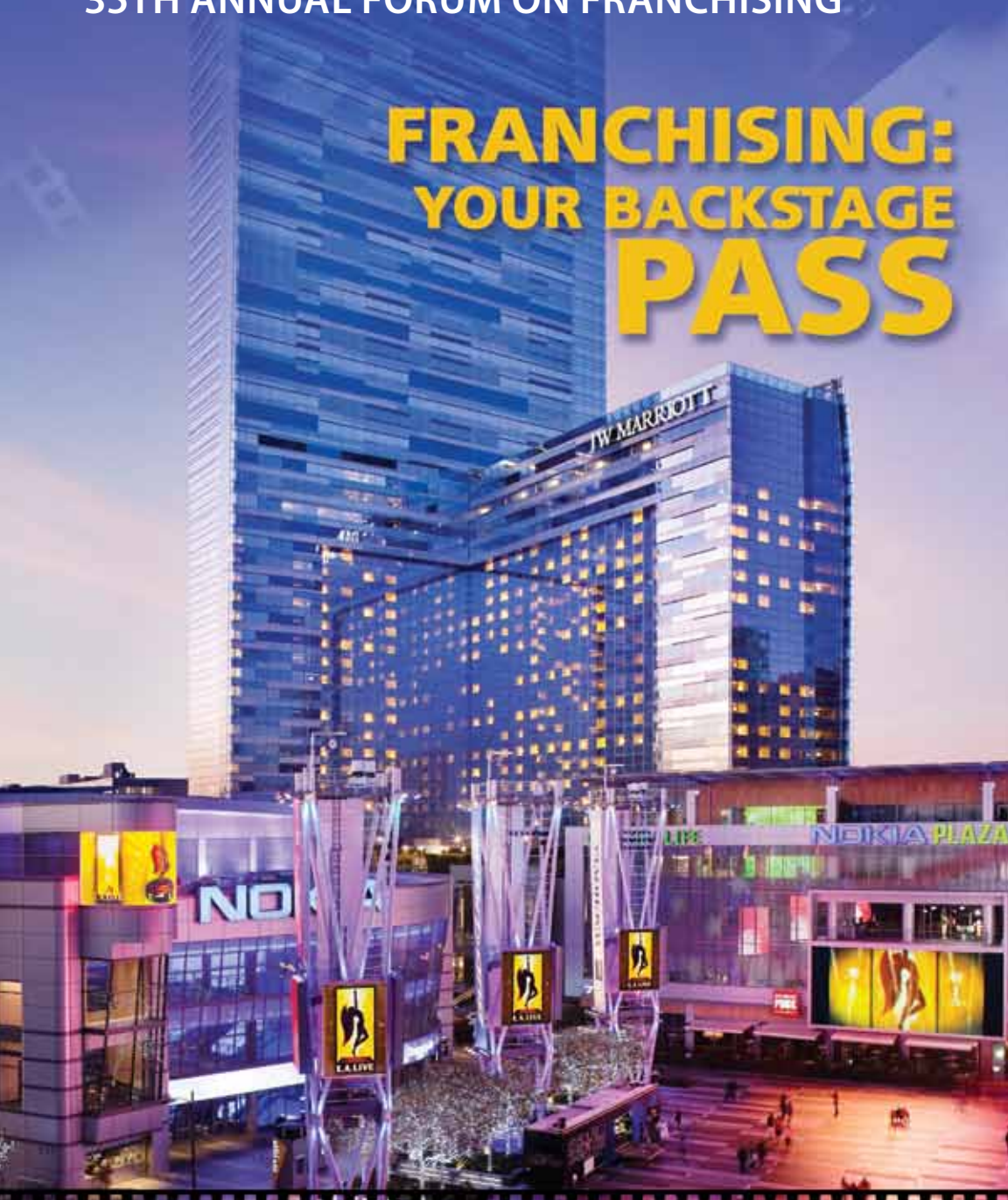




THE AMERICAN BAR ASSOCIATION
FORUM ON FRANCHISING

35TH ANNUAL FORUM ON FRANCHISING

FRANCHISING: YOUR BACKSTAGE PASS



OCTOBER 3 - 6, 2012

JW MARRIOTT AT L.A. LIVE
LOS ANGELES, CA

Dear Colleagues and Friends:

It is our pleasure to invite you to join us in Los Angeles for the 35th Annual Forum on Franchising.

