

2018 IFA

LEGAL SYMPOSIUM

• May 6-8 | Washington, DC

TRADEMARK AND INTERNET BRANDING: *PROMOTING AND DEFENDING A FRANCHISE REPUTATION ONLINE*

- Colleen Devanney – *Vorys, Sater, Seymour & Pease LLP*
 - Cincinnati, Ohio
- Carolyn Dinberg - *IHG (Intercontinental Hotels Group)*
 - Atlanta, GA
- Eleanor Vaida Gerhards - *Fox Rothschild LLP*
 - Warrington/Philadelphia, Pennsylvania
- Dale Cohen, Moderator – *Kaufmann Gildin & Robbins LLP*
 - New York, New York

Topics for Today's Discussion

- DEFENSE – Defending a Franchise Brand/Trademark from Online Attacks
- OFFENSE – Promoting a Franchise Brand/Trademark Online in Compliance with Federal and State Laws and Regulations



What does a franchise system's reputation look like in 2017?

Union Street Guest House

Web News Maps Images Videos More Search tools


About 17,500,000 results (0.41 seconds)

Union Street Guest House - boutique hotel in Hudson NY ...
www.unionstreetguesthouse.com/
Hudson Valley lodging, Union Street Guest House offers lodging and accommodations in Hudson New York for vacations and getaways in the Hudson River ...
1.6 ★★☆☆☆ 67 Google reviews · Write a review · Google+ page

345 Union St, Hudson, NY 12534
(518) 828-0958
Rooms - Rates & Policies - Reservations

Union Street Guest House - Events & Weddings
www.unionstreetguesthouse.com/events_weddings.shtml
Your Special Event. Hudson and Union Street Guest House are a great destination for a get together and we provide lodging for many every year - including lots ...

Union Street Guest House - 15 Photos - Guest Houses ...
www.yelp.com > Hotels & Travel > Guest Houses > Yelp
★☆☆☆☆ Rating: 1.5 - 61 reviews
I visit Hudson a few times a year and Union Street Guest House is my personal favorite B&B in Hudson. The rooms are very unique and beautifully decorated, ...




Union Street Guest House ★
1.6 ★★☆☆☆ 67 Google reviews
Guest House

This chic guesthouse, in a 19th-century Greek Revival style property, is 27.3 miles from Catskill Park and 35.4 miles from downtown Albany.
... More

Address: 345 Union St, Hudson, NY 12534
Phone: (518) 828-0958

How Do We Protect Our Reputations?




Ted R.
Schererville, IN
0 friends
3 reviews

★ ★ ★ ★ ★ 7/19/2017

I have had two appointments to have someone come out to diagnose the problems I am having with a couple interior drain pipes. Both times I had appointments no one showed up and no one called.

My appointments were for a house in a Cincinnati suburb.

Was this review ...?



Mitch P.
Cincinnati, OH
0 friends
6 reviews
16 photos

★ ★ ★ ★ ★ 3/27/2018

Horrible experience! Charged \$2,500 to my credit card, didn't do any work, and now refuses to refund! Be very careful!

Brian S. voted for this review

What are a franchise system's options?

Legal Options

- Defamation Action
- False Advertising/Unfair Competition Action
 - Federal (The Lanham Act and The FTC Act)
 - State Statutes

Non-Legal Options

- Removal by third party?
- PR response
- Do Nothing



I Want to Sue!

What Do I Need to Consider:

– Legal Considerations:


- First Amendment
- Federal Communications Decency Act (CDA)
- Anti-SLAAP Statutes

– Perhaps Most Important Consideration:

- Public Opinion



Case Study: Ron Gordon Watch Repair

 **Matt B.**
New York, NY
141 friends
15 reviews

★ ★ ★ ★ ★ 4/24/2013


I went to Ron based on the positive reviews here, and while he and his associate are nice people, I cannot recommend them based on my experience. I had two watches to repair - an Ebel and a vintage pocket watch. I was told it would be a week just to get an estimate. This seemed like a long time just for an estimate, but fine. I waited over a week and decided to call and check in - I was already annoyed that they had not called me. The pocket watch, I was told, was too old - the part that was needed was no longer in existence. The Ebel could only be fixed by the manufacturer and would need to be sent out, which they could do (Ebel would take over 8 weeks to repair). When they told me it would be \$45 to send it out, I decided against it, and just picked up the watches.

