CRISIS AND REPUTATION MANAGEMENT: SHAPING STANDARDS OF BEHAVIOR AND IMPLEMENTING RESPONSE PLANS

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# Table of Contents

I. INTRODUCTION ............................................................................................................... 1

II. ASSESSING RISK FOR CRISIS ...................................................................................... 1

III. PROACTIVE CRISIS PLANNING AND STRATEGIES ..................................................... 3
   A. What Crisis Plans Should Be Developed? .......................................................................... 3
      1. Crisis Management and Response Plans........................................................................ 4
      2. Crisis Communications Plans .......................................................................................... 5
      3. Preparing for Media ......................................................................................................... 8
   B. Who Develops The Plans? ................................................................................................ 10
   C. Identifying Leadership and Management During Crisis Events ......................................... 10

IV. TRAINING / COORDINATION STRATEGIES ................................................................. 11
   A. Announcing the Plans........................................................................................................ 11
   B. Disseminating the Plans .................................................................................................... 11
   C. Training Related to Plans .................................................................................................. 12
   D. Media Training .................................................................................................................. 13
   E. Review and Update Plans ................................................................................................. 15

V. CRISIS RESPONSE / MANAGING THE ACTUAL CRISIS ............................................ 15

VI. BRINGING IN OUTSIDE EXPERTS .............................................................................. 21

VII. LEGAL CONSIDERATIONS ......................................................................................... 22

VIII. REPUTATION MANAGEMENT .................................................................................... 29

Biographies
I. INTRODUCTION

Crises come in a variety of forms and can affect businesses in a variety of ways, including franchisors, franchisees, employees of either, systems generally and their suppliers. The crisis can involve a single unit, or groups of units, or can be system-wide. The crises can result from the activities of the franchisor, such as business decisions that are adversely received by the consuming public, resulting in dramatic downturn in sales or negative affect on the profitability of the franchised business. They can arise out of the purposeful activities of the franchisor’s or franchisee’s employees, such as claims of sexual harassment or racial discrimination. The events can arise from the acts of suppliers through the sale of tainted meat or vegetables. Crises can arise out of the acts of unrelated third parties, such as hackers, scam artists, criminals, extremists (political or otherwise) or terrorists. Situations can arise through acts of nature, such as hurricanes Sandy and Katrina, or naturally occurring diseases such as salmonella or H1N1. And they simply can arise through the franchisor’s negligence or business decisions that seemed good at the time but, in retrospect, prove to be ill-conceived.

The bottom line is that crises are often unavoidable. This paper will focus on the establishment and implementation of crisis management programs. Crisis management programs typically involve five key elements: (1) crisis assessment and planning; (2) establishment of crisis management teams; (3) crisis management and response plans; (4) information gathering and dissemination management; and (5) crisis communication plans. The planning in advance of the occurrence and the management of the crisis is integral to franchise systems. This paper also discusses the legal implications of undertaking such activities, such as direct liability and vicarious liability, as well as managing the crisis communications, the reputational damage to the brand and financial damage to the businesses operated under it.

II. ASSESSING RISK FOR CRISIS

The first step toward implementation of crisis management planning is assessing the significant potential risks that the franchise system, including the franchisor and franchisees, may face. These risks will vary substantially based on the type of business franchised, the locations of the franchised businesses (risks of natural disasters, political unrest and other market risks) and the sophistication of the operators of the franchised businesses and their ability to manage the risks or the likelihood of crisis creation by such operators or their employees. This assessment requires an audit of the system, which, to be effective, should be performed before the company is embroiled in a severe crisis situation. The franchisor should assemble a team of representatives to perform this audit. The numerical size of this team is less important than make up of the team; however, the franchisor should be sure that the team does not reach an unwieldy number. The franchisor should be sure to include individuals who represent the franchisor and franchisees, along with those well-versed in any third-party relationships (such as vendor issues) that may have a direct and substantial impact on the system in the event of a material crisis. The final consideration for members of this assessment team are outside crisis management consultants who, based upon experience with other franchise systems or similar business, can help identify weaknesses that those close to the situation may not recognize.
Before assessment of the franchise system, the team and the franchisor's management team should discuss how a crisis will be defined to provide the team with a framework for the system-wide audit. Generally speaking, a crisis will be any unplanned event that has the potential to have significant adverse impact on the franchise system, whether it be the franchisor, one or more franchisees, the suppliers or vendors, the customers/consumers of the products or services offered by the units, shareholders of publicly traded companies or all of these constituencies. In many franchise systems, crises are caused by a disruption or issue with the supply chain or with the proliferation of the internet and social media, viral videos or other commentary from consumers regarding an alleged action in one unit that quickly is seen by 1, 100, 1,000, 1,000,000 or even more individuals which can then impact all units in a global marketplace. Therefore, the franchisor should be sure that franchised and corporate units in the franchised system are involved with the development and roll out of the crisis management and response plans.

Once the team is assembled, an audit of the entire franchise system should be performed. This audit can be time-consuming and expensive; however, it is necessary for any franchise system that wants to develop comprehensive and meaningful crisis management plans. In order to get the most complete and accurate picture of the system, the team should be given independent access to all aspects of the franchise system and everyone in the franchise organization should be instructed to cooperate with the team for the audit. The team should review and assess any relationships, situations or events that could lead to a significant and critical breakdown in the business model that would result in the consumers not receiving the goods, products or services they have come to expect. To the extent that the franchise system has already experienced any crisis events, the audit team should carefully review each crisis, the operational response to the crisis, the communications regarding that crisis, the outcome of the crisis, along with any changes that were implemented as a result of the crisis, and the application of the changes, including system-wide implications.

Keep in mind that any such audit cannot foresee every possible crisis event that might arise nor can it pin-point the exact time, place and other particulars of the crisis. The main focus of the audit should be to develop categories of crises. For example, the audit team may categorize the crises through a variety of lenses such as (1) system-wide versus localized impact; (2) short-term versus long-term impact; and (3) economic versus reputation issues. Once the audit team has developed those categories of potential crisis events, the franchisor can then develop crisis management plans responding to each such category.

After the review is complete, the audit team should provide its findings to the franchisor’s management team. The report may include categories of crises, relative impact of the various crises (for example, the team may rank the crises from low system-wide impact to catastrophic system-wide impact), any recommendations for steps to address each category of crisis and any other observations from the audit (such as system changes that should be made outside of the crisis management planning to reduce the likelihood and impact of a crisis). Each crisis is likely to have business, legal and media issues that will need to be assessed and addressed if the franchisor precedes with developing crisis plans.

With that information in hand, franchisors must further assess what additional risk assessment obligations it wishes to impose on its franchisees, how the franchisor should be involved in the franchisees’ process, and how the franchisees should be involved in the franchisor’s process (as often times franchisees have more operational experience or in-market experience than the franchisor, and sometimes are in an equivalent or better position to assess local market risk). Unlike vertically integrated businesses or distribution systems solely made
up of company owned-units, franchisors typically operate dual-distribution systems made of a mix of company owned and independent franchised units over whom the franchisor does not and cannot exercise operational control.

III. PROACTIVE CRISIS PLANNING AND STRATEGIES

A crisis event can introduce into the franchise system, among other things, confusion, turbulence and the unknown. During such events, the entire franchise system oftentimes will be judged on the responses and other actions that relate to the crisis (even if it truly involves just one unit). In order for everyone involved (including the franchisor, the franchisees, and any third parties such as suppliers) to effectively respond, a forward-thinking, prepared franchisor must engage in pre-planning and must develop crisis-related plans that will help the entire franchise system navigate dicey situations that are sure to arise. These situations will require quick decisions, along with communications and actions based upon limited knowledge and limited, if any, time for reflection. For the plans to be manageable in the face of a crisis event, the franchisor should strive to create plans that are simple, not cumbersome. If the plans are too detailed, the plans can actually hinder proactive, situation-specific thinking during a crisis event.

The key to bringing the franchise system through a crisis is simple and understandable crisis plans that enable the franchise system’s leaders to respond in a clear, decisive manner that instills confidence in all audiences – franchisor’s employees, the franchisees and their employees, government officials, third parties and consumers. And, while preparation may not guarantee “success,” it will help the franchisor and franchisees survive and thrive after the crisis event has passed.

A. What Crisis Plans Should Be Developed?

At a minimum, the franchisors should develop two types of plans: (i) the crisis management and response plan; and (ii) crisis communications plans (which should include subparts for internal communications, communications with customers, media and social media). The plans must incorporate elements that apply to and include the franchisees in the strategy. Franchisors should also assist the franchisees and direct the franchisees to sources that can assist the franchisees to develop their own plans that will integrate with the franchisor’s overall strategy.

As the crisis event unfolds, the “who, what, when and where” of the detailed aspects of these plans are likely to change. Accordingly, in developing the plans, the franchisor should think through the possible timeline of the crisis event and the plans should address each portion of that timeline. For example, in terms of the communications planning, the franchisor may want an executive officer on the front line communicating with the media at the beginning of a crisis event to instill confidence and to reflect that the company understands the magnitude of the crisis and is committed to resolving the crisis, or it may wish to keep contact with the media at the franchise-unit level. As the crisis event works its way through the process toward resolution, the view as to whom should be on point for communications will change and vary based on to whom the communications are being made (local media, national media, customers (local or system-wide) and government organizations). Or the role of primary communicator may well move to the company’s head of public relations or to someone who is responsible for owner and franchisee relationships (or someone in a similar position who has more regular communications with franchisees, the media or third parties). These pivotal changes in the plans should be carefully managed and documented to avoid confusion. The plans should also
have contingency options if the plans cannot be carried out as a crisis may impact the normal course of business and make typical options unavailable for operations and communications.

1. **Crisis Management and Response Plans**

The crisis management and response plan is an implementation plan that details what actions should be taken in the event of a crisis and who will take them, including operational controls that would apply to franchised and company operated units. For example, if the crisis relates to a specific unit, the plan may state if the unit must be closed, how long the unit should be closed, and what factors will determine when and whether the unit can be reopened.

In assessing the various categories of crises that may arise, the franchisor may decide that the best course is to have multiple plans that differ based upon the type of crisis event the franchise system is facing. This allows the franchisor to think through the various actions that will be required for each category of crisis and may be easier to implement in the face of a crisis because the plan is already somewhat tailored to the specific crisis event.

For certain types of crisis events, these plans may take into account actions for third parties, such as suppliers, and the interactions that the franchise system should undertake with the third parties. For example, for restaurant franchise systems, if the crisis event relates to contaminated food, the plan may include who will contact the supplier, what steps the franchisor will undertake to investigate the contamination issues, what actions the franchise system expects the supplier to undertake, and how alternative supplies will be obtained.

