

HOSPITALITY LAW CONFERENCE

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HOUSTON, TEXAS

RECENT FRANCHISE LAW CASES - 2006

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HOSPITALITY LAW CONFERENCE-RECENT FRANCHISE LAW CASES (2006)

I. What is a Franchise?/Franchise Sales

Subject	Case Law	Summary
Violation of Connecticut Franchise Act, Connecticut Unfair Trade Practices Act, and implied covenant of good faith and fair dealing	<i>Charts v. Nationwide Mut. Ins.</i> , 397 F. Supp.2d 357 (D. Conn. 2005)	<p>Sufficient evidence of franchise relationship between insurance company and agent.</p> <p>Franchise relationship exists where: (1) oral or written agreement or arrangement in which franchisee is granted the right to engage in the business of offering, selling, or distributing services under a marketing plan or system prescribed in substantial part by a franchisor; and (2) operation of a franchisee's business pursuant to this marketing plan or system must be substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate.</p>

Subject	Case Law	Summary
Franchise Sales	<i>Kristine A. Kieland, Scott J. Kieland, Stanford P. Evavold, Jr. Kathleen D. Evavold, and Katstan Inc. v. Rocky Mountain Chocolate Factory, Inc.</i> , 2006 U.S. Dist. LEXIS 76057 (D. Minn. October 18, 2006)	Plaintiff franchisees asserted that the franchisor violated the Minnesota Franchise Act ("MFA") by failing to disclose material information in the UFOC, and making material misrepresentations in connection with franchise sales and

Subject	Case Law	Summary
		<p>discriminating against them.</p> <p>Court found that the franchisor's waiver to a small number of franchisees' of royalty fees was not a material fact that the franchisor was required to disclose. In addition, the UFOC authorized the franchisor to require the franchisees to issue a different point of sale system, as franchisees were required to upgrade or update the POS systems; the UFOC properly represented that the POS system would perform certain functions; and no failure to disclose material fact occurred by the franchisor's not attaching a copy of the maintenance agreement, as the UFOC did disclose annual maintenance fee.</p>
Franchise Sales	<p><i>Edible Arrangements, Int'l, Inc. v. James Notaris, Amanda Albert, aka Amanda Notaris; Fresh Fruit Bouquet Company, Inc. and Fresh Fruit Franchising LLC</i>, Bus. Franchise Guide CCH 13,487 (C.D. Cal. October 19, 2006)</p>	<p>Court found that competitor franchisor failed to disclose litigation in UFOC, violated the California Unfair Competition Law by misrepresenting that an independent accountant audited the financial statements; and improperly offered to sell franchises prior to completing the registration process in California.</p> <p>Consequently, court granted to plaintiff franchisor a preliminary injunction to prevent the plaintiff from suffering irreparable harm.</p>

II. Wrongful Termination

Subject	Case Law	Summary
Failure to provide notice and opportunity to cure	<i>Dunkin' Donuts, Inc. v. Tejany & Tejany, Inc.</i> , 2006 WL 163019 (N.D. Ill. Jan. 18, 2006)	Franchisor did not violate Illinois Franchise Disclosure Act which requires providing franchisee with notice and opportunity to cure prior to termination or suing to enforce defaults and terminations, because franchisor successfully demonstrated that franchisee's actions constituted grounds for termination, without opportunity to cure, under Franchise Agreement. Franchisor also provided proper notice.
Termination with Cause	<i>Manpower Inc. v. Mason</i> , 405 F. Supp. 2d 959 (E.D. Wis. 2005)	Franchisor brought suit against franchisee for breach of franchise agreement due to franchisee's violation of territorial restriction in franchise agreement, franchisee's violation of duties under the agreement, and franchisee's misrepresentation and misuse of franchisor's name without consent. The court granted franchisor's request for preliminary injunction against the franchisee's continued use of the franchisor's trade name, trademarks, and proprietary information for franchise agreements which franchisee breached, but enjoined franchisor from rescinding the franchise agreements.
Good Cause Exists	<i>Brown Dog, Inc. v. Quizno's Franchise Co.</i> , 2005 WL 3555425 (W.D. Wis. Dec.	Franchisor terminated marketing agreement with area director due to area

Subject	Case Law	Summary
	27, 2005)	<p>director's failure to meet development quotas under agreement. Franchisor provided numerous notices with opportunity to cure default.</p> <p>Court found that area director did not substantially comply with the agreement and the manner in which the franchisor terminated the contract did not discriminate against the area director.</p> <p>Burden of good cause is on the grantor. Franchisor met this burden.</p>
Good Cause Exists	<i>Shaffer v. Domino's Pizza, Inc.</i> , 2006 WL 355022 (E.D.N.Y. Feb. 15, 2006)	<p>Franchisor moved for summary judgment declaring that terminations of three franchise agreements were proper. Court held good cause existed due to franchisees' operational problems and failure to maintain proper insurance coverage.</p> <p>Court also granted franchisor recovery of attorney's fees and costs.</p>

III. Encroachment

Subject	Case Law	Summary
Motor Vehicle Sale and Distribution Act	<i>Bloomington Chrysler Jeep Eagle, Inc. v. DaimlerChrysler Motor Co., L.L.C.</i> , 2005 WL 3577133 (D. Minn. Dec. 29, 2005)	Distributor objected to relocation of another distributor of same vehicles within close physical proximity to area granted to

Subject	Case Law	Summary
		<p>distributor.</p> <p>Motor Vehicle Sale and Distribution Act permits relocation of existing dealer within area of responsibility that is within 5 miles of its existing location and is not within a radius of 5 miles of an existing dealer of the same line make.</p> <p>Court found no violation of Motor Vehicle Sale and Distribution Act due, as no notice or prior approval needed due to the relocation falling under the 5 mile exception.</p>
	<p><i>Pro Golf of Fla., Inc. v. Pro Golf of Am., Inc.</i>, 2006 WL 508631 (E.D. Mich. Mar. 1, 2006)</p>	<p>Court did not grant franchisee right to terminate Franchise Agreement because question of fact whether internet sales by franchisor were made within the franchisee's defined territory and whether the franchisor violated the franchisee's rights to be the exclusive distributor of the franchisor's products within the franchisee's territories.</p> <p>Franchise Agreement provided franchisor with unrestricted right to engage in direct and indirect sales of its equipment through its distributors or otherwise as long as the sale occurred outside of the franchisee's territories. In addition, the Franchise Agreement reserved the franchisor's right to engage in merchandise sales over the</p>

Subject	Case Law	Summary
		internet and through mail order means, as long as the sales did not occur within the franchisee's defined territories.

