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Sarah Kulbatski, Director of JT Corporation

THE ART OF A FRANCHISE AGREEM

Too many potential franchisees literally fall in love with a franchise concept and skip important steps prior to purchasing a franchise.

As advisors, it is our role to ensure that our clients make sound decisions, and with all the information that is available to them, minimize the risks associated with the purchase of a franchise (and there are some), the whole while protecting the assets of our clients.

A franchise agreement is what legally sets out the relationship between the franchisor and the franchisee in a business. It incorporates details such as how the franchise will be run, and what the franchisor's role is in running the franchise. The agreement makes sure that the franchise will be run like all the other franchises under the franchisor's brand name, and it also sets out how potential problems, which may arise, will be solved. Generally, franchise agreements are more favorable towards the franchisor, who is

> "Anybody beginning or extending a venture that will consume significant resources of money, energy or time, and that is expected to return a profit, should take the time to draft some kind of plan."

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the person who will give the orders on how the franchises using its brand name should be run.

Franchise agreements are tailored to specific situations and vary from franchise to franchise. It would be impossible to identify every term and issue that should be considered in every situation. However, by following the tips in this article, a potential franchisee should be able to form a rather complete portrait of a franchise network and the advantages and disadvantages associated with the purchase of a franchise from that network.

The main items which are addressed in most franchise agreements:

1. Keeping in line with the franchise operation manual:

The franchise operation manual is the most important thing that the franchisee must have with them all the time. This is the book that should be looked at when the franchisee is not sure how to deal with a particular situation. It is copyrighted by the franchisor, and the franchisor can take legal action against the franchisee if he makes the contents public. Franchisees are obliged to follow any changes that have been made to the manual.

2. Proprietor's remarks:

This part of the franchise agreement deals with issues such as the brand name (how it should be used), the training, advising and other forms of support that the franchisee is entitled to, and the types of marketing tools and methods of advertising that the franchisee is expected to use.

3. Explains how the contract will pan out:

This part of the franchise agreement details the type of business relationship that the franchisor and the franchisee are going to partake in. This part of the agreement is extremely important and therefore, it is imperative that a potential franchisee read this carefully and make sure he/she understand every word of it before a franchise agreement is signed.

4. The advertising medium and related costs:

The franchisor should clearly explain what types of advertising mediums should be used and/or are approved to be used, in advertising the goods and services of the franchise. There should also be a part in the franchise agreement that lays out the percentage of gross revenue that the franchisor expects the franchisee to spend on marketing the products and the brand name in the area.

5. Repair, upkeep and maintenance

This part of the agreement specifies what types of repair and 'aesthetic' upgrade the franchisor expects the franchisee to carry out, after what period the franchisee is expected to do this, or when it is deemed necessary, for example, upon a further lease renewal for the location. This should also discuss things such as the paint to be used, the changing of décor design, including any art on the wall and furniture. Such obligations are generally dependent on the duration of the contract.

Other matters that are generally looked at in franchise agreements also include the royalty fees, insurance to be signed up, other terms of agreements, terms of termination and any changes to the system of operations currently being used.

Ask your advisor for a comprehensive checklist of basic franchise agreement terms, listing the basic terms that may be included in a franchise agreement. The checklist should also identify many of the issues surrounding those terms that should be addressed, to help potential franchisees with what we call the "due diligence" of a franchisor.

The franchise agreement and the operations manual often give us information about the philosophy and the management style of a franchisor. Franchisors, like people, have a philosophy with respect to the conduct of their business, on the role of a franchisee in a franchise network, on the responsibilities of a franchisee (employee, manager, business person), etc. This philosophy should conform to the philosophy and to the aspirations and expectations of a potential franchisee. It is a question of determining if both parties are compatible.

While you can use the tips above to understand and review a franchise agreement, you shouldn't sign it until you've discussed your options with your attorney. Make sure you can decipher every single word in the agreement before you sign the paper!

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