Another complex example is hotels located in areas subject to hurricane risk. The franchisor and the individual hotels must have plans for emergency preparedness for the safety of guests and employees, for continued operation in the event of temporary loss of power, for evacuation, for sheltering guests in the event evacuation is not possible, and for continued operations when there is damage to surrounding residences, including managing guests and inventory when the existing guests have no place to go and guests with reservations need some place to stay. That also includes having anti-gouging policies to prevent damage to brand reputation when those circumstances arise and, as a result of a natural disaster, demand substantially exceeds supply. Plans of that nature must also include dealing with local, state and federal government agencies, and local, regional and national media depending on the severity of the event.

Each person on the management team should be tasked with roles, responsibilities and protocols for each category of crisis. The roles, responsibilities and protocols are likely to differ at various stages during the crisis event and may differ from one category of crisis to another category. And, while the plans cannot cover all potential variations of crisis, a thoughtful crisis plan will provide the leadership team with a basic framework that can be quickly modified to address the particular crisis. The protocols for each team may range from very detailed (i.e., checklists or flow sheets with specific follow up) to generalized suggestions. The protocols will vary based upon the experience level of the team, the need for uniform response, the nature of the crisis and many other factors.

For example, the core team is likely to need to assess and address impending issues, so they need access to all scenario plans. Secondary teams may be more effective if the crisis plan only contains step-by-step instructions or flow sheets for the actions to take. Generally speaking, for the secondary teams, the plan should be specific to reduce or eliminate the need
for interpretation, which can be ineffective and actually counter the objectives of mitigating the situation.

Franchise systems and their leaders should be well-versed in identifying early warning signs for an impending crisis and, to the extent such signs are identified, the franchisor should have a tracking system in place to monitor such issues. This approach will permit the franchise system to proactively and thoughtfully address, and possibly head off, adverse consequences before the issue escalates to a full-blown crisis event. The backbone of this system can be based upon the various categories of crises the franchise system is mostly likely to encounter and the corresponding activities and actions that should be tracked for each issue that arises. This tracking system can be as basic as an Excel table that identifies the potential issue, the individuals on the crisis teams who are monitoring the issue, the status of the issue, any communications that have been sent regarding the issue, the status of fact-finding or review of the issue (if necessary) and next steps. This system may track issues such as internal system issues, issues that arise at the corporate level within the franchisor’s organization, general industry issues, issues that arise based upon actions of competitors, etc. These tracking systems and early warning systems may include dedicated command centers, computer systems or third-party consultants.

In addition to corporate-level crisis management and response plans, franchisors must have standards for the development of such plans that can be implemented both by company operated units and franchised units at the local market level, standards for identifying what plans are necessary for different types of units and locations, as well as an audit process for confirming whether both company operated and franchised units have the applicable plans in place and are complying with them. The franchisor must also have a process in place for identifying units that fail to have an adequate plan in place. One method is to have the requirement to have a plan be identified as a critical item under the quality assurance program.

2. Crisis Communications Plans

The crisis communications plan is separate from, but might be considered a subpart of, the crisis management and response plan. This plan should outline, among other things, the audiences that will need to be contacted during each crisis event, how the audiences will be contacted (i.e., texts, emails, in-person meetings, webinars, intranet, etc.), a list of contacts for each type of media that might be involved, how and by whom the messages will be delivered (and may include some basic communications from which the company will develop specific communications or actual communications for each crises), how and by whom messages will be sent, the types of information that will be delivered, and suggested response times for inquiries.

Questions that should be answered in the communications plan are:

- Will one person be in charge of issuing statements on behalf of the franchisor and the franchisee to the media regarding the crisis?
- If yes, at each stage of the crisis, who should issue the statements – the CEO, a media consultant, an executive in the marketing department, general counsel, or the individual operator/owner of the unit(s) that were impacted by the crisis?
- Is there an internal system for logging, prioritizing and tracking responses to media requests?
• How should unit-level managers (franchised and company owned) deal with on-site media requests, protests, etc.?

• Does the company have a “dark website” that can be activated for communications during a crisis?

The plan should carefully address how all interested constituencies will be kept abreast of developments during the crisis event and how the franchisor will engage those constituencies in a dialog during the crisis event to obtain feedback and information. The plan should start by identifying the various stakeholders or audiences the franchisor will need to communicate with during the crisis, which may change as the crisis event unfolds. At each stage of the crisis event, there are likely to be multiple audiences that should be considered and, for each audience, the messaging is likely to be slightly different. The franchisor should review its entire franchise system to determine the audiences to communicate with and then identify key communication point persons for each audience. Each point person for a specific audience should understand his/her role in further disseminating the necessary information, obtaining any feedback or information from the respective audience, and how to provide that information back to the franchisor. A tiered communications plan will help ensure that information is widely disseminated in an efficient and effective manner. Before a crisis strikes, franchisors should consider establishing strategic partnerships that will help disperse information to each audience and develop an effective channel for feedback.

There are a variety of ways for a franchisor to disseminate its messages to various audiences. Part of the plan should identify each vehicle that the franchisor may consider using and develop a framework for each one. With regard to traditional media options, franchisors should consider developing strategic relationships with the media. Developing and maintaining a good relationship with the media will buttress credibility at the time of any crisis and prevent the need for establishing baseline relationships while managing a crisis. Ideally, the franchisor will have demonstrated to all interested stakeholders that the franchisor is accessible and willing and able to provide timely, accurate information.

With ever-changing electronic options, including new social media platforms, franchisors should be sure that communications plans take into account these types of communications. In the past, a company would use traditional media to inform its various audiences using prepared messages. Today, because of social media, companies must assess how and to what extent to use social media as part of the crisis communications plan. While audiences may look to traditional media options for most of the information regarding a crisis situation because those outlets are considered to be more credible and trustworthy, the usefulness of engaging in a dialog on social media should not be discounted.

Social media platforms are ready made communities that are constantly sharing information and easily available to tap into to collect and disseminate information and to engage with certain audiences. Due to the nature of social media, the most judicious approach is likely to be a crisis communications plan that includes both traditional and new or emerging technologies for communications with various stakeholders. In social media, the worst possible stance to adopt is the “wait and see if it gets to social media” or “wait and see how bad it gets.” A reactionary approach is likely to mean that, by the time the franchisor sees and responds to the message or post, that message or post may have already been seen by millions of viewers. In addition, once a message or post has been made in certain social media channels, there is no way to remove that message or post – it lives on forever, regardless of what actions the
franchisor may take. And, if the franchisor is not involved in social media and only engages in the communities at a time of crisis, users may be skeptical of the franchisor's motivation.\textsuperscript{1}

Franchisors can easily provide information, gain insight and engage specific audience members via social media. In comparison to traditional media, social media is characterized by: (1) unstructured and decentralized information sharing; (2) quick, instant and continuous information flow; (3) information flow controlled by multiple audience members; (4) use is inexpensive and easy; and (5) (in general) no gatekeepers or governors on the information content or flow. While in some instances this may present a number of challenges such as inaccurate information being shared, the benefit of engaging in the dialog and obtaining information and feedback on a real-time basis can be very valuable, and the company has the choice to respond (strategically) on social media.

The communications plan should include a strategy to use social media and include possible draft messages for this medium. The messages must be prepared in social media friendly formats. Effective communications via social media may be easier said than done. Franchisors must consider that, among other things, space and attention span of users are limited, every word carries significant weight, tone and body language are unavailable to show nuance, and statements usually cannot be thoroughly explained. Yet the limited formats for these messages should actually help the franchisor identify only the critical information that should be shared. To convey additional information, the posts or messages can then refer to other sources for more detail. Finally, effective use of social media will require the franchisor to monitor social media channels which, to be most effective, should be a full-time effort. In the event of a crisis, the franchisor may consider adding additional personnel to this monitoring effort. The franchisor should monitor what is being said online and assess how broadly any online messages have been disseminated and develop an appropriate response, either to the individual or to the public more generally.

Some companies set up alert systems that are triggered upon the occurrence of a crisis event. These alert systems are an easy way to disseminate information quickly to a large, diverse audience; however the messages are usually less targeted and focused than messages directed to a specific audience. In addition, the communications plan should detail how key messages will be uploaded and shared in various ways – such as on the franchise system’s website, via social media sites, in press releases, etc. If a crisis situation garners significant media attention, consider holding press conferences.

The messaging during the crisis should be simple, honest, straightforward and consistent across the franchise system. If the franchise system does not know the answer to media questions, the best course is to respond that the franchisor does not have the answer to the question and is looking into the situation to determine the answer and will report back to the media. It is important to follow through and check back with the reporter to provide the additional information that was promised. In addition, the franchisor must be sure that everyone in the franchise organization is “on message,” which means that everyone is delivering the same message when asked for information. For this to happen, the franchise system must have already established internal channels to communicate the message.

The franchisor should also consider, where appropriate, developing basic message and press release text for anticipated categories of crisis events. These communications would include the “who, what, when, where and why” of the message from the franchisor to help frame

\textsuperscript{1} A detailed discussion of social media issues is beyond the scope of this paper.
the basic communications. Preparing “form” messages at the crisis planning stage has a number of benefits, including permitting the franchisor to reflect on the language used, the content and the overall impact, and possibly to get some feedback from various audiences (such as trusted franchisees), all of which may not be possible in the throes of a crisis situation. In addition, the messages are less likely to omit important components if the franchisor has a pre-prepared form that has been vetted through various individuals. If a franchisor relies upon a pre-written communication to form the basis of a communication during an actual crisis, the franchisor should take care to ensure that the form communication is modified to reflect the current reality and facts of the crisis event.

The crisis communication plan should always include the names, telephone numbers, email addresses and other contact information of: (1) the franchisor and key crisis management personnel; (2) crisis management advisors (including any outside consultants); (3) key vendors; (4) key franchisees; (5) local authorities; and (6) key press contacts. This list should be reviewed and updated on a frequent basis. The crisis communication plan for each franchised unit, in addition to the above, must include similar information applicable to the franchise unit.

The franchisor should determine whether the key components of communications during a crisis event should originate from the franchisor or the franchisee. The plan should take into consideration how audiences will react to the spokesperson that is selected. If the situation is receiving or likely to receive national or international coverage, then it typically will be managed by the franchisor and enlist as a spokesperson the chief executive officer, the executive whose job title most closely aligns to the crisis event (i.e., food contamination issue – Executive Vice President of Sourcing), chief communications officer or marketing officer – in collaboration with legal counsel and PR counsel. In circumstances where the matter is affecting an individual franchisee’s unit and can be managed at the local level by the franchisee (in cooperation with area or regional franchisor representatives) and, in particular, if the media coverage can potentially be contained to local coverage and limit the involvement of the franchisor’s corporate personnel, then it may be appropriate for the franchisee’s crisis team to handle the crisis event communications.