Every year in October, the Forum on Franchising offers a four day legal conference featuring unparalleled educational programs and collegial social events, where attendees network with familiar and new franchise bar colleagues, clients and friends. Come out to the Forum in Los Angeles, which promises to be one of the finest and most memorable events. Highlights that make this an event you will not want to miss include:



A Forum Tradition — also on Wednesday, October 3, highly experienced franchise attorneys will present Fundamentals of Franchising®, the finest course available on the basics of franchise law. This five hour intensive program covers structuring the franchise relationship, registration and disclosure requirements, trademark and other intellectual property issues, antitrust, franchise relationship laws, and a primer on representing franchisees.

A Forum Primer — on Wednesday, October 3, a five hour intensive program on representing the franchisor from inception, and throughout, with a focus on designing the system, drafting disclosure documents, obtaining registration and providing ongoing counseling. This is a must for the new and experienced.

A Forum Essential — twenty four engaging, unparalleled workshops — on Thursday and Friday, October 4 and 5, these workshops (each presented twice) cover a variety of legal developments and business challenges facing the franchise industry, whatever your practice — in-house or outside counsel, transactional lawyer or litigator, franchisee or franchisor lawyer — you will have many thought-provoking and worthwhile choices.

A Forum Signature Focus — two plenary sessions, including Annual Developments, a survey of the key cases and decisions in franchisethe digital age.

A Forum “Don’t Miss It” Location — the historic Belasco Theater – on Thursday night, enjoy top-notch LA entertainment and connect with familiar and new Forum colleagues, clients and friends at the historic Belasco Theater, one of only a few stops by Prince William and Kate Middleton in their recent L.A. tour.

A Forum “Once In a Lifetime” Occasion — The Grammy Museum on Friday night — view the city from the outside patio and then explore the legacies of all forms of music and the creative process at the Grammy Museum with its four floors of cutting edge interactive exhibits on a night that the Museum will belong exclusively to the Forum.

A Forum Legacy — on Saturday morning, give back to the community that serves as our host as we head out to the Los Angeles Food Bank.

We look forward to greeting you on Wednesday at one of the intensive programs or the Welcome Reception, interacting and learning with you at the educational workshops and networking with you at the Belasco Theater and the Grammy Museum. Don’t miss this opportunity to join your franchise bar colleagues, clients and friends America’s premier franchise law event!

Leslie D. Curran **Michael D. Joblove**
Program Co-Chairs

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Program Schedule

Wednesday, October 3, 2012

10:00 am – 5:30 pm

Forum Registration

11:30 am – 12:00 pm

Box Lunch Pick-up

12:00 pm – 5:00 pm

Forum Intensive Programs:

- I1 Fundamentals of Franchising*
- I2 Representing the Franchisor—A Primer on Designing the System, Drafting and Registering Documents and Providing On-going Counseling

5:00 pm- 6:30 pm

Welcome Reception

6:45 pm – 10:00 pm

Newcomers/YLD Event (fee)

Thursday, October 4, 2012

7:00 am – 5:30 pm

Forum Registration

7:00 am – 8:15 am

Women's Caucus Breakfast (fee)

