers:**

Kim Toomey, Vice President & General Counsel, Century-21, Realogy  
Melissa Rothing, Franchise Counsel, NexCen Brands, Inc.  
Doug Kordel, General Counsel, ProForma

## 6 *Termination Alternatives in Tough Economic Times (or Any Time?)*

Difficult financial times challenge franchisors to develop even more creative approaches to addressing non-compliance by franchisees. This program examines strategies other than termination that franchisors can employ to deal with franchisee non-compliance and focuses on alternative approaches to resolving disputes other than abruptly terminating the franchise relationship. Subjects to be examined include, among others:

- Negotiating mutually agreeable exit strategies
- Negotiating on-going relationship strategies
- Initiating legal proceedings to collect unpaid monies due the franchisor
- Obtaining injunctions to compel compliance (monetary and non-monetary)
- Possible pitfalls of forgoing or delaying termination.

### **Moderator:**

Harris Chernow, Partner, Chernow Katz LLC

### **Speakers:**

Sandra Gibbs, Corporate Counsel, Goddard Systems  
Bethany Appleby, Partner, Wiggin & Dana LLP



Monday, May 17 (continued)

## 7 The New Shifting Sales Paradigm: Private Equity, Multi-Unit Developers, Joint Ventures

- Many franchise companies have a franchisee owner-operator business model and philosophy, which is different from the more passive investment of private equity. How does this friction play out in the negotiation of a franchise deal involving a private equity company?
- Issues most commonly raised by private equity companies and large multi-unit developers when negotiating a franchise deal, as well as possible solutions acceptable to both sides of the deal.
- The common potential modifications to the standard franchise agreement for private equity or large multi-unit developers, including the non-compete, guarantee, and confidentiality provisions.
- The advantages and disadvantages of domestic joint ventures as a growth tool, including typical agreement provisions.
- Can a franchisee be too large?

### Speakers:

Jan Gilbert, Partner, Haynes and Boone, LLP  
Jack Wixted, Vice President and Associate General Counsel, ARAMARK (Burger King, KFC, Wendy's and Subway franchisee)  
Mark Friedman, Vice President & General Counsel, Pinkberry

## 8 Basics Track: Disclosure

- State and federal laws governing franchises.
- Quick overview of items that must be disclosed.
- Due diligence and information gathering.
- Managing the disclosure updating process from a timing perspective.
- Required renewals/amendments.
- Issues in disclosing the FDD to prospects – timing, receipts, financial performance representations.

### Moderator:

Leslie Pujo, Attorney, LaPlaca Law P.C.

### Speakers:

Alexander Tuneski, Attorney, Kilpatrick Stockton LLP  
Nicole Harrell, Partner, Kaufman & Canoles

3:15 pm – 3:30 pm  
Refreshment Break

3:30 pm – 4:45 pm  
Concurrent Sessions  
*(titles in italics will be offered twice)*

## 1 Have Your Franchisees and Their Employees Become Your Employees Without Your Knowledge?

- The New Battlefield: repelling claims by state governments and plaintiff lawyers attempting to classify franchisees and their employees as employees of the franchisor.
- Contract drafting, policy setting and litigation strategy in response to these new claims.
- Establishing and enforcing system standards without exposing the franchisor to traditional vicarious liability actions.
- Emerging case law.

### Moderator:

Gregg Rubenstein, Partner, Nixon Peabody

### Speakers:

Donald Burleson, Executive Vice President & General Counsel, Jani-King International, Inc.  
K. Kristann Carey, Senior Counsel, McDonald's Corporation

## 2 Proving and Collecting Damages in Franchise Litigation

- The ability to recover a franchisor's lost profits following termination of the agreement, despite Sealy.
- The use of liquidated damage provisions in recovering lost profits where they might not otherwise be available.
- What enhanced damages are available for trademark infringement and how are they proven?
- What means are available for calculating a franchisor's costs with respect to single or multiple units for purposes of determining lost profits?
- Effective use and cross-examination of accounting experts.