This is where Ron really lost points. I took both watches to a place called Precision Watch Repair, right around the corner, which had good ratings here on Yelp. I met with Eric, who told me first that he definitely could fix the vintage one, and also that he could repair the Ebel without sending it out - all for a good price. The Ebel was repaired in a day. I went from hopeless to happy within a span of 15 minutes. In addition, Eric called me THAT DAY with the estimate, and followed up the next day.

So Ron Gordon loses in terms of creativity, and just overall slowness....which seems appropriate for a review of a watch repair shop.

Was this review ...?

Useful 225 Funny 65 Cool 79

 Comment from Ron G. of Ron Gordon Watch Repair
Business Owner

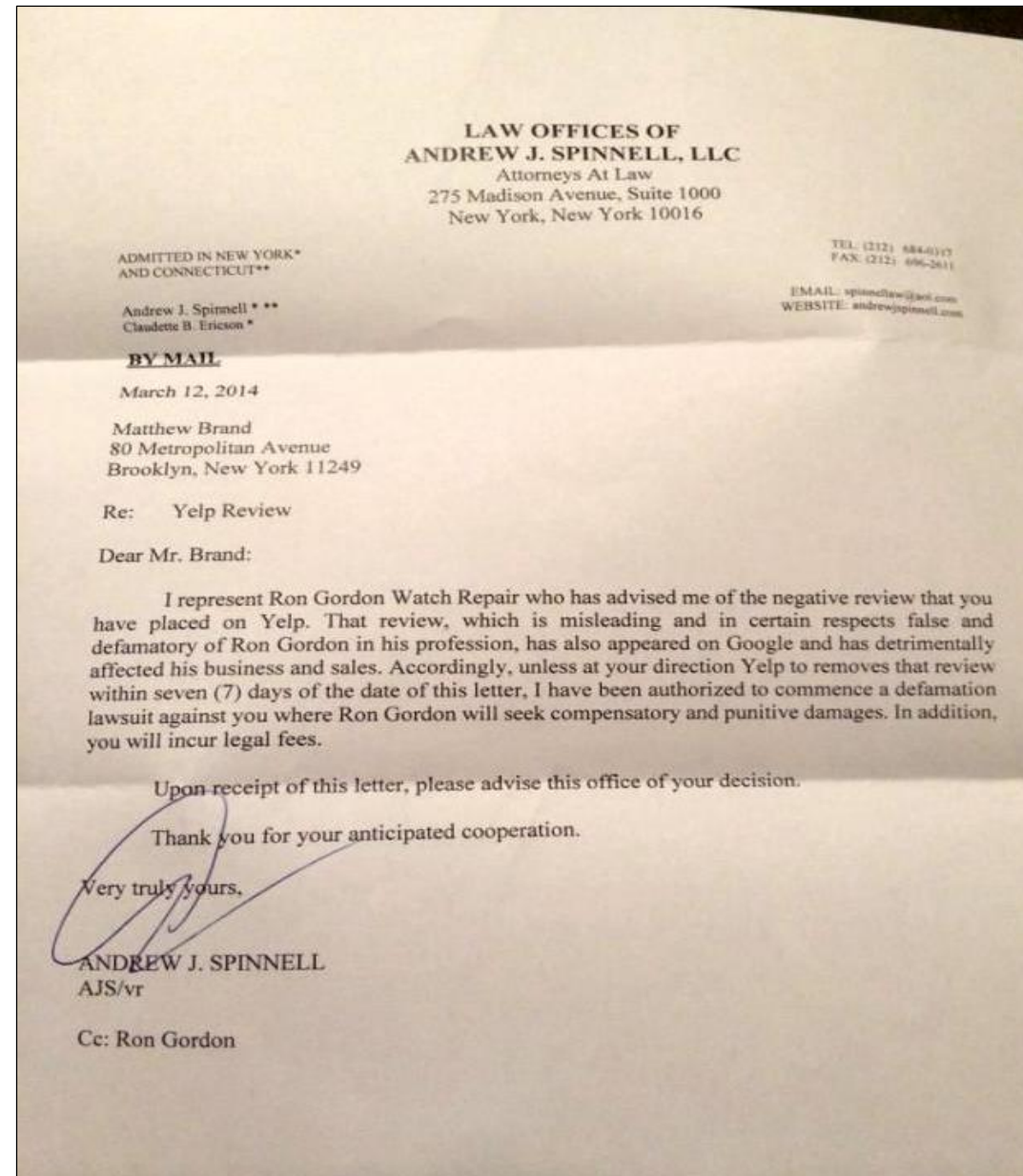
6/10/2013 · Thank you for your review, but I respectfully would like to explain some important facts for the Yelp community.

