



IFA ANNUAL CONVENTION



20
22



Elements of Successful Franchising

Sunday, February 27, 2022
1:45 pm –3:30 pm



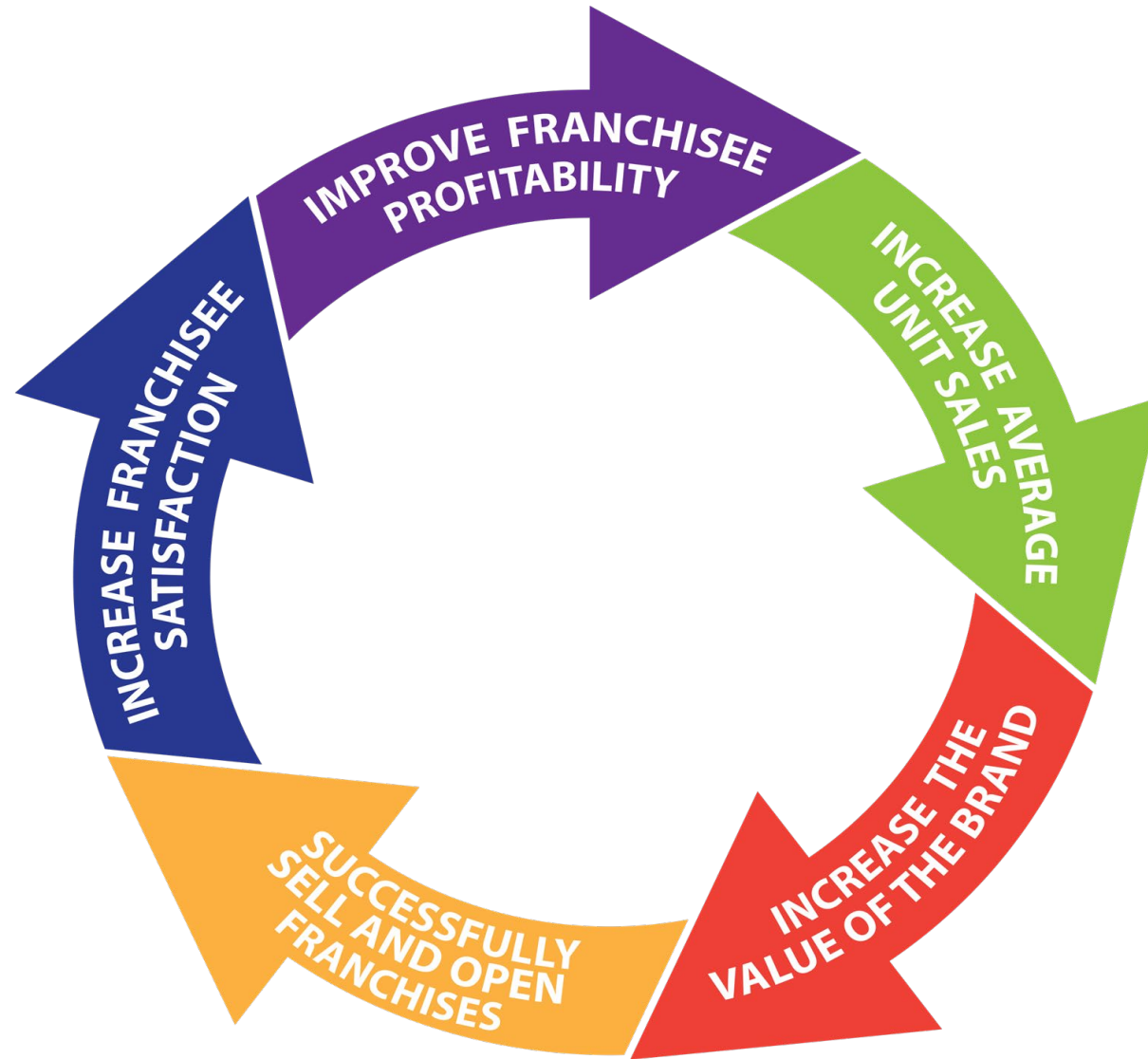
Catherine Monson

Chief Executive Officer
Propelled Brands

Catherine.Monson@propelledbrands.com

Propelled Brands Philosophy of Franchise Support

Be the franchisor of choice in every industry!