### Moderator:

Jonathan Perlman, Partner, Genovese Joblove and Battista

### Speakers:

Heather Carson Perkins, Partner, Faegre & Benson  
Andra Terrell, Senior Franchise Counsel, Pearle Vision

## 3 Search Engine Optimization, Paid Search, and Micro Sites – Controlling Your Brand

This workshop will explore how franchisors can develop and protect a cohesive, system-wide internet brand presence by means of:

- Coordinating a Search Engine Optimization/ Search Engine Marketing program for a franchise system.
- Effective monitoring and prevention of third-party use of the brand in paid searches and keyword targeting.
- Aggressive prosecution of domain name poachers.
- Using micro sites to market the franchise system.

### Moderator:

Kim Lambert, Partner, DLA Piper US LLP

### Speakers:

Ben Reed, Partner, Plave Koch PLC  
Doreen Costa, Partner, Baker Botts

## 4 Unit Level Economics: The Legal and Business Case for Understanding How to Analyze Your Franchisee's Financial Position

This session will discuss the legal and business reasons why a franchisor should take steps to understand the financial strength and unit-level performance of its franchisees.

- Visibility into franchisee finances can be an "early warning system" of franchisee or system distress.
- Addressing unit-level financial performance is essential to any successful financial workout.
- A franchisor should be a resource for identifying areas where specific franchisees or locations can improve profitability.
- Understanding unit-level profitability can highlight operating system or business model changes that could make the franchise a more attractive investment.
- A franchisor is better able to make a case for system-wide changes or capital investment in the context of realized cost savings or a reasonable "pay back" period.
- A franchisor that understands the drivers of franchisee profitability is better positioned to develop viable business strategies that will be embraced by the system.

### Speakers:

Louis Chronowski, Partner, Seyfarth Shaw LLP  
Robert Gerstenfeld, Business Development Manager, Dunkin' Brands, Inc.



# Where Legal and Business Minds Come Together.

Monday, May 17 (continued)

## 5 How to Say “Yes” to Sales Without Saying “No” to Best Practices (Ethics credits)

Franchise development in many ways has become more difficult in today’s changed economic environment. The franchise sales process that worked in the past may not work as effectively now. Technology has improved. Franchisee candidate expectations have changed. Through all the changes, many of the legal challenges still exist. This session will:

- Identify the most common legal issues that arise during the sales process regarding financial performance representations, franchisee validation, use of technology and other aspects of franchise development.
- Suggest best practices where franchise development and the lawyers work together to find solutions that meet the objectives of the development team and do so in a way that avoids legal liability.
- Identify the key professional responsibility issues that franchise lawyers (particularly in-house counsel) should consider when advising on franchise sales issues.

### Moderator:

Kevin Hein, Partner, Faegre & Benson

### Speakers:

Troy Bader, Chief Development & Legal Officer, International Dairy Queen  
Tim Bryant, Partner, Preti Flaherty

## 6 Social Networking: Best Practices for Franchise Systems

- What social networking sites are franchise systems using and how are they being used as a business tool?
- Terms of use on major social networking sites and how they affect franchisors’ use of the sites.
- Policies for participation in social networking by employees and franchisees.
- The risks (and rewards) of using social networking to promote a franchise system.
- Protecting a franchise system’s trademarks in the world of social networking and other legal issues.

### Moderator:

Beata Krakus, Attorney, Greensfelder, Hemker & Gale, P.C.

### Speakers:

Mark Chloupek, Executive Vice President and General Counsel, La Quinta Inns & Suites  
Darin Kraetsch, CEO, Flip Flop Shops Franchise Co.

## 7 Raising the Bar of Your Franchise System Through Standards Enforcements (Advanced Session)

- Changing standard enforcement criteria with the franchise agreement and operations manual.
- Improving enforcement procedures in the field.
- Obtaining franchisee support for system changes.
- Legal enforcement options, including termination and non-termination remedies.

### Moderator:

Patrick McGovern, Senior Counsel, McDonald’s Corporation

### Speakers:

Peter Sheldon, VP of Franchising, Coverall  
Brian Schmidt, Vice President, Associate General Counsel, H&R Block

## 8 Basics Track: Registration

- Registration requirements under state franchise and business opportunity laws.
- Exemptions under state franchise and business opportunity laws.
- Renewing or amending franchise registrations.
- Registration of franchise sellers and brokers.
- Registration of franchise advertising.
- Penalties for non-compliance with franchise registration and disclosure laws.