Unfortunately, there are many ways to repair a watch. I am very conservative, and use only the highest quality components and I take the necessary time. People come to me because they love their watches and they want only the best repairs, repairs that will last as long as possible.

In your case, the repair parts were not available, so I advised it was best to send to Vacheron in Switzerland. As far as the Ebel, it needed parts to be repaired correctly. Ebel's policy is not to sell parts to anyone. So I had to get in contact with the manufacturer and they take time.

My feeling is to take the time necessary to research the situation. Yes, you can often get your watches fixed more quickly elsewhere. But as someone who deals with time, I always feel that time will tell and that quality will show through - perhaps not quickly, but over time.

Thank you, again, for participating in the Yelp community. The important thing is that you solved your watch problem, and I am glad for that. [Read less](#)



Now, Google Results:

The screenshot shows a Google search for "ron gordon watch repair". The search bar is at the top left, and the results are listed below. On the right side, there is a map and a business card for Ron Gordon Watch Repair.

Google ron gordon watch repair

All Maps Shopping News Videos More Settings Tools

About 373,000 results (0.70 seconds)

Ron Gordon Watch Repair
<https://www.rongordonwatches.com/>
Expert watch repair, click or call 212-869-8999. Hamilton, Breitling, TAG Heuer - all Swiss luxury watch brands. New York, NY - Ron Gordon Watch Repair.
Watch Repair · Hours / Location · Watch Inventory · Reviews

Ron Gordon Watch Repair - Watch Repair - 280 Madison Ave ... - Yelp
<https://www.yelp.com> > Local Services > Watch Repair
★★★★★ Rating: 4 - 8 reviews - Price range: \$\$
8 reviews of Ron Gordon Watch Repair "So I'm new to the world of luxury watches. I had accidentally pulled out the crown to my Breitling while attempting to wind it. Ron fixed and cleaned up my watch for a fair price. I strongly recommend him as..."

Shitty Watch Repair Shop Threatens Lawsuit Over Two-Star Yelp ...
gawker.com/shitty-watch-repair-shop-threatens-lawsuit-over-two-sta-1548200656
Mar 20, 2014 - Is your watch broken? Do you need to get your watch fixed? Are you looking for a New York-based watch repair shop? You should probably skip Ron Gordon Watch Repair, because he's so bad at fixing watches, he's threatening frivolous, insane lawsuits against critics.

Ron Gordon Watch (@rongord123) | Twitter
<https://twitter.com/rongord123?lang=en>
The latest Tweets from Ron Gordon Watch (@rongord123). I am, Ron Gordon, the proprietor of Ron Gordon Watch Repair. Follow me on Twitter for interesting tips, tricks, and reviews on watch repair and NYC. New York, NY.

Ron Gordon Watch Repair - Home | Facebook
<https://www.facebook.com> > Places > New York, New York > Jewelry & Watches Store
Ron Gordon Watch Repair. 272 likes · 6 talking about this. Ron Gordon Watch Repair provides luxury watch repair for all major brands, specializing in...

Ron Gordon - Watchmaker - Ron Gordon Watches | LinkedIn
<https://www.linkedin.com/in/rongordonwatchrepair>
New York, New York - Watchmaker - Ron Gordon Watches
RON GORDON WATCH REPAIR NEW YORK, NY As proprietor of Ron Gordon Watch Repair, I

Map and Business Card:
The map shows the location of Ron Gordon Watch Repair at 280 Madison Ave, New York, NY. Landmarks like Grand Central Terminal and the Chrysler Building are visible. The business card includes:
Ron Gordon Watch Repair
Website Directions Save
4.4 ★★★★★ 60 Google reviews
Watch repair service in New York City, New York
Address: 280 Madison Ave #510, New York, NY 10016
Hours: Open · Closes 4PM
Phone: (212) 869-8999
Suggest an edit
Ron Gordon Watch Repair on Google
If you need your Rolex, Tag Heuer, Omega or any other timepiece restored feel free to stop in for an estimate or j...
13 hours ago
Know this place? Answer quick questions