In addition, the franchisor should recognize that, no matter what the plan says, media members are not privy to that internal franchise system communications plan and will interview the person to which they have access. Accordingly, the franchisor should provide franchisees with simple responses for media inquiries, such as:

- I can’t answer that question but the person who can is [franchisor team member], whose contact information is [information].

- I am not sure of that information and I do not want to give you inaccurate information. If you provide your contact information, I will get it to the correct person for response.

Providing these standard media responses and training to franchisees and others who may be contacted by the media will help the franchisor manage the crisis and keep the entire franchise system on message throughout the crisis event.

3. Preparing for Media

Franchisors should provide training and have systems in place for franchisees to respond to media inquiries and to communicate with the franchisor upon the occurrence of a
crisis event. As noted above, when an event occurs, it is likely to happen at a franchise unit and thus the franchisee’s employees may be on the front line when the media makes contact.

First things first: all crisis management and crisis communications plans must include a mechanism so that the franchisee’s employees recognize a crisis and notify the franchisor and the appropriate management personnel at the franchisee organization. Marriott requires its franchisees to deliver to each of their employees a wallet card, and crisis team members for company operated and franchised units are required to carry that card.

The card outlines, in simple terms, what the franchisee’s employee should do when an emergency occurs: (1) notify Marriott public relations, (2) notify the franchisee company representative, and (3) notify the Marriott Regional Representative. The card then gives examples of types of events the employee should consider an emergency so that the employee has a sense of what types of events should immediately be reported: (1) natural or man-made disaster affecting the hotel operations; (2) guest death; (3) armed robbery; (4) bomb threat; (5) associate work-related death; (6) occurrence of foodborne illnesses (2 or more) of guest or associate; (7) rape or sexual assault; (8) serious guest assault; (9) TB or hepatitis exposure; (10) injuries resulting from fire or crime; and (11) any incident related to a celebrity or public figure. The list should be extensive enough so that even the most entry level employee will recognize a crisis event and feel authorized and empowered to report it.

The card provides key numbers for the employee to call and provides a place to list the crisis numbers of the franchisee company representatives. The key is to keep it simple for the employee. The card includes the franchisor numbers for its claims management for reporting damage to property and injuries to people who have access to information concerning the insurance coverage and carrier of every franchised hotel, the franchisor’s PR department, and a 24-hour crisis hotline that is operated by a crisis management company with operators trained in crisis management, which have access to phone numbers of Marriott regional and corporate executives. The crisis hotline operator is trained to get the facts, counsel the franchisee employee on next steps, determine which franchisor representative should be contacted, and has a protocol for contacting them 24 hours a day. So, depending on the nature of the emergency, the crisis management hotline can begin the contact process of alerting the corporate crisis management team.

The information on the card is the same information that appears on the franchisor’s intranet, in the standards, in the training materials used for franchise executives, in the training materials provided by the franchisor for use with the franchisee’s hourly employees, and the signs to be hung in the employee break room. This is to constantly reinforce the concepts and to drive information flow and compliance upon the occurrence of an event.

Franchisees are likely to have to deal with requests from the media to film inside the location and possibly interview customers. Generally speaking, franchisees should not permit media to film inside the unit as it disrupts business and, in terms of interviewing customers, if the customers agree to be interviewed outside the unit, neither the franchisee nor the franchisor can restrict that customer. Franchisees should be encouraged to ask the media not to harass customers in any way as that experience may be attributed back to the brand. Franchisees should be encouraged to report any troubling information or comments to a point person at the franchisor and that person should proactively address the comments or information. Inaction on such communication may result in intensifying a bad situation because the franchisor and the franchise system are perceived to not care about the issue.
As part of the communication plan for a system-wide event, there should be a mechanism for the franchisor to ensure that all franchisees in the system understand the nature of the crisis, know the basic facts regarding the crisis, and the next steps to be taken by the crisis management team. In the best-case scenario, the crisis communications team will quickly develop and disseminate talking points to all members of the management team.

There are a myriad of resources available that provide starter templates for each potential scenario. Many companies within the industry are willing to share their plans as examples, excluding confidential information of course. Public relations agencies also can provide guidance on what’s contained in an effective crisis communications plan. Every template and example, of course, must be tailored specifically to the scale, geography and type of business you operate.

B. Who Develops The Plans?

When it comes time to develop the crisis management response plan, it is important for the franchisor to carefully assess which aspects of the franchise system may be impacted by the potential crisis event. Because no one can predict the specific type of crisis that will affect the franchise system, the best course is to categorize the types of crises that the system may face, identify the departments that may be impacted by the crisis event, and then organize teams for each type of crisis to help develop the crisis management / response plan. For example, the crisis management / response plan may be created by individuals from operations, facilities, human resources, finance and technology. Each category of crisis will likely require careful thought regarding which internal departments will be impacted, along with any third parties that may have an interest in the resolution of the crisis event – such as franchisees, suppliers, vendors, building management companies, landlords, insurance companies, safety organizations and government entities.

The communications plan is likely to be developed by internal marketing departments along with external experts like PR firms or consultants who are well-versed in crisis management. The franchisor’s management team should also be involved in the planning stages.

C. Identifying Leadership and Management During Crisis Events

The crisis planning teams should determine a leadership team (i.e., the team that will lead the franchisor or franchisee through the crisis), management team (i.e., the team that will manage the tactical implementation of the crisis plan) for each crisis, as well as a crisis communications team. These teams must work together with the common goal of leading and managing the company through the crisis. The key to effective teams in the face of crisis events is to keep them small and manageable so they are able to make decisions and obtain broad-based support from the entire franchise system. The crisis plans should identify not only these management-level teams but also the various secondary teams that will take direction from, and implement directives issued by, the management-level teams.

The leadership team typically is made up of executives of the franchisor or franchisee – chief executive officer, chief financial officers, chief legal officer and chief public relations officer. The officers that will make up this team should be carefully assessed to ensure that the team is not so large that it becomes unwieldy. One of the officers on the team should be designated as the ultimate and final decision-maker for a crisis event.
The management team is in charge of the tactical and operational support to carry out the directives of the leadership team to restore normal business operations as quickly as possible. This team will be a much larger team than the leadership team and, in any given crisis event, this team may be comprised of different departments and individuals from a variety of disciplines.

At the crisis planning stage, it is important to think through how the crisis will impact the unit where the crisis may be taking place, the market in which the unit is located, and potentially the entire franchise system. It should consider those associates that might be most directly affected, and the management team should reflect those disciplines impacted. To enable the franchisor to deal with the crisis in the most effective manner, it will be important to ensure that, at each point during the crisis event, the right departments, individuals and third parties are involved. Team members may include: quality assurance, food safety, finance, operations, franchise administration, franchisees, suppliers, legal department, risk management, insurers, and supply chain. During any crisis, the management team is likely to change to include different departments that may be impacted as the crisis event unravels and then moves toward resolution.

Finally, the crisis communications team will manage and implement the crisis communications plan under the direction of the leadership team. This will vary depending on the nature of the crisis and the extent of its impact on the business. For situations with system-wide implications, this team could be made up of the head of public relations, chief legal counsel, and a member of the leadership team. For this team, the franchisor may include a crisis management consultant well-versed in crisis communications or a PR expert and, depending on the category of crisis, a franchisee representative. For a local matter within the control of the franchisee, it could be the franchisee, the general manager of the franchisee’s unit, the franchisee’s attorney and PR consultant, coordinating with the franchisor’s representatives and involving the appropriate disciplines.

IV. TRAINING / COORDINATION STRATEGIES

Once the franchisor has developed crisis plans, it should consider how to best announce, disseminate, implement, maintain and update the plans.

A. Announcing the Plans

Announcements about the plans should be made internally to the franchisor’s personnel and to the franchisees of the system. The communication should include information regarding where the plans can be accessed, a summary of the key components of the crisis plans, upcoming training sessions for the crisis plans, and request that franchisor personnel and franchisees sign up for crisis training.

B. Disseminating the Plans

The franchisor will need to carefully assess where the plans will be stored and how the plans will be disseminated, keeping in mind that the crisis plans are likely to be updated over time and that a number of impacted internal departments and individuals, along with certain third parties, will need access to the crisis plans. Franchisors usually make crisis plans available via intranet websites, in printed or online manuals and from risk management departments. The franchisor should be sure that, if the plans are posted or printed, they are the current versions. The franchisor may consider password-protecting the plans; however, in the
face of a crisis event, the crisis plans will need to be accessed by a wide variety of individuals and passwords may prohibit or hinder quick access to necessary information. Crisis plans should be circulated when they are initially developed, and again every time the plans are updated.

C. Training Related to Plans

In the face of a crisis, the slightest misstep by any individual who is or perceived to be involved in the franchise system and its response to the crisis event may have a lasting, long-term impact on the entire franchise system. Accordingly, similar to many other aspects of the franchise system, the franchisor should consider how to best train everyone in the franchise system – including franchisor personnel, franchisees and unit-level management and employees – on the various crisis plans and how to implement and carry out those plans. The individuals who must attend the training may vary based upon the category of crisis. The training may include walking through the plans, step by step, with some suggested dos and don’ts, role playing and crisis simulations. While the most effective training sessions include crisis simulations, this option does involve some drawbacks such as increased expense if an outside consultant is used to prepare and run the simulation and more down time or business disruption. However, it is important to note that there are significant benefits associated with crisis simulations including increased confidence among employees in their ability to implement and carry out the crisis plans and identify and address possible gaps in the crisis plans.

In developing the actual training sessions, the franchisor should consider, among other things, who should attend the training sessions, whether different training sessions will be offered to various categories of individuals, whether there will be different training sessions for various categories of crisis events, and how frequently the training will be provided. In many instances, franchisors choose to train the primary crisis teams first – the core leadership team and the core management team. These teams then assist with training the secondary teams who will carry out the directions from the leadership and management teams. The training materials for the primary and secondary teams should be tailored to the teams’ roles.

The best practice is to provide the training annually and when any significant changes to the plan are made. In addition, if any new employees are added who are expected to assume one of the key roles identified in the crisis plan, that new employee should, as part of onboarding, be required to review and understand the crisis plans.