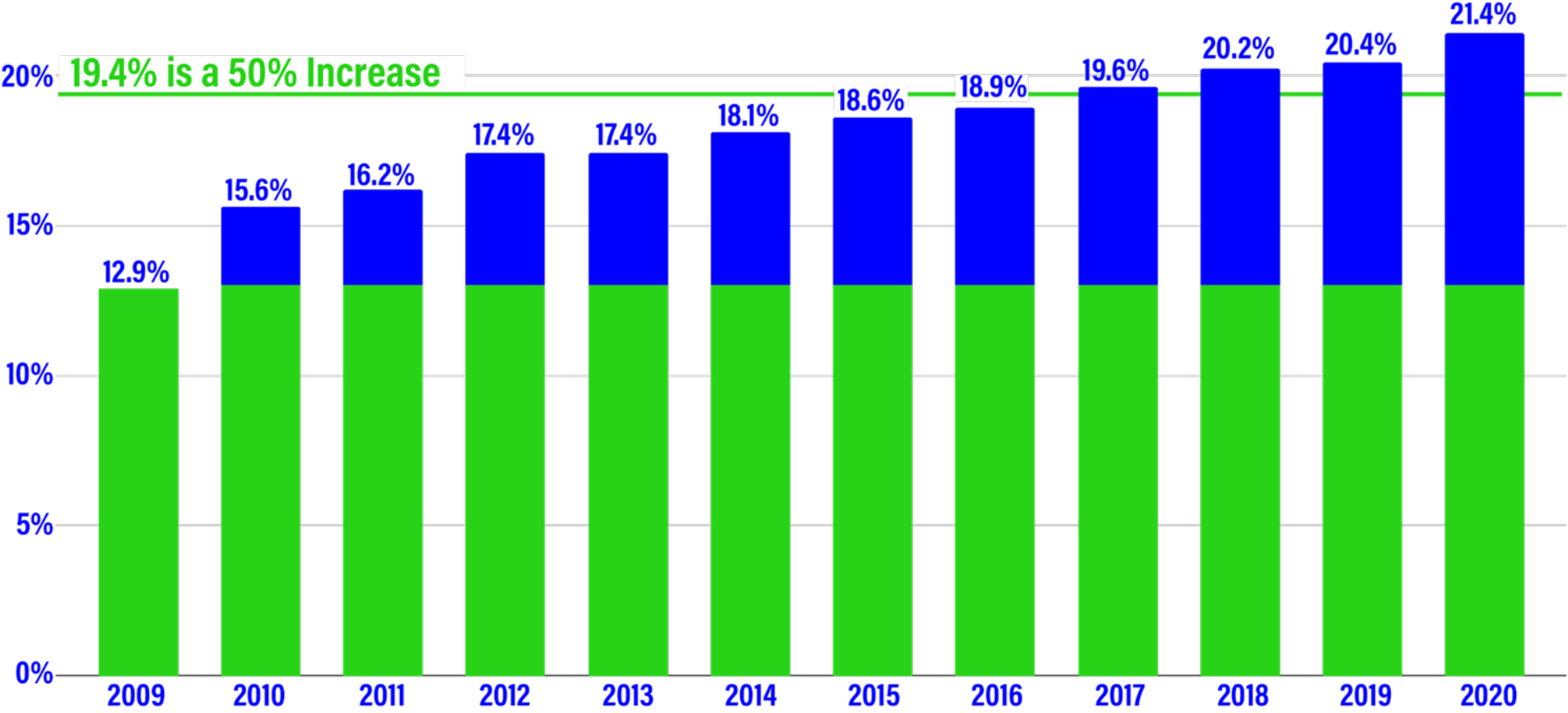


FASTSIGNS Goal Set in 2009: 50% Increase in Profitability

New Goal: Further Increase Profitability by 25%

25% **24.5% is 25% Further Increase**

20% **19.4% is a 50% Increase**



ELEMENTS OF SUCCESSFUL FRANCHISING



Rick Morey

Partner
DLA Piper
richard.morey@us.dlapiper.com



Stephanie Zosak

Associate
DLA Piper
stephanie.Zosak@dlapiper.com



Rich Greenstein

Partner, Chair, Franchise & Distribution
Practice
DLA Piper
rich.greenstein@us.dlapiper.com

KEY TAKEAWAYS

- Habits of highly successful franchise systems
- Threats and challenges for franchisors, franchisees, and the franchise model in general
- Avoid system stagnation – anticipate and address needed changes in your system
- Balance business and legal considerations in operating your franchise system
- Private equity and other large investors involvement in franchise systems

HABITS OF HIGHLY SUCCESSFUL SYSTEMS

- Diligently monitor the interaction of the economy, regulatory change, franchisee profitability and competition
- Positive relationship between franchisor and its franchisees with open lines of communications, especially concerning system change
- Knowledgeable dedicated and fulsome franchise compliance department
- Complete accurate and current operations manual with updates made when circumstances require change, but without unnecessary or unenforced standards
- Vigilant about franchisees failing to pay ongoing royalties, ad fund and other fees and charges including taking proper action when needed
- Be conscious of the impact COVID has had on your staff as well as your franchisees – financial and operational

HABITS OF HIGHLY SUCCESSFUL SYSTEMS (cont'd)

- Continually monitor franchisee health to address problems early
- Create and stick to a franchise sales strategy, but flexible enough to alter the strategy when circumstances dictate
- There should always be an emphasis on franchise sales, even sales are flourishing

HABITS OF HIGHLY SUCCESSFUL SYSTEMS (cont'd)

- Due to COVID, your system needs an effective and efficient supply chain-monitor the health of your suppliers and continually search for new/additional suppliers
- System changes thoroughly tested at Brand's expense