Solutions are Fact-Dependent

Terms of Service of
Relevant Website

Ranking of Content on Search
Results or Review Website

Budget

Potential Damage

Statute of Limitations

Removal Options

Risk Tolerance

Available Legal Claims

Jurisdiction

Poster Characteristics

Circling Back to Union Street Guest House

The screenshot shows a Google search for "union street guest house". The search results include several news articles and a business listing for Union Street Guest House. The business listing shows a 1.7-star rating from 92 Google reviews, a "Permanently closed" status, and a list of negative reviews.

Google union street guest house

About 20,600,000 results (0.71 seconds)

Union Street Guest House - CLOSED - 14 Photos & 104 Reviews ...
<https://www.yelp.com> > Hotels & Travel > Guest Houses
★ ★ ★ ★ Rating: 1.5 - 104 reviews
104 reviews of Union Street Guest House - CLOSED "My wife and I decided to go on a little trip last minute (within 2 hours of the decision, we packed up and went) on New Years Day. We found Union Street Guest House using a combination of Yelp and..."

Union Street Guest House's \$500 'joke' led to 3,000 bad reviews ...
<https://www.today.com/.../union-street-guest-houses-500-joke-led-3-000-bad-1D8002...>
Aug 5, 2014 - One of the coolest small towns in the USA may now be home to one of the most trolled businesses on the Internet, and the owner is apologizing. A day after the New York Post publicized the Union Street Guest House's posted policy to charge guests \$500 for bad online reviews, the Internet piled on the ...

How One Hotel Ruined Its Reputation By Penalizing Negative Reviews
<https://www.forbes.com/.../how-one-hotel-ruined-its-reputation-by-penalizing-negativ...>
Nov 3, 2014 - The Union Street Guest House was a fairly reputable place to stay. It was near the Vanderbilt and Rockefeller estates of upstate New York, and was a self-described "boutique hotel" with tasteful décor and award-winning food. Clearly, the owners of the hotel realized how important local reviews are to the ...

Hotel that fines guests for bad reviews gets a taste of justice
<https://nypost.com/2014/.../hotel-that-fines-guests-for-bad-reviews-gets-a-taste-of-justi...>
Aug 6, 2014 - So, it was all a joke. When Hudson, NY's Union Street Guest House notified guests, "If you have booked the inn for a wedding or other type of event . . . and given us a deposit of any kind . . . there will be a \$500 fine that will be deducted from your deposit for every negative review . . . placed on any Internet ...

Union Street Guest House - Hudson Forum - TripAdvisor
<https://www.tripadvisor.com> > ... > New York (NY) > Hudson > Hudson Travel Forum
Aug 4, 2014 - Answer 1 of 12: What do you think of the Union Street Guest House policy reported on the internet reporting a \$500 "fine" for each bad review posted by you OR your events guests? So much for winning by providing a good experience...

Union Street Guest House: Is it legal to fine consumers for negative ...

Union Street Guest House
1.7 ★ ★ ★ ★ 92 Google reviews
Guest House
Address: 345 Union St, Hudson, NY 12534
Phone: (518) 828-0958

Hotel details
This chic guesthouse, in a 19th-century Greek Revival style property, is 27.3 miles from Catskill Park and 35.4 miles from downtown Albany.
... MORE

Reviews Add a photo

- "The security guard punched me in stomach as the manager took my wallet."
- "The staff was rude, the beds were filthy, and rats were everywhere."
- "Boycott this place for charging guests \$500 for bad review."

Copyright Infringement

What do I need to consider before submitting a copyright takedown?

The “Fair Use” Doctrine:

- the purpose and character of your use (is it transformative);
- the nature of the copyrighted work;
- the amount and substantiality of the portion taken; and
- the effect of the use upon the potential market.