For a franchised system, one of the most important aspects of preparing for a crisis event will be coordination between the franchisor and the franchisees. The crisis plans must have strategies that involve the franchisees. In the best case, certain franchisees will be involved with the creation of the plans. Then, the plans should be provided to the franchisees (along with the employees at the franchised units). Much of this can be accomplished through thoughtful training programs designed by the franchisor with appropriate follow up at the unit level by the franchisee. If a crisis event actually impacts the system, the communications plan should prioritize when the franchisor will communicate to various stakeholders and a franchisor should remember that, in many situations, franchisees should hear the news regarding a crisis event before the general public.

One potentially significant issue in the franchisor / franchisee coordination is how to deal with training for front-line employees at franchised and company owned units. In many instances, these employees may turn over frequently and will not be part of the formal crisis training offered by the franchisor; however, these employees are often the ones dealing with the
brand’s customers, answering phone calls from media and dealing with media who show up unannounced at the unit.

Franchisors should consider whether a simple one-page action summary for crisis events can be printed and displayed in all units. For example, if a front-line employee receives a call from the media, the suggested response may be “Please wait while I get the manager.” Also, these front-line employees may be the first individuals to be aware that a crisis event is occurring. Accordingly, the employees should have a simple path to report such events.

D. Media Training

An important aspect of preparing for crisis situations is media training. In most instances, the franchisor will have a communications professional – such as a media relations expert – prepare the designated company spokespeople to most effectively interact with the media. The crisis communications plan should identify the spokespeople who will need to be trained and the consultant should provide the spokespeople with easy guidelines for following the general aspects of the crisis communications plan. The designated spokespeople will work directly with the media throughout the crisis event, so it is important for these individuals to learn how to establish and maintain good relationships with the media. The franchisor should ensure that the designated spokespeople are accessible and responsive to the media and that the spokespeople have the most up-to-date information regarding the status of the crisis.

Media training for crisis preparedness will focus on tips and techniques for the spokespeople to perform, as best as possible, during a highly charged and difficult time. This training is typically conducted one-on-one with each spokesperson. Media training should be conducted initially when the crisis plans are implemented and on, at least, an annual basis thereafter. In addition, if any of the key spokespeople leave the company, onboarding for the replacement personnel should include media training for crisis events.

As a crisis event is unfolding, franchisors should consider having in-house or outside consultants provide advice on public relations aspects. Public relations professionals should be on hand to help develop key messages during the crisis event, discuss how to deliver such messages in the most effective manner, review strategies for how to keep the entire franchise system “on message” during the crisis event so that the system is speaking with one voice, and rehearse key messages with the spokespeople. The franchisor may consider having a public relations professional attend interviews and other media correspondence during the crisis to provide feedback on the exchange, hone the messages and discuss ways to improve the delivery of the messages.

Media gaffes can quickly go viral and become the defining moment of a crisis event. Therefore, media training is one of the most important steps in crisis planning and management. Some important tips for spokespeople to keep in mind:

- Be proactive. Communicate with the media as quickly as possible. If the franchise system does not identify a spokesperson for the media, the media will find someone and that person will be used as the spokesperson. Even if facts are in short supply, identify the known facts regarding the crisis. As the crisis event unfolds, make sure the spokesperson has the most up-to-date factual information, current response plans and is aware of any other internal actions that are taking place.
• Anticipate the tough questions and have well thought-out responses. Practice responding to questions. Obtain questions in advance, if possible.

• Never respond with “no comment;” instead consider other options such as:
  o We’ve just learned about X fact and are trying to get more complete information.
  o Our efforts are focused on responding to the crisis event so I will not speculate as to the cause.
  o I am not the authority on that subject, let me have X get back to you.
  o We are preparing a statement to address that question and it will be issued no later than X.

• Avoid on camera interviews, if possible. Set a time limit in advance for all meetings with media. While you cannot control the media, maintain control of the interview. Never speak “off the record.”

• Provide accurate and truthful responses; even if such responses may reflect poorly on the system, as it is generally better to get it out than to appear to have been hiding information (although there may be limited circumstances when the franchisor may decide to remain silent). If you do not know the answer, tell the media that you will get back to them. If information is proprietary, state that. If there are questions that are “off limits” for the spokesperson to answer, identify the types of questions that should not be answered — such as what is the estimate of monetary damage caused by the crisis event, what portion of the crisis event will the company’s insurance cover, and speculation as to the cause of the crisis or the actions the company might take.

• Come prepared to deliver your messages. Back up responses with facts and other data.

• Listen to the questions asked and answer the questions asked. Ask for clarification if necessary before you respond. Keep your answers short and focused. Do not answer inappropriate questions.

• Develop your key messages before the media meeting, and stay on message. When possible, bridge back to sound bites, key points and key messages.

• Do not be negative or critical of others involved in the crisis event.

• Provide contact information for follow-up questions and be available if the media contacts you.

• Consider how message content and body language will be perceived at various stages of the crisis event.
- Do not get so relaxed with media that you say something you wish you hadn’t said. Do not let media “wear you down.”

Finally, with the increased utilization of social media and other online avenues of communication, the media training program should include a component that focuses on how to track, respond to and control messaging in these venues. Training sessions should cover the various types of social media platforms and discuss best practices regarding how to engage in each platform and share information with audiences on each platform. Since social media platforms are constantly evolving, the individuals tasked with monitoring and responding to issues and concerns on social media will likely need more frequent training than those working with more traditional media.

E. Review and Update Plans

Plans should be reviewed and updated, at a minimum, annually. The crisis teams should meet at least twice per year to review plans and discuss any necessary updates.

In addition, after any crisis event, the teams involved in the crisis should review the crisis plans and suggest revisions based upon the actual crisis event. Typical steps would be: (1) review existing crisis plans in light of actions during the actual crisis event, including management and leadership actions and decisions, and all crisis communications; (2) re-evaluate crisis plans; (3) suggest and make revisions to crisis plans; and (4) announce and disseminate updated crisis plans.

After any crisis event, franchisors should consider preparing an executive summary of the crisis event that includes the type of crisis, and how the core leadership and management handled the situation. That includes crisis events affecting competitive businesses. Learning through the experiences of others is sometimes a great way to avoid the same mistakes.

One example of standards for crisis planning that are constantly evolving are standards to address threats of terrorism. Marriott determined post 9-11 that, regardless of the potential risks for vicarious liability, that Marriott would develop planning tools for its company operated and franchised units related to security. The standards revolve around threat conditions applicable to the hotel, which can go up and down a scale ranging from clear to red, depending on where the hotel is located and likeliness of the hotel being a target, events or guests at the hotel that have the potential to be targeted, and events in the surrounding area that could raise the threat potential, political or civil unrest. For certain hotels that are considered permanently “red” based on locations with a continuous state of political or civil unrest or high incidence of terrorist activity, Marriott is dictating specific minimum standards with respect to security and crisis response management.

V. CRISIS RESPONSE / MANAGING THE ACTUAL CRISIS

Each crisis has the same basic four characteristics: (1) the time period when factors or issues are building up to create the crisis (which may be lengthy or non-existent, depending on the crisis); (2) the eruption of the crisis and beginning of harm; (3) the management of the events surrounding the crisis, business impact analysis, including determination of tasks required for resumption of business and compliance with continuity of business plans; and (4) the resolution of the crisis, implementation of business continuity plans, and post-mortem analysis to determine lessons learned from the event and analysis of the company’s crisis response. However, crises come in all shapes and sizes and no crisis will be like any other.
So, the first step in the crisis response will be the identification of the crisis event. While this may sound like an easy task, for crises that can be predicted and the affects anticipated, other crises arrive with no notice but are easy to identify, and others arrive with limited notice but can cause significant and lasting impact on a franchise system. For example, natural disasters like hurricanes can be predicted sometimes for days in advance and when a terrorist attack occurs there is no question that an event has taken place. Others, such as an airborne illness or contaminated foods, may not be obvious until a number of customers have been affected and the source traced to the particular cause. Or, it may be a single event at a single unit, and the event itself may have come and gone, but the attention and crisis for the company results later when the event comes to the attention of the media.

As described above, crisis plans must provide protocols for identifying and responding to a variety of crisis categories or events that may arise at a unit or that could affect the entire franchise system. The crisis plans should identify reporting protocols for how employees, franchisees, vendors, and customers can identify various categories of crises and advise the franchisor that a crisis event is eminent, and cause the information to be disseminated to the appropriate persons, including the crisis management team. The company has to have a mechanism for declaring a crisis and communicating with the crisis management team. For example, the franchisor may have a hotline or alert system for such reporting, or post the information on how to report a possible crisis in a conspicuous place in the unit. The examples below describe how some of the processes and protocols described above have been implemented by Marriott International for responding to specific types of events.

Marriott categorizes crisis events into Tier 1 and Tier 2 crisis events. A Tier 1 crisis event is an event where the crisis is local (typically a single hotel or a small market) and the impact of the event is not likely to expand beyond the hotel or a small market. Tier 2 events are events that affect multiple hotels or are major market/national or international in scope, or may be local event where the impact will be beyond the incident or local market, or has the potential to become national or international in scope. Marriott has a number of crisis teams, and each has a crisis team leader (who is typically one of the continent presidents for Tier 2 crises), and representatives from the following disciplines: legal, finance, human resources, engineering, risk management, business continuity, public relations, logistics, ad hoc members based on business units affected, consultants that vary depending on the type and location of the crisis, and a security and crisis coordinator. As described above, Marriott has a 24-hour emergency hotline, whose operators have the authority to contact different members of the crisis teams, depending on the issue. Marriott also uses a third-party system called AlertFind, which has multiple phone numbers, email addresses and texting capability so that, all members of the crisis management team can be contacted, as necessary. Once the crisis team leader or crisis team coordinator believes that a crisis is impending or occurring, that person can call a meeting of the crisis management team and use AlertFind to advise all members of the crisis team of the meeting. When the meeting is called, the applicable crisis management plan is reviewed and discussed by the team to confirm that no alterations are in order since the last time the plan was reviewed and the plan is implemented. Crisis plans are reviewed semi-annually, and even if no crisis event has occurred, a desk-top event will be implemented annually to test the plan.