### Moderator:

David Oppenheim, Partner, Kaufmann Gildin Robbins & Oppenheim LLP

### Speakers:

Anne Connelly, Franchise Examiner, Franchise Bureau, Office of the Illinois State Attorney General  
Christopher J. Wallace, Associate, Nixon Peabody

5:00 pm – 6:30 pm

Reception

## What Does Your Registration Fee Include?

- Attendance at all educational sessions.
- Continental Breakfast on Monday, May 17 and Tuesday, May 18.
- Refreshment Breaks on Monday, May 17 and Tuesday, May 18.
- Lunch on Monday, May 17 and Tuesday, May 18.
- Networking Receptions.
- Symposium course materials are available on a CD-ROM or as a two-volume book set. The base registration fee includes your course materials on a CD-ROM. If you prefer to have your materials in the form of a hard copy book set, you will be charged an additional \$50. The CD-ROM will be mailed in advance to attendees whose registration is received by May 5. If your registration is not received by this deadline, the CD-ROM will be distributed onsite at our Registration Desk. Book sets will be distributed onsite at our Registration Desk.

## CLE Credits

Your attendance at IFA’s Legal Symposium qualifies you for Continuing Legal Education Credits (CLEs) in most states. Details on how to earn credits will be available onsite at the Registration Desk.

## ICFE Credits



You will earn 300 Education Credits toward the completion of the Certified Franchise Executive (CFE) accreditation by attending the IFA’s Annual Legal Symposium.



## Tuesday, May 18

8:00 am – 4:00 pm  
Registration Desk Open

8:00 am – 8:30 am  
Continental Breakfast

8:30 am – 10:00 am  
**General Session**  
**Judicial Update - A Fresh Look**

Rather than just summarize recent cases, we will identify key franchise legal trends that are impacting the franchise community and examine what the most important cases mean for the future of franchising's legal and business operations. Expert speakers will cover trends in the franchise relationship, compliance, dispute resolution, antitrust, professional responsibility and other important issues.

**Speakers:**

Rupert Barkoff, Partner, Kilpatrick Stockton  
Constantine T. Fournaris, Partner, Wiggin & Dana LLP

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10:00 am – 10:15 am  
**Refreshment Break**

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10:15 am – 11:30 am  
**Concurrent Sessions**  
*(titles in italics will be offered twice)*

### 1 **Social Networking: Best Practices for Franchise Systems**

- What social networking sites are franchise systems using and how are they being used as a business tool?
- Terms of use on major social networking sites and how they affect franchisors' use of the sites.
- Policies for participation in social networking by employees and franchisees.
- The risks (and rewards) of using social networking to promote a franchise system.
- Protecting a franchise system's trademarks in the world of social networking and other legal issues.

**Moderator:**

Beata Krakus, Attorney, Greensfelder, Hemker & Gale, P.C.

**Speakers:**

Mark Chloupek, Executive Vice President and General Counsel, La Quinta Inns & Suites  
Darin Kraetsch, CEO, Flip Flop Shops Franchise Co.

### 2 **How to Identify and Avoid Problems in International Master Franchising**

The world is smaller, as barriers to trade, travel, and information transfer have become topics for history books. International expansion is the new frontier and you have already made the leap. Now, what to do when new markets appear, or problems arise? This session will:

- Identify the most common problems that arise in International Franchising, featuring examples of "things gone wrong" and right, featuring strengths and weaknesses inherent in one or more expansion methods, such as master franchising, single unit, area development, joint venture, area representative, and hybrid type arrangements.
- Suggest creative legal solutions and avoidance tactics to maximize the benefits and minimize the shortcomings of each model.
- Not all methods suit all markets. Evaluate how to learn from what you have done, and control, monitor, and manage international markets and activities, to consider which model will work in the next market.
- Forecast the challenges (and consider solutions) that will present themselves to international franchisors in the next 5 to 10 years.