IV. Transfers

Subject	Case Law	Summary
Withholding Consent to Transfer	<i>Dunkin' Donuts Inc. v. Sharif, Inc.</i> , 2006 WL 1149474 (10th Cir. 2006)	Court found that franchisor did not violate franchise agreement by withholding consent to transfer, as transferee had defaulted under other existing franchise agreement with franchisor.

V. Trademarks

Subject	Case Law	Summary
Unauthorized Uses Following Termination	<i>Days Inn Worldwide, Inc. v. Mehta</i> , 2005 WL 2237629 (S.D. Ga. Sept. 7, 2005)	<p>Franchisee defaulted on payment obligations and failed to cure defaults. Franchisor provided notices of default. License Agreement subsequently terminated. Franchisee continued to use franchisor's marks after termination.</p> <p>Court found trademark infringement occurred under Section 32(a) of the Lanham Act where a person "uses in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark" which "is likely to cause confusion,</p>

Subject	Case Law	Summary
		<p>or to cause mistake, or to deceive.” Court also found false designation of origin under Section 43(a) where a person “uses in commerce any word, term, name, symbol, or device or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact” which “is likely to cause confusion, or to cause mistake, or to deceive.”</p> <p>Court denied injunction under Section 543(c) of Lanham Act because no evidence that franchisor’s marks had been diluted.</p>
Unauthorized Uses Following Termination	<p><i>Papa John’s Int’l, Inc. v. Spectacular Pizza, Inc.</i>, 2005 WL 3132337 (W.D. Ky. Nov. 21, 2005)</p>	<p>Court granted franchisor preliminary injunction against former franchisee’s use of trademarks. A preliminary injunction under the Lanham Act will be granted if franchisor can show proper termination of contract which authorized franchisee’s use of trademarks.</p> <p>Court found that franchisor would suffer irreparable injury if injunction was not issued, harm to franchisee did not outweigh harm to franchisor, and injunction would serve best interests or public.</p> <p>Franchisor had right to terminate franchise agreement due to franchisee’s failure to</p>

Subject	Case Law	Summary
Unauthorized Uses Following Termination	<i>Papa John's Int'l, Inc. v. Rezko</i> , 2006 WL 1843121 (N.D. Ill. June 29, 2006)	<p>pay advertising fees to Cooperative.</p> <p>Former franchisee continued to use franchisor's trademarks after termination of franchise agreement.</p> <p>To establish a case of unfair competition based on trademark infringement, a plaintiff must demonstrate validity of the mark in question and infringement. Court found that franchisor sufficiently stated that the franchisee's use of the franchisor's marks may confuse the public or dilute the strength of the mark. Court also found possible tarnishment claim due to franchisee's use of similar mark.</p>
Other Unauthorized Uses	<i>Rosati's Franchise Sys. v. Rosati</i> , 2006 WL 163145 (N.D. Ill. Jan. 17, 2006)	<p>Minority shareholders purchased and registered domain name from third party owners and excluded from website majority shareholders' restaurant locations. Majority shareholders claimed dilution of marks due to unauthorized use of web site.</p> <p>Court found that license agreements granted minority shareholders broad rights in marks and did not prohibit them from using the marks in domain names or from registering domain names. Consequently, court dismissed trademark infringement claims.</p>
Other Unauthorized Uses	<i>Starbucks Corp. v. Lundberg</i> , 2005 WL 3183858 (D. Or. Nov. 29, 2005)	Owner of trademarks brought suit against individual using similar mark.

Subject	Case Law	Summary
		<p>Dilution is demonstrated where a variant mark creates a mental association between the protected mark and the alleged dilutor. Court found individual's use of similar mark likely to dilute distinctive quality of owner of trademark's' mark.</p> <p>Section 32 of Lanham Act prohibits individual from using any "reproduction, counterfeit, copy, or colorable imitation of a registered mark" in a manner that is "likely to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1114(1). Owner must demonstrate it owns a protectable mark and the other person's use of the similar name creates likelihood of consumer confusion.</p> <p>Federal registration is prima facie evidence of validity of respective marks, ownership of mark, and owner's exclusive right to use the marks.</p> <p>Infringement only requires that an appreciable number of consumers are likely to be confused. Factors examined for infringement include: (1) similarity of marks, (2) relatedness of 2 companies' services, (3) marketing channels used; (4) strength of owner's marks; (5) other party's intent in selecting its marks; (6) evidence of actual confusion; (7)</p>

Subject	Case Law	Summary
		<p>likelihood of expansion into other markets; and (8) degree of care likely to be exercised by purchasers. Court found likelihood of confusion between two marks at issue.</p> <p>Evidence of confusion not actually necessary. Licensor met burden of proving violation of Section 43(a) of Lanham Act.</p>
Validity of Canadian Trademark	<i>Borden Ladner Gervais LLP v. WestCoast Hotels Inc.</i> , 2006 WL 28563 (T.M. Bd. Jan. 4, 2006)	Registration of trademark maintenance in accordance with Section 45 of the Trade-Marks Act requires a registered owner of a trademark to indicate whether the mark has been used in Canada in association with each of the wares and services listed in registration at any time during the 3 years preceding the date of the notice, and, if not, the date on which it was last used and the reason why not used. Court upheld registered mark, as broadly interpreted “hotel services” and found such services were performed in Canada with respect to the mark during the relevant 3 year period by the registrant.

VI. Contract Issues

Subject	Case Law	Summary
Franchisee Cannot Withhold Payments	<i>Papa John’s Int’l, Inc. v. Specktaular Pizza, Inc.</i> , 2005 WL 3132337 (W.D. Ky.	Papa John’s terminated two franchise agreements with a franchisee and sought a

Subject	Case Law	Summary
	Nov. 21, 2005)	<p>preliminary injunction to prevent the continued unauthorized use of its trade name and marks. The franchisee withheld payment of Cooperative advertising fees on the ground that Papa John's had breached the franchise agreements by improperly establishing the advertising Cooperative.</p> <p>The court granted the injunction and held that "the infringement of a trademark is not a proper self-help remedy for a breach of contract." The court held that the franchisee cannot stop performance (by withholding payments) while continuing to take advantage of the contract's benefits.</p>
Franchisee Cannot Withhold Payments	<i>Travelodge Hotels, Inc. v. Honeysuckle Enters., Inc.</i> , 2005 WL 3164205 (D.N.J. Nov. 10, 2005)	<p>Travelodge sued one of its licensees for the licensee's failure to pay amounts due.</p> <p>The court held that the licensee breached the agreement by not paying the fees due under the agreement. The licensee was not justified in withholding payment based on alleged oral representations made by Travelodge because the signed agreement did not include such promises and expressly contradicted any such representations. Although the licensee claimed to have not read the agreement, a person who signs an agreement is presumed to have read it.</p>