The “Dancing Baby” Case



Trademarks Online

- Domain Names
- Registering screen names or accounts using a trademark name on forum websites or social media platforms
- Using a logo as a on platforms, e.g., Facebook, Twitter or Instagram

Best Practices for Thwarting Trademark Infringement

Where to Start:

- Terms of Service: Report infringement to website or online service provider

Other Options:

- File a claim under the Anti-Cybersquatting Piracy Act (ACPA)
- Initiate the ICANN procedure (Uniform Domain-Name Dispute-Resolution Policy (UDRP))

Problem: Holdover Franchisees

- Best Practices for Thwarting Holdover Use
 - Expand description of IP in franchise agreement (domain names, apps, metatags, ad placements)
 - Require franchisees assign copyrights to photos posted online that contain franchisor's marks
 - Trademark Certificates
 - Reminder Letters, Investigation, Cease and Desist Letters

Problem: Holdover Franchisees


- Options when best practices do not work
 - File a DMCA takedown notice
 - File an action under the: (i) Uniform Domain-Name Dispute Resolution Policy or (ii) Uniform Rapid Suspension Program
 - Utilize the email and social media reporting takedown tools
 - Seek injunctive relief under the Lanham Act
 - File an action for false and deceptive practices
 - File an action under the Trademark Dilution Revision Act

Playing Offense: Promoting the Franchise Brand Online...*Risk Exposures:*

- Unfair and deceptive advertising
- Clear and conspicuous disclosures on small screens
- Endorser disclosures
- Employee brand ambassadors
- Customers as promoters
- Native advertising

Playing Offense

*5 Easy Tips for
Promoting a Franchise
Brand Online in
Compliance with
Federal and State Laws
and Regulations*



Join the *Pinterest* elite today and grow faster together.

Ad: PinLeague is so confident you will love our service that we're willing to give you 2 weeks FREE! Some limitations apply. Read full disclosure here: pinleague.com/pinleague-faq

Pinned onto Pinterest Marketing Tips and Insights - PinLeague Blog from pinleague.com

(1) Do Not Contract Away Right to Review (including Bad Reviews!)

- It is now illegal
 - *Consumer Review Fairness Act*
- It results in bad publicity
- [example]