- Fully knowledgeable about competition and systems or action items in place to react to competition as necessary
- Franchisor utilizes a portion (or all) of rebates, commissions and other payments received from suppliers for the overall good of the franchise system

HABITS OF HIGHLY SUCCESSFUL SYSTEMS (cont'd)

- Monitor your franchise sales department to help avoid conflicts which could be detrimental to your business and create ill-will amongst employees
- Be concise of privacy and data security issues – bring third-party provider to pressure test your systems (including your website and terms and conditions of use)
- Protect your confidential and proprietary information and be diligent about attacking those that seek to discover/utilize such information
- Your form of franchise agreement and other operative franchise contracts must be reviewed and updated as necessary to be consistent with your franchise system

ADVERTISING/MARKETING FUND

To...	General Counsel
From...	Chief Financial Officer
Subject:	Use of Ad/Marketing Fund Contributions

I am getting an increasing number of requests for Ad Fund contributions to be used for costs which would normally be considered general operating expenses. I feel pressured to approve using fund contributions for these expenses. Have guidelines been implemented to assist me in responding to these requests?

PROPER USES OF FUND CONTRIBUTIONS

- Franchise Agreement and Item 11 of Franchise Disclosure Document (check old versions as well as current versions)
- Operations manual
- Past practices and/or previous commitments
- Supplier contracts when supplier payment made to fund
- Caselaw (likely not a case of first impression)
- Consistency is critical and be careful about a proposed use for which there is no contractual right to do so

WHAT IS TRIGGERING THE REQUEST

- Is there an ulterior motive? Is it an effort to improve franchisor's net worth or EBITDA?
- Is the request reasonable under the circumstances?
- Is this the type of expense that has historically been covered by fund, even if new technology?
- What is the likely reaction from the franchise community if ad fund contributions are used?
- Can the expenditure be supported if challenged?