Subject	Case Law	Summary
Unconscionability	<i>Days Inn Worldwide, Inc. v. Mehta</i> , 2005 WL 2237629 (S.D. Ga. Sept. 7, 2005)	<p>Days Inn sued a licensee for breach of the license agreement for its failure to pay royalties and other amounts due. The licensee argued that the license agreement was unconscionable due to the disparity in bargaining power between the parties and the complexity of the agreement's terms.</p> <p>Applying New Jersey law, the court held that the agreement was not unconscionable and that the licensee was liable for the unpaid fees. Mere disparity in bargaining power does not constitute unconscionability absent oppression or unfair surprise. The court rejected the licensee's contention that he was at a significant disadvantage and was not a sophisticated businessman. The licensee conceded that he had not even read the license agreement.</p>
Must Show Breach of Express Terms	<i>Pepsi-Cola Bottling Co. of Pittsburg, Inc. v. PepsiCo, Inc.</i> , 431 F.3d 1241 (10 th Cir. 2005)	<p>The court rejected a Pepsi bottler's claim that Pepsi was required to provide it with Pepsi's full range of products based on the parties' "course of conduct" during their 39-year relationship.</p> <p>Applying New York law, the court refused to modify the original bottling contract based on the parties' course of performance. The court also relied on the contract's merger and integration clauses and requirement that all modifications be</p>

Subject	Case Law	Summary
Enforcement of the Franchise Agreement by Franchisor	<i>Choice Hotels Int'l, Inc. v. Sonora Sun Mgmt. Ltd. P'ship</i> , 162 Fed. Appx. 247 (4 th Cir. 2006)	<p>contained in a writing signed by both parties.</p> <p>Choice Hotels sued one of its franchisee for the balance of a promissory note that was payable upon termination of the franchise agreement. The franchisee had sold its franchise to a third party buyer, which executed a separate franchise agreement with substantially different terms than the agreement between the franchisee and Choice Hotels.</p> <p>The 4th Circuit entered judgment in favor of Choice Hotels since the franchisee's agreement was in effect terminated when the franchise was sold. The court rejected the franchisee's assertion the franchise agreement was in essence being assigned to the new franchisee (and therefore was not terminated) because Choice Hotels had separately negotiated a new agreement with the buyer and there was no evidence that the rights and obligations under the original franchise agreement were assigned to the buyer.</p>
Termination Based on Illegal Conduct	<i>Dunkin' Donuts, Inc. v. Tejany & Tejany, Inc.</i> , 2006 WL 163019 (N.D. Ill. Jan. 18, 2006)	Dunkin' Donuts terminated several franchises for failing to pay their employees for overtime work and for failing to pay all required federal and state payroll taxes. The franchise agreement prohibited any "illegal or unauthorized use" of the franchise.

Subject	Case Law	Summary
		Based on this language, the court held that Dunkin' had sufficiently pled that the franchises were being used for illegal or unauthorized purposes because of the alleged wage and hour violations.
Failure to Mitigate Damages	<i>EMS, Inc. v. 7-Eleven Inc.</i> , 2006 WL 1373170 (7th Cir. May 9, 2006)	7-Eleven received no damages despite winning on its claim that its franchisee breached the franchise agreement. The court reduced 7-Eleven's damages amount by the amount of damages caused by 7-Eleven to the franchisee by failing to repair the stores' freezers and failing to provide consulting support. Even though some of 7-Eleven's breaches occurred after the franchisee failed to timely cure its defaults, the court held that 7-Eleven had a duty to mitigate damages.

VII. Liquidated Damages

Subject	Case Law	Summary
Stipulated Damages Presumptively Valid	<i>Travelodge Hotels, Inc. v. Govan</i> , 155 Fed. Appx. 235 (6 th Cir. 2005)	The Sixth Circuit upheld the liquidated damages provision in the parties' franchise lease agreement. The provision provided that, in the event of default, the franchisee would pay the greater of the average monthly royalties and applicable taxes, or the product of \$2,000 multiplied by the number of guest rooms in the hotel.

Subject	Case Law	Summary
		<p>The court held that, under New Jersey law, stipulated damages are considered presumptively valid and the contesting party bears the burden of demonstrating unreasonableness. Here, the franchisee failed to meet that burden.</p>
Recovery Not Limited to Liquidated Damages	<p><i>Villager Franchise Sys. V. Dhami, Dhami & Virk</i>, 2006 WL 224425 (E.D. Cal. Jan. 26, 2006)</p>	<p>The court awarded the franchisor \$100,000 in liquidated damages based on the language in the franchise agreement. The amount was based on the time it typically takes the franchisor to replace a terminated hotel franchisee.</p> <p>The court awarded separate damages for the franchisee’s Lanham Act violations, holding that the liquidated damages clause only applied to the franchisor’s breach of the contract.</p>

VIII. Implied Covenant of Good Faith and Fair Dealing

Subject	Case Law	Summary
Enforcement of the Implied Covenant	<p><i>Pepsi-Cola Bottling Co. of Pittsburg, Inc. v. PepsiCo, Inc.</i>, 431 F.3d 1241 (10th Cir. 2005)</p>	<p>A Pepsi bottler brought multiple claims for violation of the implied covenant of good faith and fair dealing based on (i) Pepsi’s failure to enter into contracts with the bottler for the distribution of new products, (ii) Pepsi’s failure to enforce its anti-transshipment policy with respect to</p>

Subject	Case Law	Summary
		<p>products being shipped into the bottler's exclusive territory, and (iii) Pepsi's refusal to provide the bottler with advertising funds and other financial support.</p> <p>The court held that the implied covenant of good faith and fair dealing imposed on Pepsi the duty to take reasonable steps to prevent competing bottlers from encroaching on the bottler's exclusive territory. Based on the evidence presented on summary judgment, the court held that the bottler had demonstrated a question of material fact. Regarding the other implied covenant claims, the court held that the implied covenant did not apply since it would impose additional obligations on Pepsi beyond what a reasonable person would expect.</p>

IX. Vicarious Liability

Subject	Case Law	Summary
Negligent Hiring by Franchisee	<i>D.L.S. v. Maybin</i> , 121 P.3d 1210 (Wash. Ct. App. 2005)	Maybin, an assistant general manager at a franchisee-owned McDonald's, engaged in sex with and provided drugs to a 15-year-old employee. Maybin had an extensive criminal record and, before being hired, had disclosed that he had "legal problems" and had committed a bank robbery.