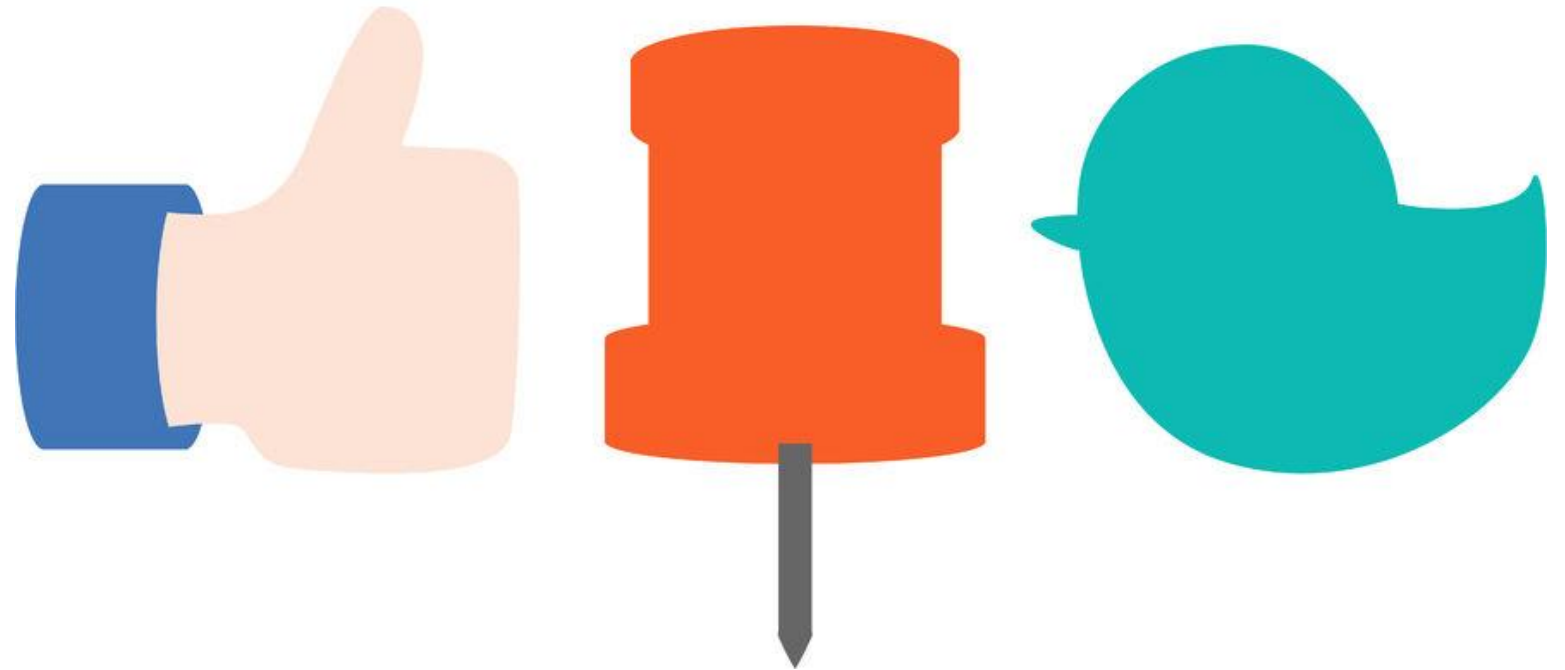


(2) Always Disclose Relationship with Social Media Influencers



(3) Avoid Employee Review Schemes

LIKE ME • PIN ME • FOLLOW ME



(4) Clearly Identify Contests, Sweepstakes and Online Promotions

“Entry into a contest to receive a significant prize in exchange for endorsing a product through social media constitutes a material connection that would not reasonably be expected by viewers of the endorsement.”



(5) Consider a Consumer's Impression Before Engaging in Native Advertising

TRENDING ON RELATED BLOGS
How Dolby Vision Works, and How It Could Revolutionize TVs Forever
1.9k people reading on Gtzmmodo



RECOMMENDED BY STUDIOATGAWKER

Summer Tech That'll Convince You to Peel Yourself Off the Couch

Who's That Bicycle Gang Taking Pint Glass Selfies?

Everyone Is Terrible And You Are Probably Unlovable So Go With It

How Innovations in Water-Based Printing Make Clothes Softer

For Privileged Married People, Sometimes It Doesn't Get Better

Pride Week 2014: Let's Try and Keep It Together This Year, Okay?

Now That *Louie* Is Over, Discuss Louis C.K.'s Comedic Evolution

Win a Kindle Paperwhite and Read With Ease This Summer

When You Forget Your Phone At Home, This Gadget Will Pick Up the Slack

This Is the Summer You Nap Outdoors With No Shame

5 Ways to Get Summery, Stat

Could You Learn To Love An Alien?

Now that *Louie* is over for the season, go back to Louis C.K.'s stan...

Is The Religious Extremism of *Jesus Camp* Alive and Well in 2014?



How to Transform into a Total Nerd-Babe

SPONSORED ONE NERD TO RULE THEM ALL 1/17/13 11:59am 73,934



Though the inimitable Dorothy Parker once claimed, "Men seldom make passes at girls who wear glasses," times, they have changed. These days there is nary a fella out there who would balk at putting the moves on some bespectacled nerd-babe. In fact, it's pretty much safe to safe to say, that being "adorkable" is now considered a compliment.

That's why, inspired by tonight's premiere of (and is, of course, hosted by *Revenge of the Nerds* stars Robert Carradine and Curtis Armstrong. Hi, Booger!), we've curated a list of fine sartorial choices for ladies with a glimmer of geek in their eye.

The image shows a screenshot of a native advertisement on The Atlantic website. The ad is titled "FIND OUT FOR YOURSELF" and "www.scientology.org". It features a photo of David Miscavige at a podium with Scientology symbols. The text below the photo reads: "2012 was a milestone year for Scientology, with the religion expanding to more than 10,000 Churches, Missions and affiliated groups, spanning 167 nations--figures that represent a growth rate 20 times that of a decade ago." The ad is framed by a red border. The background shows the Atlantic website interface with various article teasers and navigation elements.

Top 5 Practical Tips for Promoting a Franchise Brand Online

1. Constantly monitor online activity
2. Prepare a multi-level reactive plan in advance of potential online issues
3. Maintain and consistently update social media policy
4. Provide guidance to franchisees through the Operations Manual and training seminars
5. Carefully draft trademark provisions in the Franchise Agreement outlining ownership, permitted use and reporting misuse