LITIGATION FILED AGAINST FRANCHISEE

To...	Franchisor CEO
From...	VP Operations
Subject:	Litigation against Franchisee

I just got a call from a local reporter in Omaha. Apparently, a server at one of our franchised locations there filed a class action lawsuit claiming sexual harassment and a hostile work environment. I told the reporter I didn't know anything about it, but we need to get out in front of this one.

BUSINESS vs. LEGAL CONSIDERATIONS: BUSINESS

- Want to support the franchisee
- Want to limit the PR/brand damage
- Want to avoid spread of similar litigation against other franchisees
- Gather important data to help educate the franchise system

BUSINESS vs. LEGAL CONSIDERATIONS: LEGAL

- Want to avoid vicarious/joint employer liability
- Investigate controls
- Insurance?

DISTRESSED FRANCHISEE

To...	Franchisor CEO
From...	Chief Operating Officer
Subject:	Strategy for Dealing with Distressed Franchisee Owing \$1M+

Our franchisee with 50 restaurants in Texas, California and Arizona owes us more than \$1M in past due royalties, ad fund contributions, finance charges, rent on 20 locations where we are the landlord or sub-landlord and other miscellaneous fees. Each franchised location operates under a separate franchise agreement. Additionally, the franchisee owes its lender, another \$400K for equipment loans, for which the lender has a security interest. We need to discuss the best course of action to recoup the monies that are owed as well as to preserve these franchised locations from closing.

COLLECTING INFORMATION TO PLOT A STRATEGY - WHO HAS LEVERAGE

- Status of any outstanding notices of default?
- Review documents to ensure franchisor has valid claims against franchisee entities and all personal guarantees are valid and enforceable against the guarantor
- Any franchise agreements terminated or locations operating under a short-term license?
- Review enforceability of any security interest held by lender

COLLECTING INFORMATION TO PLOT A STRATEGY - WHO HAS LEVERAGE (cont'd)

- Run a lien search to determine whether other secured parties have liens
- Status of leases
- Does the franchisor have any desire to take over any locations
- Add a restructuring attorney or independent restructuring consultant to the team
- Bankruptcy could stop plans

FOCUS FOR BUSINESS

- Priorities (i.e. recovering the monies owed vs. ensuring limited number of locations are closed by franchisee)
- Risk of franchisee filing bankruptcy and/or impact of closed locations on franchisor's EBITDA or other financial measure
- Are personal guarantees worth anything to franchisor?
- Dealing with lender/landlords and what is their priority?

FOCUS FOR BUSINESS (cont'd)

- Ensuring all appropriate areas of the business have been briefed and kept informed
- Lining up potential transferees for the locations and operations department analysis of estimated time and expense to flip locations to transferee or to franchisor
- What about replacement equipment if cannot work a deal with lender?

International Development

To...

Franchisor CEO

From...

VP Franchise Development

Subject:

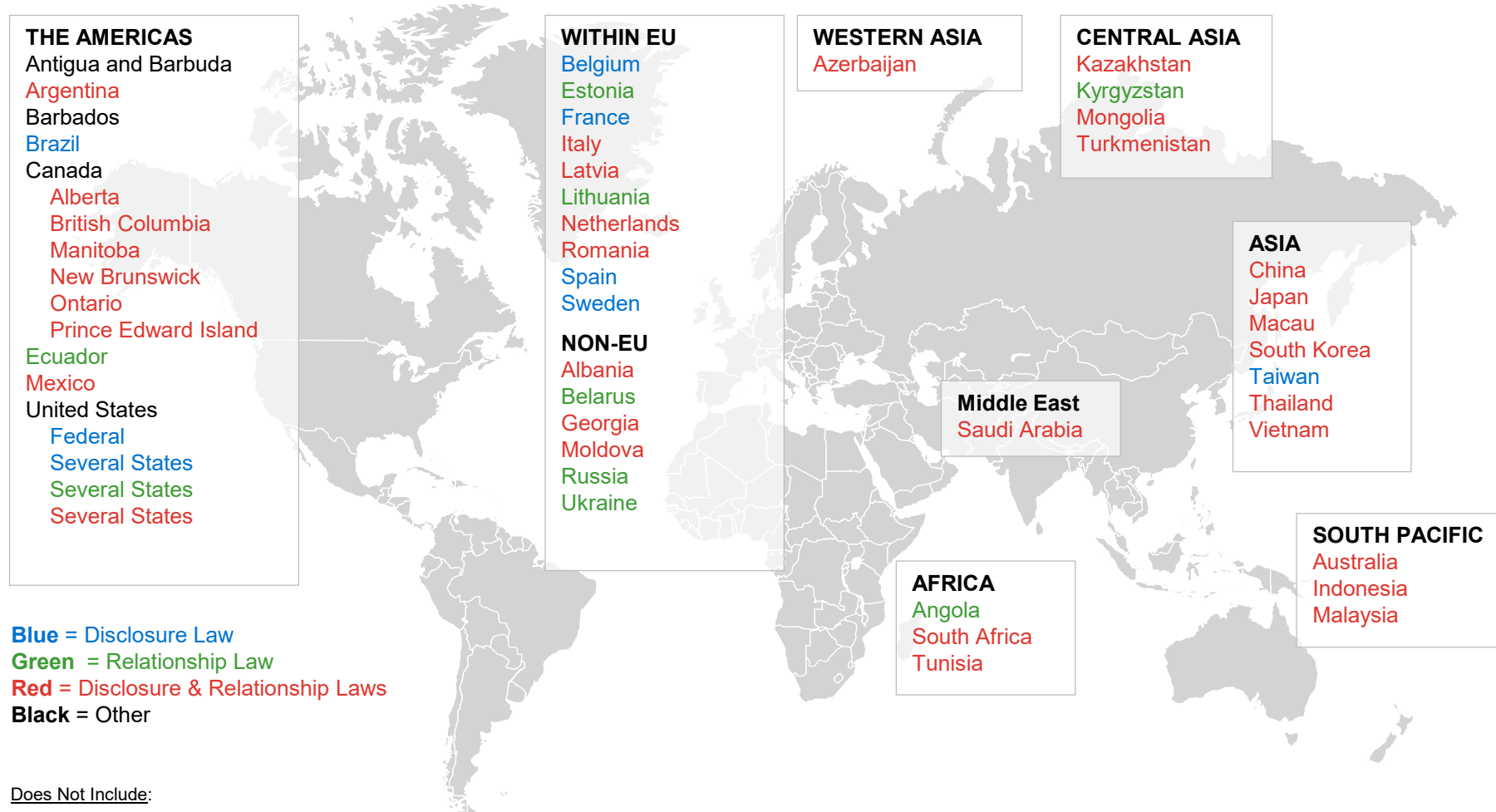
International Development

As mentioned in our business planning offsite last year, I have been working hard to develop international contacts and avenues to grow the brand internationally. It paid off because I spoke with a US brand aggregator that is interested in taking the brand to the GCC. They have some pretty strong ideas on what they need. Let's talk to figure out how we can make this work.

International News and Trends

- New franchise laws in many countries (including KSA and the Netherlands)
- Continued interest from Middle East to acquire franchise rights from US brands
- Is China cooling off? (No pun intended)
 - Has COVID and its aftermath impacted the demand for franchise rights from US brands for operation in China?
 - Current geopolitical issues
- France goes on the offensive – Paris Commercial Court decision against Subway
- Ultimately, franchisors need to be conscious of laws affecting the sale of franchises for operation in foreign countries – Use of local counsel

Countries with Specific Franchise Laws



Does Not Include:

- Codes of conduct which do not provide for governmental or private enforcement, even if promulgated under governmental authority.
- Bodies of law (e.g. commercial agency, distributorship, competition, intellectual property, etc.) which may also cover franchising.
- Registration requirements that exist in many countries under various laws (e.g., franchise, foreign exchange, intellectual property, competition, etc.).