7:00 am – 8:30 am

Continental Breakfast

8:30 am – 10:00 am

Plenary 1

Manage Your Time, Manage Your Stress—
Time Management Skills for Lawyers

10:00 am – 10:15 am

Break

10:15 am – 11:30 am

Concurrent Workshops

- W1 Keep it Simple! Drafting a Pragmatic Franchise Agreement Against the Backdrop of over Fifty Years of Franchise Law Precedent
- W2 Independent Contractor or Employee—Minimizing Exposure From the Gray Areas of the Franchise Relationship
- W3 Protection of Franchise System Trade Secrets and Confidential Information, and Enforcement of Non-Disclosure Agreements in the Digital Age
- W4 Tips, Techniques and Traps for Drafting and Using Financial Performance Representations
- W5 Dispute Resolution International Style
- W6 Is That a Fair Deal? Best Practices for Negotiation of the Franchise Agreement
- W7 Using Franchise Attorneys as Expert Witnesses – It is Not Just for Legal Malpractice Cases Anymore

11:30 pm – 12:30 pm

Networking Buffet Lunch

Diversity Lunch

12:35 pm – 1:50 pm

Concurrent Workshops

- W8 Fundamentals 201: Antitrust Essentials for Franchise Lawyers
- W9 Assessing Materiality—What to Include and When to Amend
- W10 The Strategy of Arbitration
- W11 Fundamentals 201: The Art and Science of Drafting Multi-Unit Development Agreements
- W12 Managing the Franchise Relationship through Franchisee Receivership and Bankruptcy
- W13 Roadmap for the Default and Termination Process

1:50 pm – 2:10 pm

Break

2:10 pm – 3:25 pm

Concurrent Workshops

- W7 Using Franchise Attorneys as Expert Witnesses—It is Not Just for Legal Malpractice Cases Anymore
- W14 Changes In System Standards—What is the Extent of the Franchisor's Latitude?
- W15 Building an Effective Supply Chain and Distribution System
- W16 Proving Irreparable Harm: Have the Standards Changed?
- W17 Don't Stop Me Now: Updating the Current Legal Status of Contractual Provisions Restricting Competition
- W18 Fundamentals 201: Effective Strategies for Working with State Franchise Examiners
- W19 The Risks and Rewards of Franchising in Unconventional International Markets

3:25 pm – 3:45 pm

Break

3:45 pm – 5:00 pm

Concurrent Workshops

- W1 Keep it Simple! Drafting a Pragmatic Franchise Agreement Against the Backdrop of over Fifty Years of Franchise Law Precedent
- W12 Managing the Franchise Relationship Through Franchisee Receivership and Bankruptcy

W20 Ancillary Agreements: The Other Contracts Needed in the Franchise Relationship

W21 There is No Such Thing as Boilerplate

W22 Ethics in Lawyer Advertising, Websites and Social Media

W23 Group Litigation—Strategic Considerations for Cases Involving Numerous Parties, Mass Actions, Class Actions and Claims Brought by Franchise Associations

W24 Franchise Expansion Across Our Borders: Canada and Mexico

5:00 pm – 6:15 pm

LADR Reception

Corporate Counsel Reception (fee)

6:30 pm – 9:30 pm

Annual Reception/Dinner

The Belasco Theater

Friday, October 5, 2012

7:00 am – 4:00 pm

Forum Registration

7:30 am – 8:45 am

Continental Breakfast

IFDI Breakfast (fee)

Solo/Small Firm Breakfast (fee)

Franchise Professors' Open House

Paralegal/Franchise Administrator's Open House

9:00 am – 10:15 am

Concurrent Workshops

- W3 Protection of Franchise System Trade Secrets and Confidential Information, and Enforcement of Non-Disclosure Agreements in the Digital Age
- W5 Dispute Resolution International Style
- W9 Assessing Materiality—What to Include and When to Amend
- W10 The Strategy of Arbitration
- W11 Fundamentals 201: The Art and Science of Drafting Multi-Unit Development Agreements
- W13 Roadmap for the Default and Termination Process
- W15 Building an Effective Supply Chain and Distribution System