Subject	Case Law	Summary
		<p>Maybin also was forced to resign in order to serve a prison sentence, but was rehired and promoted after he was released.</p> <p>The employee sued McDonald's for negligent hiring, supervision and retention of Maybin, gender discrimination, outrage, and negligent infliction of emotional distress. McDonald's moved for summary judgment on the ground that it was not liable for the acts of its franchisees. The court agreed, holding that no apparent agency relationship had been established. The court relied heavily on the plaintiff's own admission that she knew she worked for a franchisee and not for McDonald's Corporation.</p>
No Day-to-Day Control of Operations	<i>Allen v. Greenville Hotel Partners, Inc.</i> , 409 F. Supp. 2d 672 (D.S.C. 2006)	Representatives of guests killed in a hotel fire sued Choice Hotels, the franchisor, for negligence. On the issue of whether actual or apparent agency existed, the court held that Choice Hotels could not be liable to the plaintiffs because it did not control the hotel's day-to-day operations or the hotel's security or life safety systems. There was also no evidence that any of the guests relied on any representations of agency.
No Day-to-Day Control of Operations	<i>Corrales v. Days Inn Worldwide, Inc.</i> , Bus. Franchise Guide (CCH) ¶ 13,187 (D. Colo. Dec. 5, 2006)	A hotel guest injured in the hotel's shower sued the franchisor, Days Inn Worldwide, for negligence. The court held that no agency relationship existed because the license agreement merely set forth

Subject	Case Law	Summary
		<p>standards to safeguard the uniformity, value, and integrity of the franchise system. There was no evidence that the franchisor controlled the day-to-day operations of the hotel. The court also relied on the language in the license agreement that stated the franchisee was an independent contractor and not an agent of the franchisor.</p>
<p>Racial Discrimination by Franchisee Employees</p>	<p><i>Thomas v. Freeway Foods, Inc.</i>, 406 F. Supp. 2d 610 (M.D.N.C. 2005)</p>	<p>Customers of the Waffle House claimed racial discrimination by employees at a franchisee-owned restaurant. The court held that there was no actual agency relationship because the franchisor had no control over the hiring, firing, training or supervision of the franchisee's employees. The court also relied on the language in the agreement disclaiming any agency relationship.</p> <p>However, the court declined to grant summary judgment to the franchisor on the issue of apparent agency. Although signs were posted in the restaurant stating that the restaurant was owned and operated by a franchisee, the court found sufficient evidence to support sending the issue of apparent agency to the jury.</p>

X. Tortious Interference With Contractual Relations

Subject	Case Law	Summary
No Agency Relationship	<i>Wilmington Trust Co. v. Burger King Corp.</i> , 809 N.Y.S.2d 484 (N.Y. Sup. Ct. 2005)	<p>A lender to Burger King franchisees sued Burger King Corporation for tortious interference with contract. Burger King set up a program with Trinity Capital LLC to help financially troubled franchisees obtain debt relief from lenders, including the plaintiff. Trinity recommended that certain franchisees withhold payments to the plaintiff during workout negotiations, and the franchisees ultimately filed for bankruptcy protection.</p> <p>The court held that Burger King was not liable for tortious interference because there was no agent-principal relationship between Trinity and Burger King and Trinity was privileged to interfere with the contracts between the franchisees and other creditors due to its economic interest.</p>

XI. Antitrust

Subject	Case Law	Summary
Unlawful Tying – Market Power	<i>Julian v. George Weston Bakeries Distrib., Inc.</i> , 2005 WL 1926643 (D. Me. Aug. 11, 2005)	A manufacturer of baked goods required its distributors to finance their routes through the manufacturer. The distributors alleged that the manufacturer unlawfully

Subject	Case Law	Summary
		<p> tied the acquisition of the routes to the financing of those routes.</p> <p> The court held that there was not unlawful tying arrangement because the distributors failed to allege that the manufacturer had sufficient economic power in the market for the tying product (acquisition of distribution routes). The court also found it significant that the manufacturer had not actually terminated any distributorship for seeking alternative financing, and the mere threat of doing so is insufficient to state a claim under the Sherman Act.</p>
No Distinct Products	<i>Subsolutions, Inc. v. Doctor's Associates, Inc.</i> , 436 F. Supp. 2d 348 (D. Conn. 2006)	<p> The franchisor of Subway restaurants required its franchisees to purchase point-of-sale (POS) cash registers from an exclusive vendor owned by the franchisor. Subsolutions, a vendor of POS systems previously approved by the franchisor, sued the franchisor claiming it created an illegal tying arrangement between the Subway franchise (the tying product) and the POS system (the tied product).</p> <p> The court held that the tying product and tied product were not two distinct products because there was not a sufficient market for the POS system independent from the Subway franchises. It was not sufficient to show that vendors other than the franchisor's subsidiary desired to sell POS</p>

Subject	Case Law	Summary
		systems to Subway franchisees. The court also held that Subway franchisees were not “locked in” because it was reasonably foreseeable that they would be required to purchase a POS system exclusively from the franchisor or its subsidiary.
Minimum Pricing	<i>PSKS, Inc. v. Leegin Creative Leather Products, Inc.</i> , 2006 WL 690946 (5 th Cir. Mar. 20, 2006), <i>cert. granted</i> , 2006 WL 2851385 (Dec. 7, 2006)	A retailer brought Sherman Act claims against a manufacturer of women’s accessories based on the manufacturer’s decision to suspend all shipment to the retailer after it failed to follow the manufacturer’s “suggested retail prices.” The court held that the manufacturer’s conduct constituted per se vertical price fixing.

