THE UNWELCOME PHONE CALL – RESPONDING TO REGULATORY AUDITS & INVESTIGATIONS

Christopher A. Nowak
Wyndham Hotel Group LLC

Eric L. Yaffe
Gray Plant Mooty
Types of Government Investigatory Tools

• Government’s predication and authority
• Government’s means of obtaining information
  • Informal requests for information
  • Administrative subpoenas
  • Civil investigative demands
  • Grand jury subpoenas
  • Search warrants
Responding to Government Investigations

• Have a plan
  ➢ Identify someone to handle subpoenas and Warrants?
    ❖ Make certain that all inquiries are promptly reported

  ➢ What’s the protocol for receiving these inquiries?
    ❖ Don’t assume, check credentials

• Civil or Criminal Matter?
Responding to Government Investigations

• Communicate
  ▪ Public Relations team
  ▪ Outside Counsel
  ▪ Staff
  ▪ Board of Directors
  ▪ Insurance Carrier
Internal Investigation

• Assess compliance program
• Response to subpoenas or other requests for information
• Interviews of witnesses
  • Upjohn warnings
• Joint representation of franchisors and individuals
  • ABA Model Rule 1.7
• Joint defense/common interest arrangements
The Yates Memorandum - DAG, Sally Quillian Yates announced September 9, 2015, Individual Accountability for Corporate Wrongdoing

- For “any” consideration for cooperation” credit, a company must fully disclose individual misconduct.

- Threshold test requirement company must meet.

- The DOJ will focus on individual wrongdoers from the inception of any criminal or civil investigation.
Hypothetical No. 1

• The FBI shows up at ACME Aeronautics world headquarters in Washington, DC at 8 AM on a Monday morning after receiving a tip that Acme bribed foreign officials in Columbia in return for a large airplane order worth $1 Billion. Specifically, the tipster alleges that you provided a two week vacation to several officials and their families to Disney in Florida.

• The Agents have search warrants and are demanding access to electronic and paper documentation and individuals.

• How do you respond?
Investigations Specific to Franchising

• FTC investigations
• State investigations
Investigations of Franchisees

• Types of investigations
• Franchisor involvement in investigations of franchisees
Considerations for Franchisors

• Set up appropriate policies and procedures
• Hire appropriate counsel
• Hiring of subject matter experts
• Insurance coverage
• Litigation hold letters
• Disclosures to relevant parties
• Public Relations
Hypothetical No. 2

Sunday morning you wake up to read that several people fell ill from a food borne illness and the common denominator was one of your franchised Hamburgers 4 You stores. Investigators immediately begin demanding answers from the franchisee on where the food came from, how it is made, etc. Franchisee is looking to you for help.

How do you respond?
Hypothetical No. 2 (cont.)

Tuesday morning, it is reported that the outbreak has implicated several more stores in the same area. All stores are owned by the same franchisee.

By Tuesday afternoon, state and federal investigators are pounding on your door asking for information relating to food processing standards, etc.

How do you respond?
Conclusion

• Be Prepared
  • Have a plan in place
  • Train staff on how to deal with inquiries
  • Know who to call
    • Outside Counsel
    • Crisis Management teams
THANK YOU