10:15 am – 10:30 am

Break

10:30 am – 12:15 pm

Forum Business Meeting

Plenary 2

Annual Franchise and Distribution Law Developments

12:15 pm – 1:15 pm

Networking Buffet Lunch

1:15 pm – 2:30 pm

Concurrent Workshops

- W4 Tips, Techniques and Traps for Drafting and Using Financial Performance Representations
- W8 Fundamentals 201: Antitrust Essentials for Franchise Lawyers
- W14 Changes In System Standards—What is the Extent of the Franchisor's Latitude?
- W19 The Risks and Rewards of Franchising in Unconventional International Markets
- W20 Ancillary Agreements: The Other Contracts Needed in the Franchise Relationship
- W21 There is No Such Thing as Boilerplate
- W23 Group Litigation—Strategic Considerations for Cases Involving Numerous Parties, Mass Actions, Class Actions and Claims Brought by Franchise Associations

2:30 pm – 2:45 pm

Break

2:45 pm – 4:00 pm

Concurrent Workshops

- W2 Independent Contractor or Employee—Minimizing Exposure From the Gray Areas of the Franchise Relationship
- W6 Is That a Fair Deal? Best Practices for Negotiation of the Franchise Agreement
- W16 Proving Irreparable Harm: Have the Standards Changed?
- W17 Don't Stop Me Now: Updating the Current Legal Status of Contractual Provisions Restricting Competition
- W18 Fundamentals 201: Effective Strategies for Working with State Franchise Examiners
- W22 Ethics in Lawyer Advertising, Websites and Social Media
- W24 Franchise Expansion Across Our Borders: Canada and Mexico

6:30 pm - 9:30 pm

Reception/Dinner

Target Terrace/Grammy Museum (fee)

Saturday, October 6, 2012

8:30 am – 12:30 pm

Community Service Event

Los Angeles Food Bank

Intensive Programs

I1 Fundamentals of Franchising®

This program provides a comprehensive overview of franchise law for those who want a thorough introduction to this field, and those who want a refresher on one or more areas of franchise law practice. Join our top-notch practitioners who will address franchising fundamentals, including structuring a franchise, disclosure and registration requirements, defining and protecting a franchise system's intellectual property, franchise relationship laws, antitrust considerations and the representation of franchisees.

Speakers: Max J. Schott II
Deborah S. Coldwell
Andrew C. Selden
Christopher P. Bussert
Dennis E. Wiczorek
Lee N. Abrams

I2 Representing the Franchisor—A Primer on Designing the System, Drafting and Registering Documents and Providing On-going Counseling

Franchisors make many business and legal decisions in developing and maintaining their franchise systems. These decisions can have significant and long-term impact on the franchisor's business and the health of the franchise system. Systems that have not carefully considered these issues and their ramifications at the outset may face challenges as the system matures. This intensive program will address these issues and identify best practices for developing, managing and maintaining the relationship among the franchisor, franchise counsel, franchise regulators and franchisees. Franchise counsel will discuss the due diligence that should be completed before preparing the franchise legal documents and best practices for preparing these documents. The panel will also discuss the interplay between franchise counsel and the franchise consultant, both during the initial phases of the process and ongoing interaction. After summarizing the franchise registration process, the panelists will introduce the California franchise examiners who will discuss common registration stumbling blocks faced by franchisors and wrinkles in California law and policies that may impact registration and exemption filings. Each attendee will receive a copy of the Forum on Franchising's newly published second edition of the Franchise Law Compliance Manual, a must have for those practicing in the franchise area.

Speakers: Kay M. Ainsley
Theresa Leets
Victoria T. Blackwell
James A. Meaney
Joseph J. Fittante

Plenary Sessions

P1 Manage Your Time, Manage Your Stress—Time Management Skills for Lawyers

Of all the elements lawyers work with, none is more precious than time. In the face of client emergencies, responding to the cascade of emails and the demands of one's personal life, effective time management skills are critical to successful professional and personal relationships for today's lawyer. Come hear Margaret Spencer Dixon, a world-renowned lawyer and consultant who specializes in helping lawyers improve their time management, project management, and stress management skills. Ms. Dixon will share some of her time tested time management techniques to help us become more productive, less stressed, and more satisfied with our careers and lives.