**Moderator:**

Geoffrey Shaw, Partner, Cassels Brock & Blackwell

**Speakers:**

Heather Bias, General Counsel, Le Pain de Quotidian  
Susan A. Grueneberg, Partner, Snell & Wilmer

### 3 **The Evolving Franchise System: How to Guide an Emerging System from Baby Steps to a Grown Up System**

- The "Infant" Years: Creating and nurturing the framework for a new franchise program.
- The "Pre-School" Years: Implementing franchise disclosure, registration, marketing, administration, and compliance programs; selecting the right franchisee.
- The "Big Kid" Years: Taking franchise sales to the next level, including multi-unit development strategies, non-traditional development, international sales, financial performance representations, franchise brokers, and lead referral networks.
- The "Teenage" Years: Controlling angst in franchise relationships, including strategies for handling franchisee gripes and defaults, enforcing system standards, dealing with encroachment issues, and avoiding litigation.
- The "Adult" Years: Taking advantage of size and experience by using franchise registration exemptions, modernizing prototypes, implementing system-wide changes, updating agreements, and handling renewal and transfer issues.

**Moderator:**

Kay Ainsley, CFE, Managing Director, Michael H. Seid & Associates

**Speakers:**

David Koch, Partner, Plave Koch PLC  
Debra Harrison, Partner, McDermott Will & Emery

### 4 **Franchisor as Finance Coach: Finding Options and Solutions for Franchisee Funding in Today's Market**

- A view of the financing landscape – today and in the near future.
- Where's the money now? New sources/relationships/roles and new twists on the old ones.
- A sampling of leading edge and alternative programs to assist franchisees.
- Disclosure and other legal issues created when franchisors become involved in franchisee financing.
- Drafting for the new lending paradigm.

**Moderator:**

Charlene York, Attorney, Akerman Senterfitt

**Speakers:**

Scott Pressly, CFE, Managing Partner, Van Ness Capital Advisors  
Tim Miller, Director of Franchise Finance, Marco's Pizza

### 5 **Top 5 Changes to Consider Making to Your Franchise Agreement (Advanced Session)**

- In-term non-compete covenants - Dealing with Atlanta Bread and Jimmy John's, are there business solutions?
- Arbitration clauses - Is it possible to draft a meaningful and enforceable arbitration clause?
- Choice of law and venue clauses - Include it and then exclude with a disclaimer— that the clause(s) may not be enforceable under a given state's law; does this tactic preclude a "meeting of the minds?"
- Exculpatory Language - Given the Amended FTC Rule's prohibition on disclaimers, is there still a role for exculpatory clauses, and how should franchisors draft them?
- Internet Advertising and Social Networking - Should your franchise agreement address these new communication tools? Can these dynamic tools be managed in a way that's best for the system?

**Moderator:**

John Fitzgerald, CFE, Partner, Gray Plant Mooty

**Speakers:**

Kim Toomey, Vice President & General Counsel, Century-21, Realogy  
Melissa Rothring, Franchise Counsel, NexCen Brands, Inc.  
Doug Kordel, General Counsel, ProForma

# Where Legal and Business Minds Come Together.

Tuesday, May 18 (continued)

## 6 **Unit Level Economics: The Legal and Business Case for Understanding How to Analyze Your Franchisee's Financial Position**

This session will discuss the legal and business reasons why a franchisor should take steps to understand the financial strength and unit-level performance of its franchisees.

- Visibility into franchisee finances can be an “early warning system” of franchisee or system distress.
- Addressing unit-level financial performance is essential to any successful financial workout.
- A franchisor should be a resource for identifying areas where specific franchisees or locations can improve profitability.
- Understanding unit-level profitability can highlight operating system or business model changes that could make the franchise a more attractive investment.
- A franchisor is better able to make a case for system-wide changes or capital investment in the context of realized cost savings or a reasonable “pay back” period.
- A franchisor that understands the drivers of franchisee profitability is better positioned to develop viable business strategies that will be embraced by the system.

### **Speakers:**

Louis Chronowski, Partner, Seyfarth Shaw LLP  
Robert Gerstenfeld, Business Development Manager, Dunkin' Brands, Inc.

## 7 **Basics Track: Financial and Financing Issues in Franchising**

- Reading franchisor financial statements.
- Basic legal and business financing issues for franchisees and franchisors.
- Understanding basic unit level economics in franchising.

### **Moderator:**

Will Woods, Partner, Baker Botts

### **Speakers:**

Nate Greenberg, President, Siegel Financial Group  
Ken Switzer, CFO, Marco's Pizza

11:45 am – 1:15 pm

### **Boxed Luncheon & Roundtables**

Our roundtables provide a unique opportunity for you to sit down with your peers and share thoughts on a wide-range of franchise law topics.