For example, when hurricanes (such as Hurricane Sandy) are identified as a major storm heading towards a region, a potential crisis event is declared by the team coordinator or team leader for the applicable crisis team. A review will be conducted of the projected storm path to determine the hotels likely to be affected based on a computer tracking program that integrates with Marriott’s property database. A member of the team will then pull property status reports for each of the hotels to review what the company operated and franchised units are
reporting in the hotel status reporting tool. Hotels are required to continuously update in the reservation system whether they are open or closed (or will be closed), their occupancy and availability, rooms in inventory, rooms out of inventory, and a variety of other key metrics. For example, if a hotel has been advised in advance by a government agency that the hotel is to be shut down and evacuated, that information will show up in the tool and alert the reservations system so that the guests with reservations can be advised of the potential closure as quickly as possible to enable guests to alter their plans or be moved to a different hotel, and advise associates that the hotel will be closed so that they do not attempt to come to work when the hotel is closed.

If the hotels projected to be impacted are not shown as to be closed or evacuated in the reporting tool, a message will be sent to the hotel to confirm that the status is accurate, and for the hotel to confirm information required by the reporting tool, such as that: (1) emergency plans are in place, (2) generators are in working order, and (3) and the amount of fuel and estimated time available for the hotel to operate in the event of a power outage, among other things. The reporting tool is to be continually updated and monitored so that the team is aware of the changing status of the hotels. If the hotels that are projected to be impacted are not updating in the reporting tool, they will be contacted to determine their status and required to update their information.

Regional representatives of the company will begin communicating with company owned hotels, with franchisee organizations (and with the individual franchised hotels) and government officials to obtain information updates as to changing conditions and evacuation requirements. Communication updates will be disseminated to associates at the hotels so they can communicate with existing guests at the hotel and to guests with advance reservations who are contacting the hotel directly, and so the associates can update information in the reservation system and the hotel status reporting tool. Regional representatives will continue to report back to the crisis team any change in status.

The key to success, or survival sometimes, is to be in close contact with the government officials and the media. Those situations require the franchisor and the hotels to remain fluid and constantly communicating as the situation is changing as the storms progress. The 24-hour crisis management call center also will continue to receive calls during the storm if an urgent situation arises, such as a tree falls on the hotel or a fire breaks out, as reported by employees through the use of the emergency response card. The crisis communications team, which is part of the public relations department, and the crisis management team, will be in contact with the media, government officials, and monitoring media reports and social media through search/notice programs that provide message alerts.

Oftentimes Marriott corporate or the individual hotel (franchised or managed) will receive requests from the media to use facilities during weather events. Marriott generally tries to cooperate with the media, but in such circumstances, Marriott requires damage and injury waivers from media companies and their individual personnel occupying the hotels during such events. It is Marriott’s policy that, if the media is occupying the hotel during such events, they cannot film the trademarks or identifiable aspects of the hotel during the storm or release footage of damage to the hotel without Marriott’s consent.

Subject to the media exception, if the government is requiring evacuation of the hotel premises, it is Marriott’s policy that no associates or guests are to remain at hotels. If the government is recommending as opposed to requiring evacuation, it is Marriott’s general preference to evacuate hotels, rather than shelter in place. After every crisis, there is a post
mortem. The lesson from Katrina was to “evacuate,” if evacuation is an option rather than shelter in place, so that was the approach taken with Hurricane Sandy. Although, the damage and difficulty in New Orleans resulted more from the levy breach than the storm, Marriott ended up with 650 people sheltering in place at the Ritz-Carlton with no power, little food and water, except the waist-deep water in the ground floor, and no way to get out of the city. The first time Marriott sent in buses to evacuate the hotels, the buses were commandeered by the state. Marriott had to obtain a second round of buses, hire an armed security force, and make arrangements with federal authorities to prevent local and state interference in order to finally get Marriott’s guests and associates out to safety.

In the aftermath of devastating storms like Katrina and Sandy, hotels provide a source of shelter, and become almost secondary residences for first responders, clean-up crews, insurance company representatives and representatives of governmental agencies like FEMA. They are also oftentimes the interim places of lodging for guests whose homes have been either damaged or destroyed by the weather event or at least while power is being restored to their homes. In those circumstances, as noted above, issues arise where demand exceeds supply, and there are situations where existing guests have no place to go and sometimes have little or no ability to pay, and new reservations need their accommodations. The public relations department will carefully monitor guest complaints from the customer care line, news reports, industry blogs like Trip Advisor, and other social media, for reputation issues, such as complaints of price-gouging or reports of guests being requested to leave, and attempt to get them resolved quickly. The last thing a company wants is to do a great job managing a crisis and then have its reputation damaged in the aftermath from avoidable or manageable situations.

With all of that in place, however, for every franchise organization, staffing capabilities of each franchised hotel and the location of the hotel pose different issues, and therefore Marriott does not dictate the specific terms of any crisis plans for the franchisees. Franchisees will be provided access to significant information and guidance concerning the development of crisis plans utilized by the company for its hotels and directed to third parties (including government agencies) to assist the franchisees in the development of plans, including those that are required for compliance with the law and by their insurance companies. All hotels, whether franchised or company operated, are required to have crisis plans, and the existence of such plans are confirmed as part of the annual quality assurance property audit for franchise hotels.

Marriott, on the other hand (post 9-11), instituted minimum standards and compliance requirements for threat conditions for safety and security. Unlike a normal product quality standard, franchisees may be encouraged or required to exceed the minimum standards, depending on the risk profile of the hotel. When franchisors undertake the development of standards for safety and security, as described below, franchisors may also be taking on potential liability and are required to respond to allegations concerning the adequacy of such standards and the franchisor’s failure to monitor and require compliance by its franchisees.2

In the United States, company operated and franchised hotels are required to comply with Department of Homeland Security threat condition standards. The basic U.S. standards are Yellow (or Readiness) Orange (or Elevated) and Red (or Imminent). The threat condition at a hotel generally moves up and down the threat-level scale based on events occurring at the hotel (e.g., U.S. and foreign dignitaries, celebrity and other high-profile guests or events, controversial speakers, protests, social or political unrest, high incidents of terrorism in region,

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etc.). In connection with the recent bombings at the Boston Marathon, for example, while no event took place at the hotels, Marriott declared the event a crisis, the crisis management team was convened, and the hotels were placed on Imminent Threat Status. Based on the crisis management team’s evaluation of the situation (including its monitoring of the actions of local police, the FBI and DHS), the crisis management team elected to declare a lockdown of the Marriott hotels in the area prior to the announcement of the lockdown by the Governor.

Marriott has different security standards that it imposes in the international context, and in particular regions with high incidents of political and social unrest and terrorism. Safety and security standards and the crisis plans related to such events are continuously reviewed and evolving. The standards evolved, in part, out of standards utilized by foreign and U.S. government security forces and intelligence agencies to protect facilities and personnel, safety and security consultants, and Marriott’s internal resources and own experiences at its hotels in connection with the bombings at the Islamabad Marriott in October 2004, January 2007 and September 2008; the bombings at the Jakarta JW Marriott in August 2003, and at the Jakarta JW Marriott and Ritz-Carlton in July 2009; and analysis of attacks on other hotels, such as the Taj Mahal Palace & Tower and Oberoi Trident hotels in November 2008, and the Kabul Intercontinental June 2011, as well as other terrorist attacks on government buildings, mosques, restaurants and other facilities where groups are targeted. In connection with every crisis at one of its hotels, as well as other hotels and similar incidents, there are post mortems conducted to analyze the crisis events, the plans and standards to protect against and mitigate damage upon the occurrence of such events, and the response plans when such events occur.

On September 20, 2008, during the celebration of Iftar (the celebration of the breaking of the fast of Ramadan), the Islamabad Marriott was subjected to a terrorist attack involving a dump truck carrying an estimated 1,300 pounds of explosives, mortar and artillery shells, and incendiary materials, along with shrapnel intended to maximize the number of injuries. The hotel was a threat condition "Red" at the time of the attack and there were approximately 1,500 people present at the hotel at the time of the attack, including 60 security personnel. The dump truck attempted to ram the protective barricade at the vehicle inspection station approximately 130 feet from the hotel entrance. The barricade held and the bomb was detonated at the security station. Fifty six people were killed (18 customers, 30 employees, and 8 bystanders and taxi drivers) and 265 wounded. The bomb crater was 60 feet in diameter and 25 feet deep, and the detonation and incendiary materials ignited a fire in the hotel. Deaths and injuries resulted predominantly from the blast, shrapnel and other debris, including glass.

Marriott’s crisis management team was convened, regional personnel were on site in less than 12 hours, and its head of safety was on site within 24 hours. Crisis plans were immediately activated and require: accounting of all guests and associates; accounting of injuries and severity; coordinating emergency services and medical attention, establishing communications with guests, associates and families; establishing a communications hotline for family and friends, including counseling services, relocation and evacuation of guests (including airline transportation); PR communications; notice to reservations systems; assessment of damage; review of insurance policies and contacts with insurers, etc. Then post mortem and business continuity took over: rebuilding and re-designing of hotel with increased security features and new modifications to threat conditions standards created and implemented, including architectural designs for hotels located in permanent threat condition red locations.

In certain instances, the crisis may not be the incident itself, but can arise out of the response to the crisis and the management of the media reaction. In October 2006, a female customer, Jane Doe, of the franchised Stamford, Conn., Marriott Hotel and Spa pulled into the
public parking garage adjacent to the hotel, which was utilized for guest parking. As she was exiting her vehicle, Gary Fricker forced Ms. Doe at gunpoint back into her mini-van and assaulted her in front of her children. While the incident was tragic and clearly a crisis event, the assault received very limited coverage in the press. Fricker was arrested shortly thereafter and, in his statements confessing to the rape, indicated that he had been roaming around the parking lot and the hotel looking for victims.

In May 2008, a lawsuit was filed against Marriott and the franchisee by Ms. Doe, alleging that the hotel was negligent, failed to take reasonable actions to prevent the assault, and provided inadequate training of security personnel. Before Marriott counsel reviewed the pleading, defense counsel for the franchisee’s insurance company filed a response that included the defense that the acts of Fricker were beyond the control of Marriott and the franchisee and neither should be held liable for the acts of Fricker, and the alternative defensive pleading that Ms. Doe failed to mitigate damages in connection with the assault. As soon as the pleading came out, it was brought to the attention of press and to groups dedicated to addressing issues of violence against women. The press and these groups had a field day with the pleading; headlines included: “Marriott Hotel Blames Rape Victim for Failing to Protect Herself” and “Stamford Marriott Blames Woman for Her Own Rape.”