XII. Civil Rights/Employment Law

Subject	Case Law	Summary
42 U.S.C. §§ 1981, 1982	<i>Domino’s Pizza, Inc. v. McDonald</i> , 126 S. Ct. 1246 (2006)	Plaintiff corporation contracted with Domino’s to construct four restaurants. Domino’s allegedly breached the contracts, and the sole shareholder of the plaintiff corporation sued Domino’s individually alleging that Domino’s refused to comply with its contractual obligations on account of race. The district court held that the shareholder

Subject	Case Law	Summary
		lacked standing to individually assert a claim under 42 U.S.C. 1981 because he was not the contracting party and, therefore, he had no contractual rights that could be impaired by Domino's conduct.
Title VII	<i>DeLuca v. Allied Domecq Quick Serv. Rests.</i> , 2006 WL 1662611 (E.D.N.Y. June 13, 2006)	<p>A former Dunkin' Donuts executive sued Dunkin' for age discrimination and retaliation under Title VII. The court held that the employee failed to present any evidence of age discrimination other than he was 45 years of age, and summary judgment was granted in favor of Dunkin'.</p> <p>However, the court denied summary judgment on the employee's claim that Dunkin' retaliated against him for complaining about being terminated by denying him the opportunity to purchase a franchise. Dunkin' denied the former employee's franchise application shortly after he filed a complaint with the Equal Employment Opportunity Commission. The court held that a decision to deny a franchise application could constitute an adverse employment action to support a retaliation claim. While recognizing that a franchise relationship does not constitute an employment relationship, the conduct was actionable since it stemmed from the employee's previous employment.</p>

XIII. Arbitration

Subject	Case Law	Summary
Void Contract	<i>Buckeye Check Cashing, Inc. v. Cardegna</i> , 126 S. Ct. 1204 (2006)	Reversing the Florida Supreme Court, the U.S. Supreme Court held that the arbitrator, and not the court, should decide whether an entire contract is void, including the arbitration clause, unless the party seeking to avoid arbitration can establish that the arbitration clause itself is illegal.
Arbitration Clause Unconscionable	<i>Nagrampa v. MailCoups, Inc.</i> , 2006 WL 3478345 (9 th Cir. Dec. 4, 2006)	<p>In a lawsuit filed by a franchisee against its franchisor, the franchisor moved to compel arbitration while the franchisee argued that the arbitration clause was unenforceable on grounds of unconscionability.</p> <p>The Ninth Circuit held that, under California law, the validity of an arbitration clause is for the court, and not the arbitrator, to resolve. The court distinguished the <i>Buckeye</i> case by pointing out that, here, the franchisee alleged that the arbitration clause itself was unconscionable, not the contract generally. Therefore, it is a decision for the court, not the arbitrator.</p>
Class-Arbitration Waiver	<i>Muhammad v. County Bank of Rehoboth Beach, Del.</i> , 2006 WL 2273448 (N.J. Aug. 9, 2006)	The Supreme Court of New Jersey held that the presence of a class-arbitration waiver in a consumer arbitration agreement rendered the agreement unconscionable. As a matter of state law,

Subject	Case Law	Summary
		it is unconscionable to deprive a party to a contract the mechanism of a class-wide action, whether in arbitration or in litigation.

XIV. Regulatory Developments

Subject	Case Law	Summary
United States	Notice of Proposed Rulemaking for “The Business Opportunity Rule”	<p>Requires all sellers of “business opportunity” to make certain disclosures to prospective purchasers.</p> <p>“Business opportunity” is defined as: (1) seller solicits a prospective purchaser to enter into a new business; (2) prospective purchaser makes a payment or provides other consideration to the seller, directly or indirectly through a third party; and (3) the seller, expressly or by implication, orally or in writing, either (i) makes an earnings claim or (ii) provides business assistance.</p> <p>“Business Opportunity” seller would be required to furnish prospective purchaser with certain information at least 7 days before purchaser signs any contract or pays any consideration: (1) whether seller makes an earnings claim; (2) a list of any criminal or civil actions against the seller that involve fraud, misrepresentations, securities, or deceptive trade practices</p>

Subject	Case Law	Summary
		<p>within the past 10 years; (3) whether seller has cancellation or refund policies and terms of such policies; (4) total number of purchasers of same type of business opportunity in past 2 years and number of those purchasers seeking a refund or to cancel in that time period; and (5) list of references.</p>
International	Sweden	<p>The Swedish Parliament passed the "Law on the Duty of a Franchisor to Provide Information" (Law No. 2006:484) in May 2006. It came into force on October 1, 2006, and governs agreements executed on or after that date. The law is strictly a disclosure law and does not govern the franchise relationship. It requires a franchisor to provide specific information to a prospective franchisee in "ample time before a franchise agreement is entered into." The law provides for a right to seek injunctive relief against a franchisor that fails to comply.</p>
International	Vietnam	<p>Vietnam adopted a new Commercial Law in June 2005 that contains eight articles on franchising. The law took effect January 1, 2006 and an implementing Decree took effect in April 2006, but an implementing circular has not yet been issued from the Ministry of Trade. The new law requires the franchisor to deliver the disclosure document to prospective franchisees. The agreement must be written in Vietnamese.</p>

Subject	Case Law	Summary
		<p>The executed trademark license must be registered with the National Office of Industrial Property.</p> <p>Under the new law, a franchisee has the right to carry out its business under the franchisor's trademark and related intellectual property. A franchisor is entitled to royalty payments from the franchisee to the extent provided for in the franchise agreement. The new law also requires the franchisor to be the owner of a lawfully organized business that is in operation for at least two years to be entitled to grant the franchise. Finally, the new law requires compliance with the terms and conditions of the agreement for a minimum period of five years, after which the royalties and renewal period will again be negotiable between the parties.</p> <p>The franchise agreement must be in writing and registered with the Provincial Department of Trade in the province where the franchisee is located. Regardless of whether any of the parties are Vietnamese persons or entities, the agreement must be registered with the Ministry of Trade.</p>
International	Belgium	In October 2005, the Belgian Parliament adopted and implemented a new franchise law requiring franchisors to make formal pre-contractual disclosure to their potential

Subject	Case Law	Summary
		<p>franchisees at least 30 days before entering into a franchise agreement or any payment is made. Failure to do so will render the franchise agreement unenforceable within 2 years of the date that the agreement came into force.</p> <p>The disclosure document consists of two parts. First, the disclosure document must contain a summary of the main terms of the franchise agreement, and second must contain information “relating to the correct evaluation of the commercial partnership agreement.” The summary of the main terms of the franchise agreement includes provisions relating to the method of calculating royalties, the consequences of the franchisee’s failure to comply with its obligations, renewal conditions, the franchisor’s reservation of rights, non-competition restrictions, and the franchisor’s right of first refusal (if any). “Information relating to the correct evaluation of the commercial partnership agreement” includes: (1) the name or denomination of the grantor of the rights, including address and contact telephone numbers; (2) name of authorized representative, if relevant; (3) the intellectual property rights being granted and prior commercial experience related to such rights; (4) 3 years of financial</p>