1:30 pm – 2:45 pm

### **Concurrent Sessions**

*(titles in italics will be offered twice)*

## 1 **How to Say “Yes” to Sales Without Saying “No” to Best Practices (Ethics credits)**

Franchise development in many ways has become more difficult in today's changed economic environment. The franchise sales process that worked in the past may not work as effectively now. Technology has improved. Franchisee candidate expectations have changed. Through all the changes, many of the legal challenges still exist. This session will:

- Identify the most common legal issues that arise during the sales process regarding financial performance representations, franchisee validation, use of technology and other aspects of franchise development.
- Suggest best practices where franchise development and the lawyers work together to find solutions that meet the objectives of the development team and do so in a way that avoids legal liability.
- Identify the key professional responsibility issues that franchise lawyers (particularly in-house counsel) should consider when advising on franchise sales issues.

### **Moderator:**

Kevin Hein, Partner, Faegre & Benson

### **Speakers:**

Troy Bader, Chief Development & Legal Officer, International Dairy Queen  
Tim Bryant, Partner, Preti Flaherty

## 2 **Have Your Franchisees and Their Employees Become Your Employees without Your Knowledge?**

- The New Battlefield: repelling claims by state governments and plaintiff lawyers attempting to classify franchisees and their employees as employees of the franchisor.
- Contract drafting, policy setting and litigation strategy in response to these new claims.
- Establishing and enforcing system standards without exposing the franchisor to traditional vicarious liability actions.
- Emerging case law.

### **Moderator:**

Gregg Rubenstein, Partner, Nixon Peabody

### **Speakers:**

Donald Burleson, Executive Vice President & General Counsel, Jani-King International, Inc.  
K. Kristann Carey, Senior Counsel, McDonald's Corporation

## 3 **Search Engine Optimization, Paid Search, and Micro Sites – Controlling Your Brand**

This workshop will explore how franchisors can develop and protect a cohesive, system-wide internet brand presence by means of:

- Coordinating a Search Engine Optimization/ Search Engine Marketing program for a franchise system.
- Effective monitoring and prevention of third-party use of the brand in paid searches and keyword targeting.
- Aggressive prosecution of domain name poachers.
- Using micro sites to market the franchise system.

### **Moderator:**

Kim Lambert, Partner, DLA Piper US LLP

### **Speakers:**

Ben Reed, Partner, Plave Koch PLC  
Doreen Costa, Partner, Baker Botts

## 4 **Termination Alternatives in Tough Economic Times (or Any Time?)**

Difficult financial times challenge franchisors to develop even more creative approaches to addressing non-compliance by franchisees. This program examines strategies other than termination that franchisors can employ to deal with franchisee non-compliance and focuses on alternative approaches to resolving disputes other than abruptly terminating the franchise relationship. Subjects to be examined include, among others:

- Negotiating mutually agreeable exit strategies
- Negotiating on-going relationship strategies
- Initiating legal proceedings to collect unpaid monies due the franchisor
- Obtaining injunctions to compel compliance (monetary and non-monetary)
- Possible pitfalls of forgoing or delaying termination.

### **Moderator:**

Harris Chernow, Partner, Chernow Katz LLC

### **Speakers:**

Sandra Gibbs, Corporate Counsel, Goddard Systems  
Bethany Appleby, Partner, Wiggin & Dana LLP

## Tuesday, May 18 (continued)

### 5 **Incurable Defaults and Good Cause Requirements – Can Sound Drafting Reconcile the Two?**

- Survey of state relationship laws with good cause requirements for termination.
- Survey of recent case law on good cause and incurable breaches.
- Best practices – drafting the good cause termination clause.

#### **Moderator:**

Frederick F. Simmons, Jr., Senior Vice President, General Counsel and Corporate Secretary, Precision Auto Care Incorporated

#### **Speakers:**

David C. Gurnick, Partner, Lewitt, Hackman, Shapiro, Marshall & Harlan  
C. Griffith Towle, Bartko, Zankel, Tarrant & Miller

### 6 **Basics Track: Franchise Agreement Drafting**

- Best practices for working with your business partners.
- Keeping it short and simple.
- Tying your provisions to the Operations Manual.
- Default provisions that accomplish your goals.
- Dispute resolution (arbitration, mediation, civil litigation).
- Drafting with litigation issues in mind.

