Franchise Associations to the Rescue
Using Associations and Advisory Councils to Avoid Joint Employer Risk and Enhance the Brand

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Franchise Advisory Councils (FACs)

• Formed by the franchisor
• Agenda set by the franchisor
• Members typically appointed by the franchisor
• Funded by the franchisor
• Communication from franchisor
• Item 20 disclosure mandatory
Independent Franchisee Associations

• Independent from the franchisor
• Internal governance controlled by franchisees
• Funded by membership and vendors
• Membership is voluntary
• Unfettered communications with franchisee constituents
• Item 20 disclosure conditional
  • Organized under state law
  • Annual request for inclusion
Let’s Poll the Audience
Stumbling Blocks for Associations

• Failure to routinely elect new leadership
• Disproportionate expenditure of resources and energy on grievances
• Single issue/formed as a reaction
• Resisting change simply for the sake of it
• Not thinking system-wide
Confidentiality Agreements

• Publicly traded franchisor
  • Leakage of information that would provide an advantage to competitors
  • Dissemination of material, non-public information
• Recommendation: develop a standard form of confidentiality agreement to be signed by any FAC or Association member that will be engaged in regular meetings with the franchisor
• Belt and suspenders approach
Commencing Communications

- In calm waters
  - Proactive measure to support the growth of the brand
- During troubled times
  - Brand may benefit most from collaboration and open communications
- Regarding specific system issues/changes
  - Too soon: franchisor ill-equipped to answer questions and inspire confidence
  - Too late: miss out on franchisee input and more difficult buy-in
Earning a Seat at the Table

• Organized (structure, communication, membership)
• Diverse leadership
• Freethinking\proactive
• Optimistic
Establishing a Relationship

• Quality meetings
• Active participation
• Commitment to remain positive/focused
• Open and transparent communications
• Accountability
• Tracking and report backs
• Orientation
Popeyes Collaboration

- Numerous subject-specific joint committees
- Joint negotiation of beverage contracts
- Annual FDD and franchise agreement review
- Review and comment on policy changes
- Franchisor focus on store level economics
The Business Case (Popeyes 2008-2015)

Average Domestic Unit Volume

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>$980</td>
<td>$1,003</td>
<td>$1,041</td>
<td>$1,100</td>
<td>$1,182</td>
<td>$1,215</td>
<td>$1,294</td>
<td>$1,367</td>
</tr>
</tbody>
</table>

Same-Store Sales Growth

- 2008: -1.7%
- 2009: 0.7%
- 2010: 2.6%
- 2011: 3.1%
- 2012: 6.9%
- 2013: 3.7%
- 2014: 6.2%
- 2015: 5.9%

Average 5.7% Same-Store Sales Growth over the last 4 years

Domestic Franchise Restaurant Profitability

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>$117 K</td>
<td>$192 K</td>
<td>$208 K</td>
<td>$211 K</td>
<td>$251 K</td>
<td>$279 K</td>
<td>$308 K</td>
<td>$340 K</td>
</tr>
<tr>
<td>%</td>
<td>17.7%</td>
<td>18.5%</td>
<td>19.5%</td>
<td>18.7%</td>
<td>20.4%</td>
<td>21.6%</td>
<td>22.4%</td>
<td>23.0%</td>
</tr>
</tbody>
</table>

Domestic Chicken – QSR Market Share Growth *

- 2008: 14.8%
- 2009: 15.8%
- 2010: 17.6%
- 2011: 18.8%
- 2012: 19.6%
- 2013: 20.8%
- 2014: 23.2%
- 2015: 25.5%

Average Domestic Unit Volume

* The growth rates in the graph above are according to independent data.
The Business Case II
Popeyes Stock Performance

December 30, 2008
$4.42/share

December 30, 2015
$58.89/share

Reported EPS More Than Doubled

Market Cap Grew Eleven Fold
Hardee's Collaboration

- Quarterly meetings with association board
  - CEO and senior executives attend
  - Q&A session
- System data shared on many subjects
  - Advertising & marketing
  - Unit economics
  - Remodel specifications and costs
- Extensive collaboration on restaurant re-design
Collaboration Can Provide Inoculation

- Franchisor desired to change marketing emphasis
- More toward grill concept; less to buffet court
- Change vetted with franchisee association
- Association supports the change
- Implied covenant claim defeated

*In Re Sizzler Restaurants* (U.S. Bankruptcy Court, C.D. California 1998)
Popeyes and Hardees-Selected Data

<table>
<thead>
<tr>
<th>Franchisor</th>
<th>FDD Date</th>
<th>Pending U.S. Franchise Cases</th>
<th>Concluded U.S. Franchise Cases</th>
<th>Commenced by Franchisor</th>
<th>Franchises</th>
<th>3 Year Growth Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Popeyes</td>
<td>3/28/17</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>2,029</td>
<td>17.5%</td>
</tr>
<tr>
<td>Hardees</td>
<td>5/23/17</td>
<td>None</td>
<td>2*</td>
<td>None</td>
<td>1,733</td>
<td>37.1%</td>
</tr>
</tbody>
</table>

*Cases filed in 2008 and 2009
Litigation—System Wide Issues/Changes

- Ordering system; hours of operation; supply chain
  - Edible Arrangements (2011)
- Even dollar pricing
  - Great Clips (1991)
- Supermarket sales program
  - Carvel (2004)
- Point of sale system
  - Domino’s (2008)
- Ad fund administration
  - Meineke (1998)
- $0.99 bacon double cheeseburger
  - Burger King (2010)
- Radical menu changes
  - Hot N Now (1998)
- Menu and pricing
  - Steak N Shake (2012)
- Web channel
  - Drug Emporium (2000)
  - H&R Block (2002)
Franchise Agreement Negotiations

- Addresses internal or external challenges
- Defuses tension
- Creates foundation for collaborative approach
- Incentivizes franchisee investment
- Common franchise agreement across the system
- More marketable agreement
- Reduces litigation costs/disclosures
The Joint Employer Issue

• Franchisors wish to avoid crossing the line from a franchisor-franchisee relationship into a joint employer relationship
• Many franchisees expect to be provided with guidance on all aspects of their businesses, including employee and HR issues
• Opportunity for collaboration between franchisors and associations
How Associations Can Help

• Collective Knowledge
• Hiring outside consultants and attorneys
• Offering virtual or in-person training or seminars
• Bonus: increase the value of the association to the franchisor
Subway’s Amended Deal with DOL

• Subway and the DOL agreed to work together to:
  • Provide compliance assistance and training materials
  • Develop compliance support through data-sharing and technology
  • Host meetings to share information, evaluate compliance trends, and solve problems
  • Communicate about responsibilities to comply with the investigative process
  • Emphasize the consequences for FLSA noncompliance

• Association as possible means of implementation
7-Eleven Wage and Hour Seminars

• Employed the services of a national labor and employment law firm
  • Presentations at the Association board meetings and conventions and franchisee owner meetings
  • Articles written in the Association’s newsletter
  • One-hour seminars for regional owners’ groups

• Details
  • Free of charge to franchisees
  • Attorney-client privilege between attorneys and relevant franchisee
  • Franchisor not informed of the attending franchisees’ identities
Maintaining the Best of Relationships

• Accepting the lack of an emotional bank account
• Preventing the pendulum from swinging too far
• Overcoming the fear of turnover
• Maintaining transparency
• Overcoming resistance to change
• Recognition