



RAISING THE BAR

IFA LEGAL SYMPOSIUM
MAY 5-7, 2019 | WASHINGTON, DC



Supply and Demand: How to Negotiate Supplier and Distributor Agreements and Work with Franchisees Regarding Their Implementation

- David B. Ramsey (Partner, Kaufmann Gildin & Robbins LLP)
- Robert G. Huelin (VP, Legal and Compliance, Wireless Zone LLC)
- Curtis S. Gimson (Consultant, Arby's Restaurant Group)

Elements of Supply Chain

- Producers
- Manufacturers
- Distributors
- Retailers
- Consumers

Establishing the Supply Chain

- Requests for Proposals (RFPs)
- Geography
- Reliability

Supply Chain Agreements

- Choice of Structure
- Key Terms
 - Price
 - Volume
 - Various other factors

Supply Agreement Terms - Examples

<ul style="list-style-type: none">• Compliance with System Standards	<ul style="list-style-type: none">• Indemnification and Insurance
<ul style="list-style-type: none">• Exclusivity	<ul style="list-style-type: none">• Warranties
<ul style="list-style-type: none">• Ownership of I.P.	<ul style="list-style-type: none">• Term / Termination
<ul style="list-style-type: none">• Obsolescence• Dispute Resolution	<ul style="list-style-type: none">• Inspection and Audit Rights

Distributor Agreements – Added Issues

- Performance Criteria
- Inventory Issues
- Shipping
- Insurance/title
- Returns / inspections

Other Supply Chain Issues

- Licensing
- Remote Ordering Systems and I.T. Concerns

Purchasing Cooperatives

- Key Objectives
- Pros and Cons

Ensuring Franchisee Compliance

- Communicating with Suppliers
- Audits
- Mystery shopper programs
- Sanctions
- Injunction
- Default notices
- Termination

Pre-Sale Disclosures: FDD Item 8

- Sourcing restrictions; specifications
- Franchisor or its affiliates as approved suppliers
- Approving alternative suppliers
- Franchisor deriving revenue / material consideration
- Purchasing arrangements
- Benefits to franchisee based on franchisee purchases

Competition / Antitrust Law Issues

- Illegal tying arrangements
- Predatory pricing
- Anticompetitive refusals to deal
- Monopolization
- Disclosure is key
- State laws prohibiting unfair / deceptive supply chain restrictions

Thank you!

- Robert G. Huelin (rob.huelin@wirelesszone.com)
- Curtis S. Gimson (curtis.gimson@gmail.com)
- David B. Ramsey (dramsey@kaufmannngildin.com)