Speaker: Margaret Spencer Dixon

P2 Annual Franchise and Distribution Law Developments

The Forum's signature event! Join us for a thoughtful, comprehensive and lively review of the year's key judicial and legislative developments affecting franchising and distribution.

Speakers: James Goniea
Peter Silverman

Workshops

W1 Keep it Simple! Drafting a Pragmatic Franchise Agreement Against the Backdrop of over Fifty Years of Franchise Law Precedent

When drafting a franchise agreement, a franchise attorney typically will draw upon past agreements and provisions that have stood up to challenge and judicial scrutiny. At the same time, the drafter will rework or add provisions that are designed to address (and avoid) issues that have arisen in disputes involving their own or other franchise companies. However, these agreements can be extremely long and cumbersome, and in many cases, are overwhelming to prospective franchisees. This session will focus on striking a balance between lengthy and cumbersome franchise agreements and a more pragmatic form of agreement. To that end, the panelists will identify those provisions that are necessary for the protection of the system, those provisions that may arguably be over-kill and techniques for making the franchise agreement shorter and easier to read and understand.

Speakers: Timothy J. Bryant Susan A. Grueneberg Jane W. LaFranchi

W2 Independent Contractor or Employee—Minimizing Exposure From the Gray Areas of the Franchise Relationship

One of the hottest legal issues in franchising is the classification or misclassification of franchisees in their relationships with franchisors: are they independent contractors or employees? Recent decisions involving Coverall, Jani-King and Subway highlight the need for franchisors and franchisees to know what factors may result in an unintended employment relationship. These same issues should be of concern to franchisees with respect to independent contractors they retain in their business. The workshop will examine the growing number of cases in this area, applicable statutes and what the parties should consider from a business standpoint to minimize the risk of their relationship being deemed an employment relationship. The speakers will also examine whether these issues mandate a legislative solution.

Speakers: John F. Dienelt W. Michael Garner Patricia Slovak

W3 Protection of Franchise System Trade Secrets and Confidential Information, and Enforcement of Non-Disclosure Agreements in the Digital Age

The protection of trade secrets and confidential information has become more of a challenge given the free flow of information via the Internet. The panel will discuss a variety of issues such as the definitional differences between trade secrets and confidential information; best practices for maintaining adequate security for franchise system trade secrets and confidential information that are stored electronically within the company and disseminated to franchisees; contract, technical, and legal issues raised by franchisee Internet portals; exit strategies including checklists for dealing with departing employees and franchisees; uncovering the tracks with effective use of computer forensic examination experts; and “computer crimes”—use of the Computer Abuse and Fraud Act, state computer crimes statutes, and common law doctrines to protect franchise trade secrets and enforce non-disclosure agreements.

Speakers: Michael J. Lockerby James Mittenthal
Heather Carson Perkins

W4 Tips, Techniques and Traps for Drafting and Using Financial Performance Representations

In the franchise sales process, the first question is often “How Much Money Will I Make?” However, only about 30% of franchisors include Financial Performance Representations (“FPRs”) in their Franchise Disclosure Documents. This session will explore the legal and business considerations involved in using an FPR in the Franchise Disclosure Document, the different types of FPRs a franchisor may make, best practices for reviewing client data and preparing the FPR, and an overview of state regulators’ current responses to FPRs contained in Item 19. The workshop will delve into counseling clients on using the Item 19 disclosures in the sales process, including the legal limitations on such use, the use of supplemental FPRs and general media claims. The panel will discuss how the FPR can be drafted in a manner that is most relevant for prospects and identify typical concerns and challenges to FPRs raised by franchisees in litigation.