Subject	Case Law	Summary
		<p>statements, where appropriate; (5) market sector and commercial information, including information regarding prospects of the market in which the activities are carried out from both a general and a local point of view; (6) size of franchise network in Belgium and internationally; and (7) required initial and ongoing investment. If the disclosure document does not properly summarize the terms of the franchise agreement, such terms will not be enforceable.</p> <p>Typical Belgian contracts provide for the territory covered, the duration of the license, the termination of assigned rights due to bankruptcy of the licensee, control of the licensee's use of the assigned rights, and royalty payments. Franchising agreements are deemed to be licensing agreements which are null and void if one party's consent was based on a mistake or deliberately misleading information, fraudulent behavior of one party, and malicious or fraudulent divulgement of commercial secrets. In addition, the Law of July 14, 1991 on fair-trade practices regulates licensing agreements. In terms of filings, licensing agreements and any agreement assigning the rights to a trademark must be registered with the Office of Intellectual Property or any of</p>

Subject	Case Law	Summary
		the Benelux Bureaux in order to be defended; however, registration is not needed to validate a licensing agreement, nor is approval needed.

5th Annual Hospitality Law Conference
Presents

Recent Developments in
Franchise Law

Presented by:
Andrew Loewinger,
Scott McLester, &
Kathryn Rookes



Andrew
Loewinger

- Partner with Nixon Peabody
- Andrew concentrates his practice on corporate, regulatory, transactional, and international franchising.
- He co-leads the Franchise Group and is a key member of the international franchising practice, which represents world leaders in franchising and retail distribution.
- Mr. Loewinger was appointed the first Director of the ABA Forum on Franchising International Franchise and Distribution Division.

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Scott
McLester

- Executive V.P. & General Counsel with Wyndham Worldwide
- Oversees all of legal activities of 50 lawyer department and has responsibility for overseeing and ensuring the effectiveness of the Wyndham's compliance and ethics programs
- Co-Chairman of the National Franchise Mediation Program
- Member of the Corporate Counsel Steering Committee of the Franchise Law Section of the American Bar Association

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Kathryn
Rookes

- Vice President, Legal for Focus Brands
- Has been a franchise attorney for 16 years
- Practiced as in-house counsel, outside counsel and in a government regulatory agency (Maryland Division of Securities)
- Member of the IFA, the ABA Forum on Franchising, the Association of Corporate Counsel and the Women's Foodservice Forum

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HOSPITALITY LAW CONFERENCE
FEBRUARY 8, 2007
HOUSTON, TEXAS

Recent Developments in Franchise Law

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Franchise Law Developments -- Roadmap

- WHAT IS A FRANCHISE?/FRANCHISE SALES
- WRONGFUL TERMINATION
- ENCROACHMENT
- TRANSFERS
- TRADEMARKS
- CONTRACT ISSUES

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Franchise Law Developments -- Roadmap

- LIQUIDATED DAMAGES
- VICARIOUS LIABILITY
- TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
- CIVIL RIGHTS/EMPLOYMENT LAW
- REGULATORY DEVELOPMENTS – UNITED STATES AND INTERNATIONALLY

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WHAT IS A FRANCHISE?/FRANCHISE SALES



- Hidden Franchises

Charts v. Nationwide Mut. Ins., 397 F. Supp.2d 357 (D. Conn. 2005)

Sufficient evidence of franchise relationship between insurance company and agent (including granting of rights under marketing plan or system prescribed by franchisor and operation of business under marketing plan or system which is associated with franchisor's trademark) to uphold \$2.3 million damages award

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- Franchise Sales



Kieland v. Rocky Mountain Chocolate Factory, Inc., 2006 U.S. Dist. LEXIS 76057 (D. Minn. October 18, 2006)

*"I don't believe you can state if these appear reasonable, but maybe you can tell me if it is a **rainy day or a sunny day.**"*

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An earnings claim is

Chocolate Shop Franchisee's Claim -

Franchisor rep's response that the following email "did not raise any issues" was alleged to be earnings claim:

"I am also attaching some of the numbers I put together. I know I am missing information on depreciation, and have to insert those still. I am sure I am missing other expenses. I don't believe you can state if these appear reasonable but maybe you can tell me if it is a rainy day or a sunny day."

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"Know your competition"



Edible Arrangements, Int'l, Inc. v. James Notaris, Fresh Fruit Bouquet Company, Inc. and Fresh Fruit Franchising LLC, Bus. Franchise Guide CCH 13,487 (C.D. Cal. October 19, 2006)

California Federal District Court enjoined a competitor fruit bouquet business franchisor ("Fresh Fruit"), at Edible's request, from engaging in franchise sales activities in California

Fresh Fruit's failure to comply with CA franchise sales law constituted violation of California Unfair Competition Law

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COURT HELD:

Competing franchisor (Edible Arrangements) likely to succeed on its claims under the California Unfair Competition Law for Fresh Fruit's violation of California Franchise Law that Fresh Fruit:

1. Failed to disclose in its UFOC a lawsuit pending in Connecticut against its creative principal,
2. Misrepresented about its audited financial statements;
3. Offered to sell franchises in California before registering to do so.

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COURT FOUND THAT:

1. Failure to disclose litigation with deceptive practices allegations was material, as defendant's representatives posed as a prospective franchisee to gain access to the competitor's trade secrets
2. Accounting firm that prepared the audited financial statements in the UFOC had undisclosed conflict of interests - father of franchisor's principal ran the accounting firm and principal had worked there for 10 years previously
3. Franchisor had offered franchises in California prior to completing the franchise registration process

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WRONGFUL TERMINATION



- Failure to Provide Notice and Opportunity to Cure
 - **Dunkin' Donuts v. Tejany & Tejany** 2006 WL 163019 (N.D. Ill. 2006)
 - Complaint: Failure to comply with wage and hour laws
 - Damage to goodwill associated with trademarks
 - "Good cause" to terminate franchise agreements
 - Franchisee's Motion to Dismiss: Failure to provide notice/opportunity to cure

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Wrongful Termination (Cont.)

- Dunkin' Donuts Opposition: Franchise agreement allows termination with out notice if "franchisee is convicted of a crime that franchisor believes is injurious to the system, or if franchisor has proof that franchisee has committed such offense, or if the franchisee permits the use of the unit for illegal or unauthorized use."
- Court: Motion denied
- Key Learnings:
 - Understand your rights/obligations for breach of goodwill
 - Draft clear termination provision
 - Stay on top of the laws

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Wrongful Termination (Cont.)