FRANCHISE SALES

To...	Franchisor CEO
From...	VP Franchise Development
Subject:	Franchise Sales

I know you asked me to cut my franchise development budget by 10% next year in line with other departments, but is there any give in that number? Some current franchise development spending has been more effective than others. I shared ideas with some folks at the Convention in Orlando, and I came away with a plan that I really think will get us over the sales hump.

RECENT TRENDS IN FRANCHISE SALES

- Seeking multi-unit operators
- Reduce fees
- Reduce scope of what are considered competitive brands

Franchise Securitizations

To...	General Counsel
From...	Senior VP Franchise Sales
Subject:	Sales Pipeline Issues

I wanted to follow up with you on the franchise securitization closing next month. I need to ensure that I give our franchise sales team the correct instructions. Will we “go dark” as soon as the securitization closes? Is there a way to avoid or minimize the time period during which franchise sales activities must be suspended?

Franchise Securitization Overview

- What is a “franchise securitization?”
 - Financing structure/transaction whereby franchisor’s royalty stream is used to secure financing from investors
 - Relevant parties include SPVs, Manager, Issuer, Investors, Underwriter
 - Benefits: Low interest rates, funding + bankruptcy remote

Securitization Registration and Disclosure Issues

- New corporate structure leads to state franchise law filing issues
 - Modify FDD
 - New franchisor must make new franchise registration/exemption filings
 - Broker filings in Washington
- Handle prospective franchisees in the pipeline

FINANCING

To...

Franchisee CEO

From...

Director of Finance

Subject:

Financing

Wanted to update you on my efforts to secure financing for the new outlet. It looks like SBA-backed financing might be an option, but it has some challenges. I also have some ideas on alternatives. Let's talk.

SBA AND OTHER FRANCHISEE FINANCING PROGRAMS

- Apple Pie Capital
- Crowdfunding
- SBA guaranteed loan
- Family & friends
- Private equity or other investors (if the size of the franchisee is large enough and the investment is substantial)

FRANCHISEE CONSIDERATIONS

- Franchisor's help, like bank credit report/structured financing program?
- Careful with personal assets as collateral
- Seek lenders who understand small business AND franchising
- If you lack liquidity, find a partner with money
- Equipment leasing to conserve start-up capital

EMPLOYMENT

To...

Franchisee CEO

From...

Director of HR

Subject:

Employment

I've been trying to address the significant turnover at the store level.

It's a problem that a lot of our fellow franchisees face. Unfortunately,

the brand is scared of this joint employer thing and won't help. I have

some ideas though.

SOLVING THE PROBLEM

- What about benchmarking studies – legal issues?
- Watch out for antitrust risks that don't involve franchisor
- Third party providers (consultants? lawyers?)
- Tools for franchisees to help

OTHER TRENDS WE ARE SEEING?

- Purchase and sale of franchise businesses and large franchisees remains active: 2020-2021 were extraordinary years
- Successful brands have grown with multi-unit operators
- Brands more willing to accept multi-unit/multi-branded operators and private equity owners
- Litigation between franchisors and franchisees continues at a steady pace
- Franchisors are still willing to terminate for material breaches

OTHER TRENDS WE ARE SEEING? (cont'd)

- Increase in start-up franchises by sophisticated investors; emphasis on novel types of franchises
- Technology still plays an important role in successful franchise systems
- Greater emphasis on avoiding TCPA cases
- Franchisors failing to protect themselves against risk of bankruptcy by failing franchisees