#### **Moderator:**

Kathy Kotel, Senior Vice President and General Counsel, Carlson Restaurants Worldwide

#### **Speakers:**

Tony Marks, Partner, Bryan Cave  
Kendal Tyre, Partner, Nixon Peabody

2:45 pm – 3:00 pm

**Refreshment Break**

3:00 pm – 4:15 pm  
**Concurrent Sessions**

*(titles in italics will be offered twice)*

### 1 **Practical Application of Consumer Privacy Laws to Franchised Businesses**

- State privacy laws -- the general requirements and a few notable variations.
- State data breach notification laws -- when they are triggered and what they require.
- The Red Flags Rule -- what it is and who must comply.
- Best practices -- tips to avoid a consumer privacy problem.

#### **Moderator:**

Bob Langer, Partner, Wiggin & Dana

#### **Speakers:**

Tony Rodriguez, Division of Privacy and Identity Protection, Federal Trade Commission  
C. Joseph Yast, General Counsel, DirectBuy, Inc.

### 2 **Planning for International Expansion – Things to Consider Before Expanding**

- How do you assess your readiness for international expansion?
- What do you need to do internally to prepare for international expansion?
- How do you evaluate potential markets for international expansion?
- How do you structure your international franchise relations?
- How to find/choose the right “partners” for international expansion?

#### **Moderator:**

Tao Xu, Associate, DLA Piper US LLP

#### **Speakers:**

Bruce Harsh, Distribution and Supply Chain Team Leader, Office of Service Industries Manufacturing and Services, International Trade Administration, U.S. Department of Commerce

Timothy Hardy, Director, International Franchising & Operations, Build-A-Bear Workshop

## Schedule

Our Registration Desk will open on Sunday, May 16 from 3:00 pm – 7:00 pm. Registration re-opens at 8:00 am on Monday, May 17. The conference program will start promptly at 8:30 am and run until 6:30 pm. Registration is open on Tuesday, May 18 beginning at 8:00 am and the conference program runs from 8:30 am – 4:15 pm.

## Symposium Pre-Registration

**Pre-registration for the Legal Symposium closes on May 5.**

If you are not able to meet this deadline, please register at our onsite Registration Desk during official Registration hours. Onsite registrations will be subject to an additional \$50 fee.

To register for all programs and events described in this brochure, please submit your completed registration form and payment to IFA's 43<sup>rd</sup> Annual Legal Symposium, 1501 K Street, NW, Suite 350, Washington, DC 20005. Tel: 202/628-8000. Fax: 202/628-0812.

## Hotel Information

You may reserve for your hotel room at the JW Marriott online at <https://resweb.passkey.com/go/ifalegal2010>. Or you may call 1-800-266-9432 or 506-474-2009 (int'l) and indicate you are attending the IFA 2010 Legal Symposium. Our room rate for a standard room is \$288 (single or double). The deadline for making reservations is April 23 (or when the IFA room block is filled.) Once the room block is sold out, reservations will be accepted on a space and rate availability basis. The JW Marriott is located in downtown Washington at 1331 Pennsylvania Avenue, NW. For more information about the JW Marriott Hotel, visit [www.jwmarriottdc.com](http://www.jwmarriottdc.com).



## Tuesday, May 18 (continued)

### 3 *The Importance of Enforcing Post-Termination Rights in a Down Economy*

- What are “post-termination rights?” Why are they important to a franchise system?
- What is “enforcement?” How far should a franchisor go? Can a franchisor push too far or not far enough?
- What are the short-term consequences of inadequate or inconsistent enforcement? Long-term?
- Do franchisees benefit from a franchisor’s enforcement of post-termination rights? How?
- Is assertion of these rights and enforcement to protect them even more important to the system in a struggling economy? Why?
- What are some of the challenges currently faced by franchisors in their efforts to protect their post-termination rights? How can outside counsel assist with these efforts?