The response by customers was immediate, with guests canceling stays and sending in cut-up Marriott’s Rewards Membership Cards. The facts of the case became irrelevant. Once the matter was on the radar of the press, any action, including amending the pleadings to delete the alternative pleading, was news. The focus on the matter was not the actual crisis event, but the pleading. Whether Marriott or the franchisee should be held liable for events taking place at an adjacent parking garage became almost irrelevant. The crisis response was to manage the public relations; the public relations strategy overshadowed the legal defense strategy, resulting in modifications to the legal strategy and immense pressure to settle the case. The matter settled in December 2010. Post mortem resulted, in addition to a review of the substantive security issues, a review and implementation of new processes and resources being dedicated to reviewing all pleadings in all potential crisis matters prior to filing by defense counsel for franchisees’ insurance providers.

As described above, whether it is a crisis affecting 100 or more units, as in the case of a Hurricane Sandy, or a single event affecting a single unit, during the initial stages of the event and in formulating its response, “real-time” communications are essential to ensuring that the franchise system gets ahead of the crisis and manages the response to the event. Teams will need to be easily accessible, which may be by cell phone and text. The key players need to understand their roles and responsibilities and act quickly to ensure the franchise system stays on task in its response to the crisis. A well-organized crisis team will provide a controlled approach, assess risk and take appropriate action to protect the various stakeholders in the franchise system. The more quickly the franchisor can get on task with an organized approach, the more likely the franchise system can minimize potential negative impacts.

The team, based on the specific crisis event, will identify key next steps, collect information regarding the crisis event, make adjustments to the plan based on the specifics of the event, inform internal and external resources, develop messages for each of the respective audiences (franchisees, customers, government officials, and the media), which will vary slightly.

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based on interest and next steps, but must be consistent and transparent, and identify the spokesperson to speak to the respective audiences.

Throughout the crisis event, the franchisor should not make statements that have not been confirmed or vetted by the factual review. If the franchisor does not have the complete facts, first statements should acknowledge the situation and inform the audience that the situation and facts are under review. The message as well as the actions must always focus on the key principle that the safety of the public and the employees is paramount, property is secondary. Cooperation with authorities and government departments is essential and the franchisor must work with, and must be perceived as working with, the government agencies to reach resolution and to be acting for the protection of the customers and employees. Actions to the contrary will be received poorly and typically result in prolonging investigations and negative publicity.

As the crisis unfolds, the franchisor should be sure to document all actions taken. This will include keeping thorough and accurate records of planning sessions, crisis management team meetings, reports and all public conferences. The notes for the crisis team meetings should include the basis for the decisions and document decision-making. This information will serve a variety of functions, including helping the franchisor learn how to better manage the event should it happen again, and make modifications to the system to prevent or curtail the effects of similar events in the future.

VI. BRINGING IN OUTSIDE EXPERTS

Just like many other aspects of the franchise business, there are aspects of the crisis planning, crisis management and crisis communications that may be handled most effectively and efficiently by an outside expert. Typically, in connection with crisis events or planning, companies consider hiring specialized legal counsel, public relations consultants, social media experts and management consultants. These experts can assist at various times during the process, such as with the initial crisis audit, crisis plans for the franchisor, training programs on the crisis plans for the franchise system, system-wide alert systems and communications systems, interim management during a crisis event, developing and communicating messages during a crisis event, and conducting a post-crisis review and suggesting revisions to crisis plans. There are a variety of considerations for franchisors in making these hiring decisions including, among others:

- Does the franchisor have a sufficient number of current staff members to handle the aspects of the crisis event? The franchisor will need to consider the number of the employees that might be necessary to handle each component of the crisis and assess whether there are a sufficient number of employees to cover the extra work that may be demanded and also to ensure that company operations are proceeding along as normal a course as possible.

- Does the franchisor have staff members with adequate experience to handle the aspects of the crisis event? All aspects of crisis planning, management and review come with special considerations. Franchisors should assess whether their current team members have the necessary experience to handle the crisis event.

- Even if the franchisor has sufficient number of employees, does it make more sense to bring in third parties due to the speed at which the crisis event is unfolding or the scale of the crisis event? Crisis events may come with a flurry of intensive activity.
• Does the franchisor need a third party to provide an objective view of the crisis planning, crisis management or crisis review? Third parties who have extensive experience with crisis planning, management and communications may bring valuable insight as to what has and hasn’t worked with other organizations facing similar issues. In addition, external resources are likely to have a different perspective that may be less biased than company employees.

• If the franchisor hires a third party, is it better to have that person on retainer or to hire the person just to deal with a specific situation? Companies handle this decision with very careful consideration to the pros and cons of each option, the potential monetary cost, and the possible need to have someone who is up to speed on the business which is useful if a crisis event does occur.

If the franchisor decides to move forward with bringing in an outside expert, the franchisor should consider the scope of the project that will be undertaken. Initially, the franchisor should develop a concise statement of the franchisor’s expectations, the deliverables the expert is expected to provide, and a timeline for providing those deliverables. The franchisor and the expert should discuss how the franchisor will assess the expert’s performance and any concerns the franchisor has with regard to the expert undertaking the project. Clear communications between the franchisor and any third-party expert will be especially important if the expert is hired during an actual crisis event.

VII. LEGAL CONSIDERATIONS

While case law regarding franchisors, franchisees and liability during crisis management is scarce, there are certain steps that a franchisor can take to ensure that a franchisee follows the franchisor’s lead during a media attention situation as well as protect the franchisor from liability for a franchisee’s actions, if that is the cause of the crisis.

It is well established that a franchisor, unless maintaining an intense involvement with the day-to-day operations of a franchisee, is not liable for the actions of the franchisee in an agency relationship. Furthermore, courts have consistently held that a franchisor will be vicariously liable for the actions of a franchisee if the franchisor controls the specific instrumentality which caused the harm. In addition, a franchisor will be vicariously liable if it, in essence, controls the day-to-day activities of the franchised business. Neither uniformity of products and services nor the franchisor’s right to terminate the franchise agreement for noncompliance with standards creates sufficient control of day-to-day operations to establish vicarious liability. It is important to note that, in a situation where the particular instrumentality or condition that was the cause of an accident is under the control of the franchisor, the

4 Kerl v. Rasmussen, 672 N.W.2d 71 (Wis. Ct. App. 2003), aff'd, 682 N.W.2d 328 (Wis. 2004). See also Hoffnagle v. McDonald’s Corp., 522 N.W.2d 808 (Iowa 1994).


franchisor cannot escape vicarious liability. As the franchisor investigates the factual basis of the crisis event, it will also need to assess the alleged underlying cause of the crisis.

A Georgia court addressed a franchisor’s vicarious liability during crisis management in *Schlotzsky’s Inc. v. Hyde et al.* In this case, three individuals alleged they had contracted Hepatitis A after eating tainted food at a Schlotsky’s franchise (owned by Tidwell Food Company). They sued Schlotsky’s as franchisor under a theory of vicarious liability. The lower court held that, because the franchise agreement and the operations manual (which was part of the franchise agreement), “gave Schlotsky’s the right to control the time, manner, method, and means of the franchisee’s work … Schlotsky’s was… vicariously liable for any negligence by the franchisee.” The appellate court reversed, stating that there was no evidence that the franchisor had assumed day-to-day control over any of the franchisee’s employees. The court went on to further clarify that:

“[t]he fact that Schlotsky’s responded to Tidwell Food Company’s request for advice about how to handle the media attention generated by these incidents or the fact that Schlotsky’s reconsidered its standards pertaining to employee hygiene after these incidents is not relevant to whether Schlotsky’s had any supervisory control over Tidwell Food Company at the time appellees consumed the allegedly tainted food.”

Thus, advising your franchisee in the midst of a media crisis will not create any more vicarious liability than already exists.

But this leads to the question of when is it proper for the franchisor to take the lead in crisis management, and when is it best to merely advise the franchisee? In general, a franchisor will want to take the lead when the crisis is one that will affect the brand as a whole, or a majority of franchisees due to the negative publicity. If the crisis relates to one unit or an isolated group of units, the franchisor may decide to permit the franchisee to control the situation; however, the franchisor should keep in mind that, with ubiquity of social media platforms, it is easier for users to share and respond to information and a situation involving one isolated unit in “Small Town USA” can quickly create a global PR issue with lasting impact on the brand and its reputation.

An example of a company taking control of the PR situation was seen when BP took control of its reputation management after the 2010 spill in the Gulf of Mexico. When BP franchisees were being boycotted by consumers, BP provided franchisees a forecourt sign that said “locally owned and operated” to create understanding among BP consumers that the franchisees themselves were not responsible for the Gulf oil spill. BP also handled the media contact in terms of advertising the steps BP was taking to remediate the spill damage and advertise that the coast was open for business. In this case, the franchisor took complete

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9 *Id.* at 562.

10 *Id.*

11 *Id.* at *563.
control of the media since the problem had occurred at a franchisor level and the problem had significant and far-reaching impact on the entire system and its reputation.

Cold Stone Ice Cream came up with a creative solution when a 2010 CNBC piece called *Behind the Counter: The Untold Story of Franchising* put forth a particularly one-sided piece that used a disgruntled former franchisee as a source. As a result of that piece, consumers boycotted franchised Cold Stone Ice Cream units. Cold Stone issued a letter to CNBC demanding a retraction, to no avail. With the thought that a unified front of the franchisees that were supposedly being set up to fail would work better, Cold Stone hired a well-known and well-respected franchise attorney to represent the National Association of Cold Stone Creamery Franchisees, as well as the Cold Stone National Advisory Board. Cold Stone then worked jointly with its franchisees to come up with a strategy. Using this strategy, when the franchisees’ legal team – paid for by the franchisor – sent a cease and desist letter to CNBC, that request was honored. Ultimately, instead of rebroadcasting the show multiple times as CNBC had planned, CNBC stopped broadcasting the show all together and instead interviewed franchisees and the franchisees’ attorney, leading CNBC to re-write the story as a more well-balanced picture of the issues of being a Cold Stone Ice Cream franchisee. Cold Stone, by working with its franchisees to control an issue, and assuming the costs related to letting the franchisees be heard, was able to better manage the story. Cold Stone was able to protect its brand goodwill and reputation: a win for Cold Stone and its franchisees.

When Taco Bell had an E. coli outbreak in 2006, the franchisor attempted to locate the source and appeared proactive in protecting its customers by switching suppliers and running an ad campaign saying their food was safe. However, in June 2013, when a photo of a franchisee’s employee tainting food hit the internet, the franchisor stepped back and merely issued a statement on its website indicating that the franchisee was handling the situation.

In the franchise agreement, most franchisors reserve the ability to decide whether the franchisor or the franchisee will handle the crisis. Several other provisions can assist the franchisor in managing its brand and reputation during a crisis event. Those provisions include:

- **An overt contractual provision.** While there has been no case law to guide appropriate or inappropriate language in a crisis management provision, a “crisis control” provision in the franchise agreement that clearly outlines a franchisor’s expectations in the event of a crisis will ensure that a mini-plan is clearly stated in an easy to reference place.