CONCLUSIONS

- Franchising model continues to thrive notwithstanding COVID
- Franchisors and franchisees face new challenges each day (and often these challenges will require collaborative efforts between them)
- Solutions to challenges often involve business and legal considerations
- Franchisors who have been successful have focused on their franchisees as well as their customers
- Franchisors concentrating on ensuring supply chain suppliers are financially strong and capable of supporting their systems
- There are likely favorable opportunities for consolidation whereby strong franchisors can evaluate adding another brand
- Suppliers of workers has not approached pre-pandemic times – must solidify your workforce, even if the costs are higher

CONTACT INFORMATION

- Rick Morey
richard.morey@dlapiper.com
- T: +1 312.368.7088
- Stephanie Zosak
stephanie.zosak@dlapiper.com
- T: +1 312 368 2174
- Rich Greenstein
rich.greenstein@dlapiper.com
- T: +1 404.736.7816

DLA PIPER GLOBAL PRESENCE

AMERICAS

Argentina
Brazil*
Canada
Colombia
Chile
Mexico
Peru
United States

MIDDLE EAST

Bahrain
Oman
Qatar
Saudi Arabia*
United Arab Emirates

ASIA PACIFIC

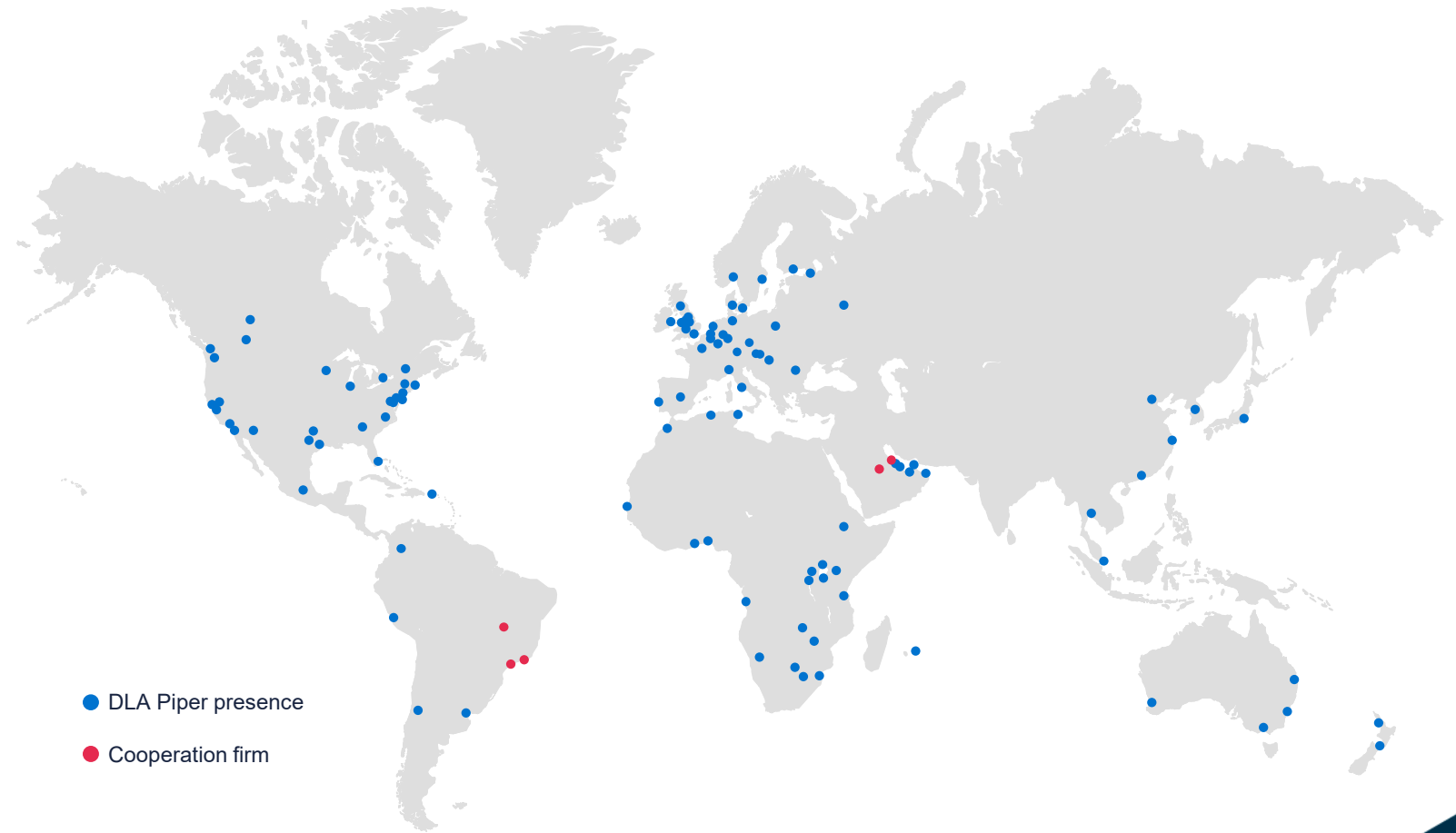
Australia
China
Japan
New Zealand
Singapore
South Korea
Thailand

