
TABLE OF CONTENTS

TABLE OF CONTENTS	iii
ABOUT THE AUTHORS	vii
FOREWORD	ix
ACKNOWLEDGMENTS	xi
INTRODUCTION	xiv
CHAPTER 1	
The Elements of a Franchise Relationship	1
I. Introduction	1
II. Essential Elements of a Franchise	1
III. Essential Elements of a Dealership	5
IV. Accidental Franchises.....	5
CHAPTER 2	
Registration and Disclosure	6
I. Introduction	6
II. Violations of Registration or Disclosure Requirements	6
III. Financial Performance Representations	15
IV. Other Misrepresentations or Omissions	16
CHAPTER 3	
Industry-Specific Statutes Affecting the Franchising Relationship.	20
I. Introduction	20
II. Petroleum Market Prices Act.....	20
III. Automobile/Motor Vehicle Dealer Laws	22
IV. Beer and Wine Laws	30
V. Other Statutes	33

CHAPTER 4

Disputes Regarding Performance, Termination, and Transfers..... 36

I.	Introduction	36
II.	Performance and Termination Disputes Generally.....	36
A.	Breach of Contract.....	36
B.	Breach of Covenant of Good Faith and Fair Dealing...	63
C.	Tortious Interference	70
D.	Fraud.....	76
E.	Unfair and Deceptive Trade Practices.....	83
F.	Violations of State Relationship Statutes	86
G.	Negligence.....	95
H.	Other Claims.....	96
III.	Non-Compete, Non-Solicitation Covenants	97
IV.	Encroachment	110
V.	Transfer Disputes.....	112
A.	Right of First Refusal	112
B.	Assignments	115
VI.	Injunctive Relief	117
VII.	Damages	124
VIII.	Attorneys' Fees.....	129
IX.	Other Issues	133

CHAPTER 5

Intellectual Property Disputes..... 138

I.	Introduction	138
II.	Unauthorized Use of Trademarks.....	138
III.	Copyright, Patent Infringement	144
IV.	Misappropriation of Trade Secrets	145
V.	Misappropriation of Publicity Rights	147
VI.	Injunctive Relief.....	147
VII.	Damages	149
VIII.	Other Trademark Issues.....	153

CHAPTER 6

Other Federal and State Law Issues..... 156

I.	Introduction	156
II.	Antitrust.....	157
III.	Bankruptcy	165

IV.	RICO	171
V.	Civil Rights.....	173
VI.	Employment	173
VII.	Tax.....	182
VIII.	Insurance.....	182
IX.	Business Opportunity	183
X.	Consumer Protection	187
XI.	Constitutional	188
XII.	Other.....	193

CHAPTER 7

Control-Related Liability of Franchisors..... 194

I.	Introduction	194
II.	Franchisor-Franchisee Liability to Franchisee’s Employees....	194
III.	Franchisor-Franchisee Liability to Third Parties.....	203
IV.	Other Franchisor Liability	215

CHAPTER 8

Issues Specific to Litigation and Arbitration 217

I.	Introduction	217
II.	Substantive and Personal Jurisdiction	218
III.	Venue and Choice of Forum.....	234
IV.	Choice of Law	245
V.	Amendment of Complaint	250
VI.	Arbitration	252
	A. Enforceability	252
	B. Binding Non-Signatories.....	271
	C. Class/Collective Arbitration.....	271
	D. Award Confirmation.....	272
	E. Waiver	278

VII. Mediation.....	278
VIII. Statutes of Limitations.....	278
IX. Collateral Estoppel/ <i>Res judicata</i>	281
X. Class Actions.....	283
XI. Discovery Issues.....	286
XII. Default Judgment.....	292
XIII. Settlements and Releases.....	293
XIV. Enforcement and Collection	297
XV. Withdrawal/Disqualification of Counsel.....	300
XVI. Other Issues	300

CHAPTER 9

International Developments 301

I. Introduction	301
II. Australia	301
III. Brazil	308
IV. Canada	312
V. France	318
VI. Indonesia.....	321
VII. Korea	324
VIII. Netherlands.....	328
IX. Saudi Arabia.....	333
X. Thailand.....	340

TABLE OF CASES..... 347

INDEX..... 379