DRAFTING THE FDD FOR MULTIPLE OR OTHERWISE COMPLEX OFFERINGS

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General Overview

• Why combine brands/models in one FDD?
• When does it get too complex?
• Rule of thumb?
Multiple Brands in One FDD

Jasmine Tea House       Serenity Coffee Bar
Why:

• Different types of locations
• Landlord has already agreed to exclusivity for another concept
• Acquisition of competitor and necessary to keep second brand alive
FTC Rule Guidance?

State Franchise Law?

• Illinois Regulation – OK if contract similar and information is not confusing
Disclosure Challenges

• Multiple Charts – Items 6, 7, 9, 17, 20
• Financial Performance Representations
  - single brand
  - both brands
  - combination
Pros

• Saves $
• Administrative Ease
• No Need to Redisclose if Prospect Switches

Con’s

• Confusion; Long FDD
• Possible Rejection by State Franchise Examiners
• Higher Frequency of Material Changes and Down Time
Co-Branding

• “Two or more brands operating out of the same location”
• Primary brand and secondary brand
• Separate or integrated franchise agreement?
Pros and Cons

Pros:
- Evens out seasonality
- Extends hours of operation
- Two for one franchise sales

Cons:
- Customer confusion
- Brand dilution
- Quality concerns
Factors to Consider

• Are the brands complimentary?
• Can co-branding value be clearly communicated?
• Ease of combining the brands at one location?
• Ease of co-managing the brands?
FDD Disclosures

- No specific guidance
- Consider degree of integration between brands
- Separate FDDs?
FDD Disclosures Cont.

• Consider disclosures in Items 1, 2, 3, 4, 5, 6, 7, 8, 12, 13 and 14
• Challenge: What is enough and what is too much?
  • Too frequent material change amendments
Multiple Operating Models

- Full Service
- Express
- Kiosk
- Satellite
- Mobile
- Non-Traditional Venues
Different Business Models

• Real Estate – Satellite Offices
• Restaurants – Express/Kiosk/Delivery
• Airports – Express and Kiosks
• Beauty Treatments – Fixed Locations and Mobile
Disclosure Challenges

- Item 7 Multiple Charts
- Risk Factors
- Item 20 May Be Impacted
- Financial Performance Representations
Non-Traditional Venues - Types

- Airports
- Casinos
- Sports Arenas/Stadiums
- Schools
- Hospitals
- Museums
- Amusement Parks
- Freeway Exits
Non-Traditional Venues – Unique Provisions

• Advertising Fund Contributions
• Territorial Rights
• Initial Franchise Fee
• Training
• Financial Performance Representations
Area Development

“An area developer being granted the right to open and operate multiple units of a franchise [within a defined geographic area]”
Multi-Unit Commentary

- Item 1: Current or then-current form of franchise agreement?
- Items 11 and 12: Site location standards throughout the ADA term
- Item 17: ADA summary
- Item 20: NO separate tables – but footnote in list of franchisees
Other FDD Disclosures

• Items 5, 6, 7, 9 and 11
• Combined or separate charts?
Area Representation Arrangements

• Franchisees who do not operate the core business
• They recruit prospective franchisees to operate core business
• They typically perform some of franchisor’s obligations under the Franchise Agreement
Special Requirements

• Franchise Sellers
• Franchise Broker Registration – New York and Washington
Disclosure Challenges

• Separate FDD – Cannot Combine with Unit Franchise FDD
• Disclosure of Area Representative in Unit Franchise FDD
  • Items 1, 2, 3, 4, 8 & 11 and Receipt pages
  • California Commissioner’s Release 18F
“Masterfranchisee/subfranchisor is granted right to grant unit franchises to third parties in a geographic area.”
So many FDDs

• “Mini franchisor” vs. Unit Franchisee
• Separate FDDs required
  • Masterfranchisor’s FDD offering master franchises
  • Masterfranchisee’s FDD offering unit franchises
  • Masterfranchisor’s FDD offering unit franchises?
Drafting Challenges

• Symbiotic FDD-relationship: masterfranchisors and masterfranchisees need to share information
• Items 1, 2, 3, 4, 8, 11, 12, 13, 14 and 20
• Updating requirements for masterfranchisees
• Special challenges for foreign masterfranchisors: financial statements
Unintended Franchises

• Joint Ventures
• License Agreements
• Distribution Agreements