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FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS
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The Franchise Debate – Does One Size Fit All?

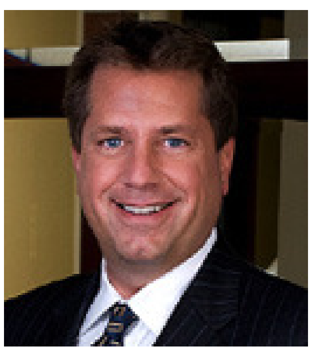
The Pros and Cons For Franchisor and Franchisee of Using a Non Traditional Franchise Agreement Strategy for Select Franchise Prospects

or

How Much to Give to Get Most Out of a Non Traditional Franchise Deal?

Presenters

- **Joyce Mazero, Partner, Haynes and Boone, LLP**
- Leader of Franchise & Distribution and Restaurant & Foodservice Practice Groups with over 30 years experience in franchising and hospitality law.
- Recipient of numerous awards and honors, including Chambers USA, Band 1 Lawyer, annually from 2008-2010.
- Member of Development Committee for National Restaurant Association Educational Foundation; member of the Hospitality Management Board of Governors for the School of Merchandising and Hospitality Management at the University of North Texas.



- **Robert Salkowski, Partner, Zarco Einhorn Salkowski & Brito, P.A.**
- Has represented franchisees, licensees and dealers in over 300 different systems
- Has authored several articles regarding franchising and distribution that have appeared in various industry and legal publications
- Robert has also been named as one of the top franchise attorneys in such publications as *The Best Lawyers in America, South Florida's Best Lawyers,* and *Florida Trend's Legal Eagles*

Moderator

- **Arthur Pressman, Partner, Nixon Peabody, LLP**
- Leading franchise lawyer with a nationwide practice, specializing in the representation of franchisors
- Leads an international franchising practice that represents world leaders in franchising and retail distribution, and numerous hotel, real estate, and consumer services systems.
- Concentrates in the resolution of franchise and commercial disputes through litigation or other dispute resolution approaches

Introduction

- **Traditional Franchisor/Franchisee Relationship Paradigm**
  - History
  - Current Approach

Market Trends and Opportunities

- **Attractive Risk Profile Candidates (“ARPC”)**
  - Definition
    - Sophisticated Operators/Multi-Unit Developers
    - Investor Groups
    - Private Equity Firms

- **Brands Entering Non-Traditional Venues with ARPCs**
- **Sample Deals**

Assessing Risk Profile of ARPC

- **Advantages**
  - Financial Security
  - Business and Financial Acumen
  - Experience and Enhanced Credibility
- **Drawbacks**
  - Relationship Overly Leveraged?
  - No Traditional Safeguards

Using Core Legal and Business Values

- **What is a Core Value?**
  - **Brand Values**
  - **ARPC's Values**

Agreement Form and Provisions

- Termination and Exit Strategy
  - In-term option to terminate
  - Cross defaults
- Materiality Condition
- Reasonableness Standard
- Transfers
  - Selling units and approval criteria
  - Succession planning
  - ROFR/ First Offer

Considerations

- **Facility's Requirements**
- **Standards considerations**
  - Menu offering
  - Training requirements
  - Personnel requirements
  - Use of alternative suppliers
- **Financial Considerations**
  - Guaranty vs. letter of credit
  - Damages recovery
  - Sole Remedy

Agreement Form and Provisions

- Non-Compete Covenants
  - Limited as to scope and time
  - Co-branding
  - Acquisitions
  - Pre-existing deals
- Franchisee Expansion
  - Development Schedule Restrictions
  - Development of Additional Units
  - First Option to Buy

Conclusion

Reality Check