- Good Cause Exists
 - **Brown Dog, Inc. v. Quizno's Franchise Co.**, 2005 WL 3555425 (W.D. Wis. Dec. 27, 2005)
 - Missing "area development quota" by 1 restaurant = "good cause"
 - Franchisee claimed discrimination (WFDL)
 - Previously gave other franchisees more time to cure
 - Brown Dog missed its quota by 1 franchise

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Wrongful Termination (Cont.)

- Court: Quizno's did not wrongfully discriminate
 - Franchisee was chronic underperformer
 - Consistently below quota
 - New CDO exercised "business judgment"
 - WFDL does not guaranty "identical treatment"
- Key Learning:
 - Predictable growth is critical
 - "Motive" is irrelevant

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Wrongful Termination (Cont.)



- **Shaffer v. Domino's Pizza, Inc.**, 2006 WL 355022 (E.D.N.Y. Feb. 15, 2006)
 - Failure to maintain proper insurance = "good cause"
 - Plaintiff owned 3 franchises in Staten Island
 - Domino's moved for summary judgment
 - Franchisee offered testimony from insurance executive

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Wrongful Termination (Cont.)

- **Court:** Granted summary judgment
 - Testimony uncorroborated by Certificate of Insurance
 - “Conclusory allegations, conjecture, speculation.....”
- **Key Learning:**
 - Courts will enforce express terms of agreement
 - Franchise Agreement requires proof of insurance → be prepared

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ENCROACHMENT



- **Pro Golf of Fla., Inc. v. Pro Golf of Am., Inc.**, 2006 WL 508631 (E.D. Mich. Mar. 1, 2006)
 - Breach of contract claim - franchisor made internet sales within franchisee's exclusive territory
 - Uniform Commercial Code must be used to determine where the “sale” occurred (when title passes)
 - Franchisee's Motion for Summary Judgment denied.

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TRANSFERS



- Withholding Consent to Transfer
 - **Dunkin Donuts Inc. v. Sharif, Inc.**, 2006 WL 1149474 (10th Cir. 2006)
 - Franchisor withheld approval of transfer
 - Franchisee claimed breach of duty to mitigate, breach of contract and good faith and fair dealing
 - Franchisor's withholding of consent is reasonable when franchisee is not current on debt and buyer is in default of its own franchise agreement with franchisor

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TRADEMARKS



- **Papa John's Int'l, Inc. v. Spektacular Pizza, Inc.**, 2005 WL 3132337 (W.D. Ky. Nov. 21, 2005)
 - Franchisor established regional marketing cooperative and franchisee refused to join
 - Franchisee claimed cooperative was not formed properly, in breach of franchise agreement
 - Remedies for breach of contract include: stop performance or continue performance and sue for breach - franchisee did neither

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CONTRACT ISSUES

- Breach of Contract (General)
 - **Papa John's Int'l, Inc. v. Spektacular Pizza, Inc.**, 2005 WL 3132337 (W.D. Ky. Nov. 21, 2005)
 - Franchisor established regional marketing cooperative and franchisee refused to join
 - Franchisee claimed cooperative was not formed properly, in breach of franchise agreement
 - Remedies for breach of contract include: stop performance or continue performance and sue for breach - franchisee did neither

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Contract Issues (Cont.)



- **Dunkin' Donuts v. Tejany & Tejany** 2006 WL 163019 (N.D. Ill. 2006)
 - Franchisor terminated franchisees based on alleged failure to comply with federal and state wage and hour laws
 - This constituted “crime that was injurious to the goodwill of the franchisor”
 - Court found this was adequate grounds to terminate without notice and opportunity to cure (under Illinois franchise law)

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LIQUIDATED DAMAGES



- **Travelodge Hotels, Inc. v. Govan**, 155 Fed. Appx. 235 (6th Cir. 2005)
 - Affirmed SJ/upheld LD provision
 - Franchise agreement required franchisee to pay:
 - “Greater of: (1) the average monthly royalties multiplied by 24, or (2) the product of \$2,000.00 multiplied by the number of guest rooms”
 - **N.J. Law:** Liquidated damages are presumptively reasonable
 - Plaintiff bears burden of demonstrating “unreasonableness”

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Liquidated Damages (Cont.)

- N.J. Courts apply two-pronged test:
 - Is the amount a “reasonable forecast” of harm suffered?
 - Is the harm difficult to estimate?
- Govan argued that:
 - Harm was easy to estimate (look at fees accrued)
 - LD provision was not a reasonable forecast of actual harm
- **Court:** Reasonableness is judged at “time of contract”
- **Key Learning:** “Hindsight is 20/20” – doesn’t invalidate LD’s

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Liquidated Damages (Cont.)

- **VFS v. Dhami, Dhami & Virk**, 2006 WL 224425 (E.D.CA. 2006)
 - Parties agreed to \$100K for premature termination
 - CA law – LD clause is unreasonable if:
 - “It bears no reasonable relationship to the range of actual damages that the parties could have anticipated would flow from the breach”
 - Franchisor Affidavit – LD’s based on “time to replace”
 - Franchisee offered no evidence
 - **Court:** Summary judgment granted
 - **Key Learning:** “Be prepared to prove it”

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VICARIOUS LIABILITY



- **Corrales v. Days Inn Worldwide, Inc.**, Bus. Franchise Guide (CCH) ¶13,187 (D. Colo Dec. 5, 2006)
 - Plaintiff sued for burn injuries
 - Direct negligence/vicarious liability/Colorado Premises Liability Act
 - License agreement/QA inspections/system standards = “control”

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Vicarious Liability (Cont.)

- **Court:** Rejected plaintiff’s “control” argument:
 - DIW has no right to control “day-to-day” operations
 - DIW does not own or occupy
 - DIW does not hire or retain personnel
 - DIW does not perform maintenance
 - Franchise agreement → “independent contractor”
 - DIW not a “landowner” under CPLA
- **Key Learning:** J. Mitchell’s opinion = “blueprint”

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Vicarious Liability (Cont.)



- **D.L.S. v. Maybin**, 121 P. 3d 1210 (Wash. Ct. App. 2005)
 - Assistant Manager engaged in sex/provided drugs to 15-year-old
 - Previously served 8 months in jail
 - Father threatens Assistant Manager
 - Plaintiffs sued for negligent hiring/negligent supervision

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Vicarious Liability (Cont.)