EUROPE

Austria
Belgium
Czech Republic
Denmark
Finland
France
Germany
Hungary
Ireland
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Romania
Russia
Slovak Republic
Spain
Sweden
United Kingdom

AFRICA

Algeria
Angola
Botswana
Burundi
Ethiopia
Ghana
Kenya
Mauritius
Morocco
Mozambique
Namibia
Nigeria
Rwanda
Senegal
South Africa
Tanzania
Tunisia
Uganda
Zambia
Zimbabwe



● DLA Piper presence

● Cooperation firm

*Cooperation Firm

Q&A

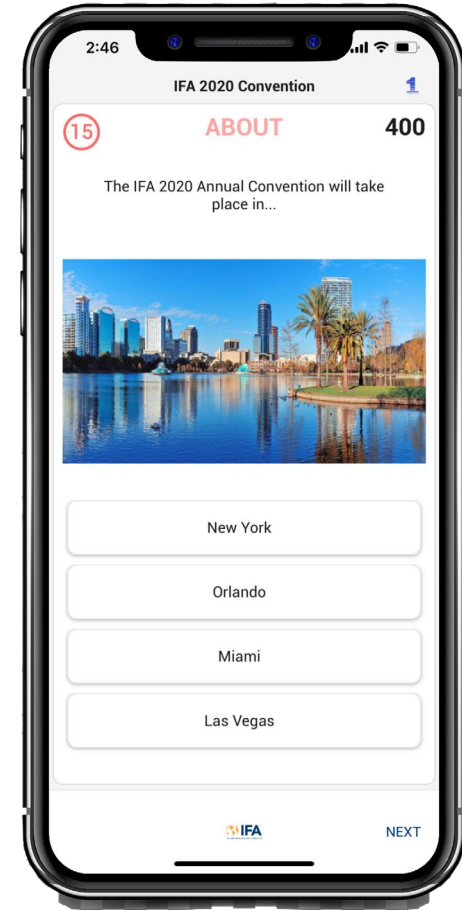
KEY TAKEAWAYS

- Habits of highly successful franchise systems
- Threats and challenges for franchisors, franchisees, and the franchise model in general
- Avoid system stagnation – anticipate and address needed changes in your system
- Balance business and legal considerations in operating your franchise system
- Private equity and other large investors involvement in franchise systems

Top the Leaderboard!

Don't forget to download and login to the IFA 2020 Convention Game powered by 1Huddle. Starting playing and let's see what you got!

1. Download 1Huddle on your iPhone or Android by searching: **1Huddle**
2. Login using VIP Code: **ifa2020**
3. Complete your profile, login and play!



1huddle[®]