The clause should clearly state that the franchisor has sole and absolute direction to define a crisis and to control how a situation is handled by all involved parties. This will allow the franchisor to maintain the “big picture” message and ensure that its franchisees are protected as much as possible. However, the ability to delegate crisis management to the franchisee when the crisis is more manageable is also important. It might be more beneficial to the franchisor to delegate management of the crisis when the issue does not necessarily affect the brand name as a whole. Franchisors may also want to consider the possibility of retaining a right of final approval on any and all communications the franchisee may have in responding to a crisis. This would allow the franchisor to control the message and ensure the franchisee stays on point without having to control the minutiae of the situation.

The contractual clause should also state that the indemnification clause of the franchise agreement will extend to any and all losses and expenses incurred by the franchisor or
its designee in the course of the crisis management. Furthermore, the franchisor should consider violation of a crisis control provision to be cause for immediate termination.

**Possible Contract Provision:** **Control During Crisis Situation.** If an event occurs at the Franchised Unit that has or reasonably may cause harm or injury to customers, guests or employees (i.e., food spoilage/poisoning, food tampering/sabotage, slip and fall injuries, natural disasters, robberies, shootings, etc.) or may damage the proprietary marks, the System, the goodwill or the reputation of Franchisor, or the reputation of any franchisee (collectively “Crisis Situation”), Franchisee shall: (1) immediately contact appropriate emergency care providers to assist it in curing the harm or injury; and (2) immediately inform Franchisor of the Crisis Situation in accordance with the then-current procedures stated in the Manual. Franchisee shall refrain from making any internal or external announcements (i.e., no communication with the news media) regarding the Crisis Situation (unless otherwise directed by Franchisor or public health officials).

To the extent Franchisor deems appropriate, in its sole and absolute discretion, Franchisor or its designee may control the manner in which the Crisis Situation is handled by the parties, including, without limitation, conducting all communication with the news media, providing care for injured persons and/or temporarily closing the Franchised Unit. The parties acknowledge that, in directing the management of any Crisis Situation, Franchisor or its designee may engage the services of attorneys, experts, doctors, testing laboratories, public relations firms and those other professionals as it deems appropriate, and Franchisee must reimburse Franchisor for all such costs. Franchisee and its employees shall cooperate fully with Franchisor or its designee in its efforts and activities in this regard and shall be bound by all further Crisis Situation procedures developed by Franchisor. The indemnification clauses stated in Section X shall include all losses and expenses that may result from the exercise by Franchisor or its designee of the management rights granted in this Section.

- **Indemnification Clause.** The standard indemnification clause should include notice to franchisor of any action that arises as a result of a crisis situation. Just like other actions, when the franchisor receives notice, the franchisor will need to decide how to proceed – to permit the franchisee to manage the matter or retain counsel to protect its own interests, or to take control of the defense of a matter and the associated risks of loss. Franchisors must consider not only its indemnification from the franchisee, but the interplay of the franchisee’s insurance carrier’s interest and requirements, as the value of the franchisee’s indemnification may only be worth the ability of the franchisee’s insurance carrier to cover the loss (as franchisor is typically named as an additional insured). Franchisors do not want to turn a franchisee-insured claim into an uninsured claim (or franchisor-insured claim) by taking action without the cooperation of the franchisee’s insurance company, unless it is absolutely necessary to do so. Under most circumstances, the franchisee’s (insurance carrier’s) attorney will take direction and cooperate with the franchisor’s inside or outside counsel. Although interests may diverge when based on reputational issues it is in franchisor’s best interest to pursue a speedy settlement, and the carrier perceives it is in its best interest to continue to press the matter to reduce the amount of the settlement.

If the franchisor permits the franchisee (or typically its insurance carrier) to handle the defense of such an action, the franchisor should carefully monitor the matter and review
court filings to ensure that the positions taken or statements made in the pleadings are not inconsistent with other positions taken by the franchisor or by their nature could result in creating additional adverse media coverage or damage the brand or its reputation.\textsuperscript{12}

Possible Contract Provision: **Indemnification.** Franchisee shall, at all times, indemnify, defend (with counsel reasonably acceptable to Franchisor), and hold harmless (to the fullest extent permitted by law) Franchisor and its parents and affiliates, and their respective predecessors, successors, assigns, past and present stockholders, directors, officers, employees, agents and representatives (collectively “Indemnitees”) from and against all “losses and expenses” (as defined below) incurred in connection with any action, suit, proceeding, claim, demand, investigation, inquiry (formal or informal), judgment or appeal thereof by or against Indemnitees or any settlement thereof (whether or not a formal proceeding or action had been instituted), arising out of or resulting from or connected with, Franchisee’s activities under this Agreement, including allegations of negligence by such Indemnitees, arising from (i) the unauthorized use of the Proprietary Marks; (ii) the violation of Legal Requirements, including Data Protection Laws; or (iii) the construction, renovation, repair, operation, ownership or use of the Franchised Business (including any action arising from a Crisis Situation). Franchisee promptly shall give Franchisor written notice of any such action, suit, proceeding, claim, demand, inquiry or investigation filed or instituted against Franchisee and, upon request, shall furnish Franchisor with copies of any documents from such matters as Franchisor may request. At Franchisee’s expense and risk, Franchisor may elect to assume (but under no circumstances will Franchisor be obligated to undertake), the defense and/or settlement of any action, suit, proceeding, claim, demand, investigation, inquiry, judgment or appeal thereof subject to this indemnification. Such an undertaking shall, in no manner or form, diminish Franchisee’s obligation to indemnify and hold harmless Indemnitees. Franchisor shall not be obligated to seek recoveries from third parties or otherwise mitigate losses. As used in this Section, the phrase “losses and expenses” shall include, but not be limited to, all losses; compensatory, exemplary and punitive damages; fines; charges; costs; expenses; lost profits; reasonable attorneys’ fees; expert witness fees; court costs; settlement amounts; judgments; compensation for damages to Franchisor’s reputation and goodwill; costs of or resulting from delays; financing; costs of advertising material and media time/space and the costs of changing, substituting or replacing the same; and any and all expenses of recall, refunds, compensation, public notices and other such amounts incurred in connection with the matters described.

- **Insurance Clause.** This clause should take into consideration the specific nature of the franchisor’s business and all the things that could go wrong in terms of damage to persons and property. Typically, the contract will provide for insurance for damage to persons and property. The franchisor should consider any insurance that might be specific to the industry, such as, for restaurant concepts, insurance policies for foodborne illnesses.

The franchisor should consider requiring the franchisee to obtain business interruption insurance. Business interruption insurance would provide coverage for the franchisee in the event the franchisor decided the best course of action would be to temporarily close

\textsuperscript{12} See discussion of supra Doe et al. v. Stamford Marriott Hotel and Spa et al.
the location in the wake of a crisis. This would protect the franchisee from having to simultaneously recover from a crisis and recover from lost income and revenue. In addition, a portion of this insurance can be used to pay the franchisor continuing fees it would otherwise have received if the business had remained open.

The franchisor should be an additional insured on these policies, should require minimum policy amounts for all required insurance and should consider setting deductible amounts.

Possible Contract Provision: Insurance. Franchisee shall be responsible for all loss or damage arising from or related to Franchisee’s development and operation of the Franchised Unit, and for all demands or claims with respect to any loss, liability, personal injury, death, property damage, or expense whatsoever occurring upon the premises of, or in connection with the development or operation of, the Franchised Unit. Franchisee shall maintain in full force and effect throughout the term of this Agreement that insurance which Franchisee determines is necessary or appropriate for liabilities caused by or occurring in connection with the development or operation of the Franchised Unit which shall include, at a minimum the policies required in the Manual. The following is a list of the currently required insurance policies: [List insurance required by type and amount of coverage]. Franchisor, and any entity with an insurable interest designated by Franchisor, shall be an additional insured in such policies to the extent each has an insurable interest.

- **Franchisee’s Compliance with Applicable Laws.** All franchise agreements contain (or should contain) a clause stating that the franchisee must remain in compliance with all applicable local, state and federal laws related to its business. Depending upon the franchised business, these laws could affect food storage and related health inspections codes, or it could refer to bed bug laws, or even to petroleum laws.

By putting the onus of conformity onto the franchisee, the franchisor is distancing itself from the issue of control of the franchisee and therefore vicarious liability.

Furthermore, by mandating that the franchisee remain in compliance with all such laws, if a violation of those laws results in a crisis for the franchisor, the franchisor would have the right to put the franchisee in default and possibly to immediately terminate the franchise agreement, depending upon the language of that specific franchise agreement.

Possible Contract Provision: Compliance with Applicable Laws. Franchisee shall operate the Franchised Unit in full compliance with all applicable laws, ordinances and regulations including, without limitation, all laws or regulations governing or relating to the handling of food products, immigration and discrimination, occupational hazards and health insurance, employment laws, including, without limitation, workers’ compensation insurance, unemployment insurance, and the withholding and payment of federal and state income taxes, social security taxes and sales taxes.

- **Use of Approved Vendors.** A provision that requires franchisees to use authorized or approved vendors may also minimize a franchisor’s liability in the event of a crisis, as well as hopefully minimize the possibility of a crisis. If the franchisee was found not to have used an authorized or approved vendor and a problem occurs, the franchisor could have the right to find them in default of the franchise agreement.
• **Default and Termination.** Franchise agreements typically include very detailed default and termination provisions. In the event that certain defaults occur, the franchisor will have the right to terminate the agreement. Depending on the default, the agreement may provide that the agreement automatically terminates or that the franchisor must provide notice for the termination (but the franchisee has no right to cure) or that the franchisor must provide notice and opportunity to cure before the agreement can be terminated. In addition to the contract provisions related to termination, certain state franchise laws restrict a franchisor’s ability to terminate franchise agreements. Generally speaking, these laws require good cause and notice (up to 120 days) before the franchisor can terminate the franchise agreement. If the jurisdictional requirements for a state franchise law are met, the franchisor must comply with that law prior to terminating the franchise agreement, even if the franchise agreement permits termination. Typically, good cause is a material breach of the franchise agreement. “For a breach of contract to be material, it must ‘go to the root of the agreement between the parties.’”13 Some states permit franchisors to automatically terminate “without notice and an opportunity to cure when ‘the misfeasance is incurable and when the cure is unfeasible.’”14

By making the crisis management plan a part of the manual, any violation of the plan becomes, under the terms of the franchise agreement, grounds for default and/or termination. Certainly protection of the system and the brand is a material element at the root of the agreement between the parties, and thus grounds for default and/or termination. Furthermore, any provisions that the franchisee may have violated that brought about the crisis – unauthorized sources, lack of insurance, lack of security, etc. – will also be tied back to a right to terminate the franchisee.

