

Franchising Opportunities in Southern California

Top Five Legal Tips For Franchisors In 2014

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THIS has been an active year for franchising. The reach of franchising as a method of product and service distribution continues to grow. Entrepreneurs considering expansion through franchising and seasoned franchisors alike may benefit from exploring issues that have surfaced in franchise cases this year and raise questions such as:

- Do you provide for unnecessary controls over the way your franchisees conduct their businesses? An affirmative answer can lead to frightening consequences including vicarious liability for franchisees' acts. According to recent announcements by the National Labor Relations Board, it may also lead to becoming the joint employer of your franchisees' personnel.
- Is your non-competition clause enforceable? State laws vary greatly on this issue, especially after the franchise relationship is over. The last thing you want is a former franchisee competing with existing franchisees in the same territory if the situation is possible to prevent.

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- Does your Franchise Disclosure Document contain a closing questionnaire for franchisees to complete so you can prove that the sale complied with franchise laws? You may think that the best answer to this question is "yes." Not so fast. It may be more effective to document compliance with franchise laws if the parties acknowledge in the Franchise Agreement itself that correct procedures were followed.
- Is your franchise sales team up to date on compliance with franchise sales laws? You may think the fact that New York and Rhode Island still require dis-

closure at the first personal meeting with a prospective franchisee is a mere technicality. But failure to comply with all of these "technicalities" of franchise laws can expose a franchisor to the threat of damages and rescission, or even personal liability on part of its control persons.

- Have you decided that licensing is the best way to avoid the regulation and expense of franchising? Beware. Even if you call your program a "license" or a "certification program," it is a franchise if it contains the three elements of the definition of a franchise (two elements in New York!) The three elements to look for are (1) payment of a fee; (2) association with a name or symbol of the franchisor; and (3) significant control or assistance with the operation of the business.

Snell & Wilmer's team of franchise lawyers can assist in analyzing these and other issues that arise in administering a franchise program. The firm helps clients structure and document franchise and related agreements, as well as comply with disclosure requirements in the United States and internationally. The firm's intellectual property group assists

franchisors with protection of trademarks, trade secrets and patents.

We have immigration attorneys who can assist with visa issues that may arise with franchisees or with franchisor personnel travelling abroad. Our dispute resolution group is experienced in representing franchisors in mediation, arbitration and litigation of matters involving franchise laws as well as intellectual property issues, general commercial disputes, bankruptcy and receivership concerns and antitrust matters. Our appellate group has been involved in significant cases, and most recently acted as lead counsel for Domino's in *Patterson v. Domino's*, which was decided by the California Supreme Court.

Snell & Wilmer's team of franchise lawyers includes:

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