**Moderator:**

Jim Susag, Partner, Larkin Hoffman Daly & Lindgren

**Speakers:**

Paul Reeve, Attorney, MBE, a UPS Company  
Mike White, Counsel, Stites & Harbison

### 4 *Dealing With Thorny Transfer Issues*

- The consent and approval process – what should your franchise agreement say?
- How involved should the franchisor be in the transfer process?
- What if the franchisor believes the purchase price is too high?
- What should the franchisor do if the transferring franchisee has failed to disclose full and accurate financial information to the buyer?
- How can franchisors proactively use the transfer process to deal with non-compliant and financially distressed franchisees?
- What documents should be used to paper the transfer process?
- Best practices for managing the transfer process in-house.

**Moderator:**

Frank Zaid, Partner, Osler, Hoskin & Harcourt LLP

**Speakers:**

Mark Dely, Vice President & General Counsel, The ServiceMaster Company  
Amy Cheng, Partner, Cheng Cohen LLC

### 5 *Basics Track: Frequent Arising Issues in Litigation*

This session will cover the analysis of franchisor and franchisee claims, goals and objectives, including compliance with system-wide standards.

- Discussion of litigation instituted by the franchisee including various claims arising from the sale of the franchise, contract claims, equitable claims, and statutory based claims.
- Discussion of litigation instituted by the franchisor, including claims for non-payment of royalties and fees, breach of franchise agreement claims, and trademark/system standards enforcement issues.
- An assessment of quality assurance issues and compliance with system-wide standards, including creating, modifying, and implementing system standards, and monitoring compliance and enforcement of non-compliance of system standards through litigation.
- Analysis of litigation forums—state or federal—and litigation alternatives including mediation and arbitration.
- The lifecycle of a franchisor/franchisee dispute—an analysis of a dispute, including causation, the stages of the dispute, how they end up in litigation, and what makes the difference between simply resolving a dispute as opposed to winning a dispute.

**Moderator:**

Barry Blum, Partner, Genovese, Joblove & Battista

**Speakers:**

Michael Gray, Partner, Gray Plant Mooty  
Robert Salkowski, Partner, Zarco, Einhorn, Salkowski & Brito

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4:15 pm

**Legal Symposium Adjournment**

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the legal profession



## IBA/IFA Joint Conference

Want to learn more about the current issues facing the international franchise law community? Extend your stay in Washington to participate in the IBA/IFA Annual Joint Conference, May 18-19, at the JW Marriott. Partnering with the International Bar Association’s Franchising Committee each year ensures we offer a comprehensive program focused on the latest international franchise law issues. Interactive sessions include a “News From Around the World” update during which expert international franchise law professionals provide a roundup of developments in franchising from some of the world’s hottest jurisdictions. There is a separate fee to attend this program. For more program and registration information, visit [www.franchise.org](http://www.franchise.org).



MAY 16-18  
2010

JW MARRIOTT  
WASHINGTON, DC



## Registration Form

The registration fee includes course instruction and materials, two continental breakfasts, two luncheons, two cocktail receptions and refreshment breaks.

Please complete one form per person. Pre-registration closes May 5. For registration after this date, visit our onsite Registration Desk beginning Sunday afternoon. Onsite registrations are subject to an additional \$50 fee.

Full Name \_\_\_\_\_ Nickname for Badge \_\_\_\_\_  
 Job Title \_\_\_\_\_  
 Company \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ Fax \_\_\_\_\_  
 Email \_\_\_\_\_

- Check here if you do not wish to receive emails and faxes on Symposium events and issues of interest.  
 Check here if you have special needs in order to participate. Please specify:

### Registration Fees

Please mark the appropriate box to indicate your participation and fees. Registration fees are per person.

**IFA Member**

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Complete this form and return by May 5 with payment to: **IFA's 43rd Annual Legal Symposium**  
 1501 K Street, NW, Suite 350, Washington, DC 20005 USA  
 Fax: 202/628/0812 Questions? Call 202/628-8000

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**Cancellation Policy:**

Full Refunds (minus a \$50 administration fee) will be granted for registrations cancelled at least 14 days in advance of the Symposium. A 50% refund (minus a \$50 administration fee) will be provided for registrations cancelled 7-14 days in advance. No refunds will be permitted for cancellations less than 7 days in advance or for "no shows." All requests for refunds must be made in writing. Substitutions are permitted at any time.