Even if the franchisor has the right to terminate the franchise agreement, the franchisor will need to carefully assess at what point the franchisor should proceed with such action. This assessment will need to review the type of crisis, the cause of the crisis, the impact on the system, goodwill and reputation, and the possible impact on consumers and employees (such as health and public safety concerns).

**Possible Contract Provision: Termination Without Cure Period.** In addition to the grounds for termination that may be stated elsewhere in this Agreement, Franchisor may terminate this Agreement, and the rights granted by this Agreement, upon written notice to Franchisee without an opportunity to cure upon the occurrence of any of the following events: … (10) Franchisor makes a reasonable determination that continued operation of the Franchised Unit by Franchisee will result in an imminent danger to public health or safety; or (11) Franchisee fails to comply with Franchisor's policies, procedures and directives during any Crisis Situation or fails to timely report any Crisis Situation to Franchisor.

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VIII. REPUTATION MANAGEMENT

A brand’s reputation is defined as the amount of positive brand equity a company has with its stakeholders and it is usually “created” by the direct and indirect experiences that a stakeholder has with the brand. These experiences build trust in the brand and, from that trust, positive brand reputation is born. When that trust is comprised, either by direct experience, or by indirect experience, the brand’s reputation is undermined. Reputation, which is a component of the goodwill of a franchise system, is an important business asset for any franchise system. A franchisor must consider various aspects of its reputation, including, among others, overall reputation of the franchisor, the reputation of the brand or franchise system, and the reputation of its franchisees. While franchisors have protected their reputation for years in traditional manners, in recent years, with the proliferation of interactive electronic media (such as social media networks and review or gripe sites), franchisors have broadened that net to include reputation management in connection with their online presence. And, as with many other business initiatives, monitoring and addressing online reputation issues has become, in some ways, more difficult because the franchisor is no longer in control of the content that is posted and in many cases, cannot remove unfavorable information.

Similar to crisis planning, a franchisor should assess how it will monitor and respond to reputational issues, whether they arise in traditional or online formats. This analysis and planning is usually more effective if it is not completed in response to an actual reputational threat. For example, when the franchisor develops the crisis communication plan, an element should be how to deal with reputational issues that arise. That plan can form the backbone of how the franchisor will monitor and respond to such issues, even absent a crisis event. Failure to quickly and adequately address reputational issues, whether or not during a crisis, may have a significant and long-term impact on the franchise system.

Until recently, many franchisors had a limited online presence that consisted mainly of a company website that was set up like a brochure to provide information about the franchisor and the franchise system. With the increased interactive nature of the internet, franchisors have been expanding their online presence. Franchisors should carefully assess their websites to ensure that they include favorable content that is updated on a regular basis. In addition, as users view the internet as an interactive platform, franchisors should consider providing consumers with an easy avenue to ask questions, provide feedback and raise concerns directly to the franchisor. Consumers who have an effective means to provide feedback are less likely to turn to other online resources to report negative comments and concerns.

If negative online web content appears, franchisors have a few options to deal with the content. The franchisor may, among other things, ignore the comment, post a direct response to the content, respond using other sites, request that other customers post positive content, or post other positive content. Each option must be carefully assessed to determine the possible additional impact. In most instances, responding by posting positive web content can naturally push the negative content down in the search engine rankings by adding new positive web content (by channels such as blogs or YouTube) or having reputable third parties add new content. This process is called “search engine optimization,” a detailed discussion of which is beyond the scope of this paper.

Monitoring and tracking what is being said about the brand is very important. Given that there are now a variety of online vehicles that permit users to share information and have a dialogue about experiences, it is naïve to believe that stakeholders such as customers, franchisees, employees, and others, are not talking about the brand. As an initial step,
Franchisors should put monitoring procedures in place to determine what is being said about the brand and where. The most basic monitoring can be done through periodic Internet searches via Google, Yahoo and Bing of key phrases like the franchisor’s name (including any common misspellings), brand name, and key offerings of the system. In addition, various services such as Google Alert offer free, real-time email alerts when certain words are used online. Franchisors can easily set up multiple keyword alerts regarding the brand to receive notifications when new web content is published about the brand. In addition to these free services, there are also paid services, such as Radian6, Vocus and Sysymos, that monitor web content.

As the internet has morphed from a one-way information channel from companies to consumers to an interactive platform where consumers are proactive, it is common to find user-generated content on various sites including social media sites and review or gripe sites. Users who have found that traditional customer service options do not offer adequate or timely responses, often turn to social media, review or gripe sites to voice their displeasure. As a start, the franchisor should have a profile on any applicable social media sites, such as LinkedIn and Facebook. Social media profiles are important because stakeholders expect franchisors to be visible on these sites where they can easily interact with interested stakeholders. The franchisor should closely monitor positive and negative user-generated web content to determine the “what, why and how” of the issues that have arisen. After investigating any pertinent facts, the franchisor should engage with the user to address the issue raised. The response should be formulated based on the communications plan, which should consider, at least, when the franchisor will respond in terms of timing, how the franchisor will respond in terms of the media used and the possible outline of a response, and under what circumstances the franchisor may decide not to respond because any response may be counterproductive. This plan should keep in mind that consumers expect companies to monitor and be engaged in these online discussions; however, franchisors should keep in mind that responding to negative online comments can actually increase the position of that web content in search engine results. Obviously, responses should be carefully crafted, as even the slightest misstep can have significant negative implications for the franchisor’s reputation. To the extent a franchisor makes a promise, the franchisor must be able to deliver on that promise.

There are some basic ways to protect the brand and its reputation. These include:

1. Build brand reputation by becoming a respected and trusted services or goods provider. Then, position the brand appropriately offline and online. For the online presence, the franchisor should actively update web content and engage in activities that optimize positive content.

2. Vigorously monitor the brand by using search tools and alerts and hiring consultants to assist with monitoring.

3. React to feedback in an appropriate manner. The franchisor should carefully, thoughtfully and promptly address negative comments. To do this, the franchisor will need to develop procedures to be accessible to consumers. The franchisor will need be realistic about what it can do and the timing of the response and then share that information with stakeholders.

4. Remember that the first two pages of Google or other search results are an online business card. These pages should be carefully monitored for negative content.
5. Get professional help if necessary. In some instances, monitoring and responding to reputational issues may be best handled by outside consultants. If outside assistance is necessary, the franchisor should endeavor to engage that assistance as early as possible.

6. Be realistic about possible outcomes. For example, while the franchisor’s first reaction may be to request that content be removed, it is unlikely that a third party will remove content and making such a request may only serve to call into question the franchisor’s motives.

7. Finally, don’t forget offline reputation management.

Reputation management takes commitment of time and resources. Franchisors who understand the value of this commitment are often in a better position to respond to instances that might negatively impact reputation.
LESLE CURRAN

Leslie Curran is a Partner in the law firm Plave Koch PLC in Reston, Virginia. She has practiced in the field of franchise law for over 10 years. Leslie represents a broad range of clients in domestic and international franchising, licensing and distribution matters, across diverse industries, including restaurants and food service, dry cleaners, waste disposal, hotels, retail, health care, business services and product distribution. She has extensive experience in structuring franchise and distribution systems, compliance with state and federal regulatory issues, developing licensing and distribution arrangements and compliance with state relationship laws.

Leslie has a BA in Political Science from the Elizabethtown College. She received her JD (magna cum laude) from University of Pittsburgh School of Law, where she was a Research Editor for the Law Review for the University of Pittsburgh School of Law.

Leslie has spoken on panels and conducted roundtables on numerous legal and business issues related to franchising. Leslie is an active member of the ABA Forum on Franchising. She has helped organize Community Service Events sponsored by the Diversity Caucus, Women’s Caucus and Corporate Counsel Division. Leslie served on the Forum’s Technology Committee. From June 2007 to June 2009, she served as the Young Lawyers Division Liaison to the Forum’s Governing Committee. Leslie is currently a member of the Forum’s Governing Committee, serving as the Diversity Officer.

Outside of franchising, Leslie is active with other boards and organizations that support local business owners. From 2010 to 2012, Leslie served as the President of the Greater DC Chapter of the National Association of Women Business Owners. Leslie enjoys spending time with her 2 year old son, traveling, reading fiction and amateur photography.
BETH LABRECHE

Ms. LaBreche is a Vice President, in charge of strategic development, at Gage, one of the country’s foremost behavioral marketing agencies, based in Minneapolis with additional offices in Seattle. She sets strategic direction for the agency, including the creation and packaging of innovative marketing, communications and technology solutions for Fortune 500 brands, such as Coca-Cola, Microsoft, Thomson Reuters, 3M and United Health Group. Ms. LaBreche has more than 20 years of experience in issues management and crisis communications, working with such franchise organizations as Carlson Companies, Great Clips and Parasole Restaurant Holdings. She has counseled senior executives at public and private companies on crisis communications planning, global crisis communications management and works directly with the media on behalf of clients.

Gage is a partner in Public Relations Organization International ("PROI"), and is part of PROI's crisis communications network, through which the agency has on-the-ground, 24-hour resources available in several international regions.

Ms. LaBreche is the founder of LaBreche, a public relations agency she founded in 1990, which merged with Gage in January 2013. She is a recognized and sought-after speaker and contributing writer on entrepreneurial, women’s leadership, reputation management and public relations practices.
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Mr. Forseth is a Vice President and Assistant General Counsel with Marriott International, Inc. Among other duties, he is responsible for responding to legal issues involving the development and operation of franchised hotels and regulatory compliance in both domestic and international markets for Marriott’s multiple lodging brands.

Before joining Marriott, Mr. Forseth was in private practice, focusing on representation of franchise and other licensing and distribution companies in both domestic and international markets, and related business structuring, regulatory and relationship issues. Prior to that, he was the Senior Franchise Examiner for the Maryland Division of Securities, responsible for enforcement of the Maryland Franchise Registration and Disclosure Law.

Mr. Forseth is currently the Chair of the International Franchise Association Legal Legislative Committee, is a past advisor to the North American Securities Administrators Association Franchise Project Group, is a current member of: the American Bar Association - Forum on Franchising, and is a Past Chairman of the Maryland Bar Association - Franchise Law Committee (Past Chairman).

He is a recognized speaker on the topic of franchising and related legal issues and has published numerous papers and articles on the subject.