- McDonald's argued → franchisee responsible for hiring/supervision
- **Court:** Granted McDonald's motion for SJ
 - Plaintiff knew she was employed by franchisee
 - Father presented no evidence of "reasonable belief"
- **Key Learning:** "Hell hath no fury"

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TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

- **Wilmington Trust Co. v. Burger King Corp.**, 809 N.Y.S. 2d 484 (N.Y. Sup. Ct. 2005)
 - Franchisor contracted with third party to provide work-outs for troubled franchisees
 - Economic interest is a defense to tortious interference unless with malice or illegality
 - Franchisor not liable for acts of its independent contractor (was not an agent)
 - IC not liable when pursuing the economic interest of the franchisor and franchisees

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CIVIL RIGHTS/EMPLOYMENT LAW



■ **42 U.S.C. §§ 1981, 1982**

- **Domino's Pizza, Inc. v. McDonald**, 126 S. Ct. 1246 (2006)
 - Sole shareholder of franchisee brought Section 1981 claim against franchisor
 - Shareholder cannot state a Section 1981 claim unless he has, or would have, rights under existing or proposed contract that he wishes to make or enforce
 - Shareholder must identify injuries from a breach of his own contract, not someone else's

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CIVIL RIGHTS/EMPLOYMENT LAW (Cont.)



■ **Title VII**

- **DeLuca v. Allied Domecq Quick Serv. Rest.**, 2006 WL 1662611 (E.D.N.Y. June 13, 2006)
 - Employee terminated for cause filed age discrimination complaint then applied to become a franchisee
 - Franchisor's denial of franchise application was an adverse employment action
 - Employee allowed to move forward on retaliation claim (denial of franchise application as the basis of the retaliation)

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REGULATORY DEVELOPMENTS – United States



- On January 23, 2007 FTC approved final amendments to FTC Franchise Rule.
- New Franchise Rule goes into effect on voluntary basis on July 1, 2007.
- New Franchise Rule mandatory on July 1, 2008.
- New Franchise Rule similar, but not identical to proposed FTC Rule

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NEW FTC FRANCHISE RULE

- **Most Significant Changes**
 - Exemptions
 - Timing for Disclosure
 - Electronic Delivery
 - Disclosure Requirements
 - Updating Requirements

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NEW FTC FRANCHISE RULE

■ Exemptions:

- (1) franchisees making major initial investments over \$1 million (excluding real estate and amounts that are franchisor-financed);
- (2) large franchisees (at least 5 years in business with \$5 million net worth); or
- (3) "insider" franchise purchases by owners or officers of the franchise system, or managers with at least 2 years management experience in the franchise system.

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NEW FTC FRANCHISE RULE

■ Eliminates the "first personal meeting" requirement

- Delivery of the "Franchise Disclosure Document" at least 14 calendar days before the franchisee signs a contract with the franchisor or pays any money to the franchisor.

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NEW FTC FRANCHISE RULE

- Addresses changes in marketing of franchises and new technological developments by deeming electronic disclosure to be in compliance with disclosure requirements and by allowing electronic signatures.

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NEW FTC FRANCHISE RULE

- Simplifies process to provide electronic disclosure.
- The disclosure document and agreements can be delivered electronically.
- Prior to delivery, the franchisor must advise the franchisee of the different formats in which the disclosure document is made available.
- The franchisee must be able to store, download, print, or otherwise maintain the documents.

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NEW FTC FRANCHISE RULE (cont'd)

■ Litigation Disclosure Expanded

All material lawsuits involving the franchise relationship in prior fiscal year filed by or against a franchisor, or a franchisor's parent company or affiliate that promises to back the franchisor financially or otherwise guarantees the franchisor's performance.

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NEW FTC FRANCHISE RULE (cont'd)

- Territory. Use of other channels of distribution such as Internet sales, catalogs, and telemarketing, whether using the same or different trademarks
- Franchisee Associations. Disclosure of franchisee associations if they are sponsored, created, or endorsed by the franchisor or if they are incorporated or otherwise organized under state law and request to be included within 60 days of the close of the franchisor's fiscal year end

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NEW FTC FRANCHISE RULE (cont'd)

- Financial Statements. May be prepared in accordance with non-United States GAAP, but only as now permitted by the Securities and Exchange Commission (including, the inclusion of a reconciliation of the foreign statements to U.S. GAAP).
- Annual Updating. Annual updates must be made within 120 days after the end of the franchisor's fiscal year; formerly, the requirement was 90 days.

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NEW FTC FRANCHISE RULE (cont'd)

- Adoption of disclosure requirements and format of UFOC Guidelines used by registration states reduces inconsistencies between the federal disclosure requirements and state franchise disclosure laws
- Number of open issues relating to adoption of the new FTC Rule by states requiring franchise registration

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INTERNATIONAL DEVELOPMENTS

- In 2006 new franchise laws internationally – Belgium, Sweden, Vietnam, and Prince Edward Island (Canada)
- Significant amendments in Mexico
- Now 15 countries with international franchise sales laws Australia, Brazil, Canada (Alberta, Ontario, and Prince Edward Island), China, France, Indonesia, Italy, Japan, Korea, Malaysia, Mexico, Romania, Spain, Taiwan, and United States

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Belgium



- New law applies to two parties where one gives to the other for a fee a "commercial formula" to be used in connection with the sale of products or services
- The "commercial formula" must include 1) a common brand, 2) a common commercial name, 3) transfer of know how or 4) provision of commercial or technical assistance

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Strictly a disclosure law and does not govern the franchise relationship.

Requires a franchisor to provide specific information to a prospective franchisee in "ample time before a franchise agreement is entered into."

Provides for a right to seek injunctive relief against a franchisor that fails to comply.

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BELGIUM (cont'd)

Requirement: at least 1 month prior to execution of an agreement to provide prospective franchisee a two part disclosure document.

If disclosure not received, franchisee may nullify the agreement within two years.

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Sweden



- The Swedish parliament passed the "law on the duty of a franchisor to provide information" (Law No. 2006:484) in May 2006.
- Law governs agreements executed on or after October 2006.

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Vietnam



- Commercial law requires delivery of disclosure document to prospective franchisees.
- Agreement must be written in Vietnamese.
- Franchisor must be owner of a lawfully organized business that is in operation for at least 2 years to be entitled to grant the franchise.
- Agreement must be in writing and registered with the provincial department of trade in the province where the franchisee is located.

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Mexico



- New amendments
- Requires franchisors to give disclosure document **30 business days** prior to signing franchise agreement
- Significant amendments to franchise agreements now required: minimum dimensions and specifications of the investments in infrastructure; criteria and methods to determine franchisees' commissions and/or profit margins; and criteria, methods and procedures for supervision, information, evaluation and rating performance

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