



IFA LEGAL SYMPOSIUM



Ghost Kitchens' and Virtual Kitchens' Intersection with Franchising

May 6, 2021

Presenters

Speakers:

Ashley Graffeo

Legal Counsel – Franchise, The Wendy's Company

Noah Leszcz

Senior Associate, Cassels Brock & Blackwell LLP

Rishi Nigam

Senior Executive, Franklin Junction

Moderator:

Gaylen Knack

Partner, Lathrop GPM LLP



Cassels

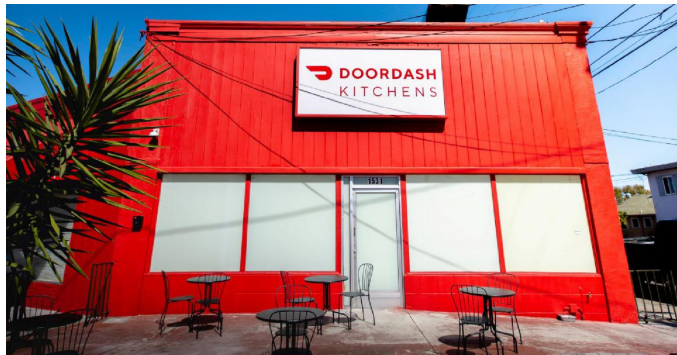


**Lathrop
GPM**

Ghost Kitchens: The Nomenclature

What is a “Ghost Kitchen”?

- There are lots of categories and names floating around in the industry.
- In order to facilitate an informed discussion, the categories and different models of Ghost Kitchens must first be clarified.



Ecosystem Glossary

Cloud Kitchens

Infrastructure provider for operators needing kitchen space

Managed Cloud Kitchens

Provide infrastructure and operate self-created brands as well as other brands

Host Facilities

(such as Host Kitchen®)

Matches overcapacity to incremental revenue opportunities to optimize existing infrastructure

Brand Platforms

Content creators for operators to add virtual brands to their kitchens

Ecosystem Glossary

Food Aggregator

*Primarily used for order origination
and/or delivery fulfillment*

Kitchen Technology Solutions

*Operations support (POS
integration, labor/inventory
management, etc.)*

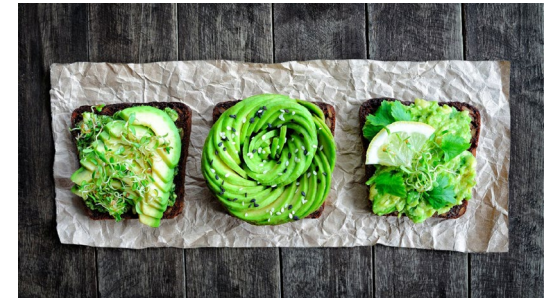
Food Delivery Ecosystem

FOOD DELIVERY ECOSYSTEM



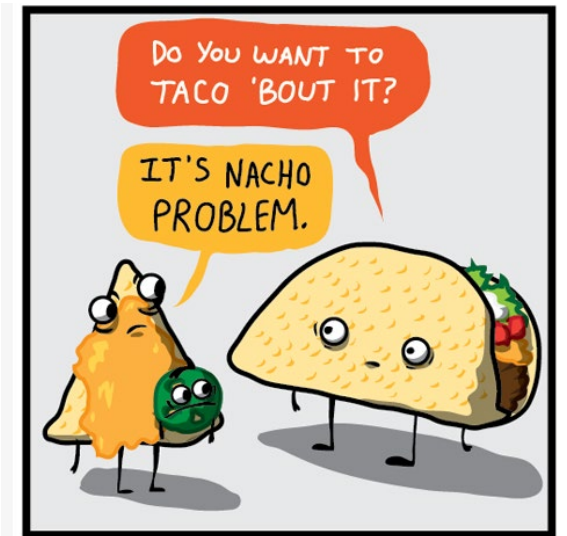
Application & Discussion: Scenario #1

- **Ashley's Avocado Bar** is a QSR concept that specializes in avocado toast with a network of corporate and franchised restaurants across Northeastern US
 - AAB's feature a dining room for in-person dining for 20-40 patrons and a fully equipped kitchen with a full-service breakfast and brunch menu
 - During COVID-19, in-person dining and brunch sales have plummeted
 - Avocados have a short shelf life, and food costs are difficult to manage



Application & Discussion: Scenario #1

- **Noah's Nachos** is a gastropub with over 75 locations across the Midwestern US
 - NN wants to expand to Northeastern US, but is wary that the market is already over saturated with similar concepts
 - NN wants to test the market before committing to launching its franchise program



Application & Discussion: Scenario #1



- Option #1: **Ashley's Avocado Bar** enters into arrangement with **Noah's Nachos** for a **Host Facility** partnership in select **AABs**
 - Analysis A: Noah's Nachos licenses its brand to AAB
 - Analysis B: AAB allows select AABs to offer Noah's Nachos on various Aggregators
- Option #2: **Noah's Nachos** launches **Cloud Kitchen** facilities in various test markets

Application & Discussion: Option 1A

Noah's Nachos considerations for licensing its brand to **AAB** as **Host Facility**



Business Considerations

- System changes
- Product offerings
- Training AAB staff
- Commercial terms



Legal Considerations

- Type of agreement
- Length of contract term
- Protection of trade secrets
- Disclosure?
 - Accidental franchise?

Application & Discussion: Option 1B

AAB's considerations for acting as **Host Facility** for **Noah's Nachos**



Business Considerations

- Brand protection
- Cannibalization of sales
- Supply chain management



Legal Considerations

- Franchise law implications
 - Disclosure to AAB prospects
- Insurance
- Protection of trade secrets

Application & Discussion: Option 2

Noah's Nachos considerations launching **Cloud Kitchens**



Business Considerations

- Aggregator partnerships
- Managing new economic model
- System changes



Legal Considerations

- Corporate or franchised?
 - If franchised, what form of agreement, and what changes to standard form?
- Territorial encroachment
- System changes

Application & Discussion: Scenario #2

- **Gaylen's Grubsteak** is a fast casual concept that specializes in backyard BBQ with over 100 locations in operation across the United States
 - GG wants to expand to Canada, but is nervous to launch an international franchise program in an unfamiliar environment
 - GG wants to first iron out the kinks in corporately run businesses, but is nervous to commit the capital required to establish and operate standalone GGs



Application & Discussion: Scenario #2



- Option #1: **Gaylen's Grubsteak** launches **Cloud Kitchen** facilities in various test markets in Canada
 - While there are certainly other **Brand Platforms** available to GG, this analysis will only focus on **Cloud Kitchens**, although other models may certainly be viable too

Application & Discussion: Option 1

Gaylen's Grubsteak considerations launching **Cloud Kitchens**



Business Considerations

- Different economics
- Different currency
- Tax considerations
- System changes



Legal Considerations

- Corporate or franchised?
 - Depends on province and depends on structure
- Trademark protection
- Language laws



Cassels