Speakers: Gary R. Batenhorst Charles S. Modell



W5 Dispute Resolution International Style

With the globalization of franchising comes the dilemma of how to address the inevitable international disputes that will follow. What are the best practices in choice of law and forum provisions in international franchise agreements? When should a franchisor or master developer require arbitration, mediation, or both? The proliferation of centers such as the International Centre for Dispute Resolution (the AAA's international arm), and the London Court of International Arbitration, can provide a confusing array of choices as can the various procedural rules involved. These experienced panelists will provide insights into the comparative benefits of these forums and rules and how parties are in fact choosing to resolve their international franchise disputes.

Speakers: **Ronald K. Gardner, Jr.** **Peter J. Klarfeld** **Geoffrey B. Shaw**

W6 Is That a Fair Deal? Best Practices for Negotiation of the Franchise Agreement

Franchise agreements have often been characterized as “take it or leave it” deals. However, franchise lawyers know (or should know) that there are often many matters about which a franchisee and franchisor will or can negotiate before finalizing the contract. In this session, the panelists will provide practical insight to negotiating a franchise agreement – what leads parties to negotiate, what provisions can be negotiable, what types of provisions are favored and disfavored and what strategies can be used to enable the attorney to meet his or her client’s needs in getting to “yes”. The workshop will provide a lively discussion of these issues, with a focus on presenting and debating some of the key areas of interest that are brought to the table by the franchisee, the franchisor and their lawyers.

Speakers: **Harris J. Chernow** **Kerry J. Olson** **Rebekah K. Prince**

W7 Using Franchise Attorneys as Expert Witnesses–It is Not Just for Legal Malpractice Cases Anymore

As franchising has matured, so have the practices of franchise attorneys. Many attorneys now have decades of experience, representing a large variety of franchise companies and franchisees. For years, they have been called as expert witnesses in legal malpractice lawsuits involving franchise matters. In addition, they are now increasingly called upon to provide expert testimony in cases between franchisors and franchisees. This workshop will address when it may be beneficial to hire one of your peers as an expert, whether it is appropriate, and circumstances where the attorney/expert’s testimony may be struck. The workshop will discuss strategies in the depositions of such experts, including how to prepare lawyers as witnesses, how to get the most of their testimony on direct, areas of attack on cross-examination, and mistakes that are made by litigation counsel in handling such witnesses.

Speakers: **Rupert M. Barkoff** **Charles G. Miller** **Trish L. Treadwell**

W8 Fundamentals 201: Antitrust Essentials for Franchise Lawyers

Every franchise lawyer should have a basic understanding of the antitrust laws affecting franchise systems. This workshop will provide an overview of these laws and their implications, including a discussion of the key antitrust cases affecting franchising. The panelists will explain, among other things, the effect of antitrust doctrine on the business of franchising, including a discussion of resale price maintenance and tying. The workshop also will address how state antitrust laws mesh with federal laws and how private enforcement differs from public enforcement.

Speakers: **Kay Lynn Brumbaugh** **Allan P. Hillman**

W9 Assessing Materiality–What to Include and When to Amend

For transactional franchise lawyers, there may be no harder task than advising a client on what changes to the franchise system require an amendment of the Franchise Disclosure Document. This workshop will analyze the concept of “materiality” in the context of whether an amendment of the Franchise Disclosure Document is required based upon the specific events at issue. The panelists will identify best practices for tracking potential changes to the information disclosed during the period when the Franchise Disclosure Document is effective. Since the decision not to disclose a fact or situation may become the basis of a lawsuit by a franchisee, the panel’s franchisor and franchisee litigators will offer their insights on this issue. The workshop will also include a discussion of the relevant legal requirements and practical considerations related to a disclosure, such as the timing for disclosure and re-disclosure obligations.

Speakers: **Marisa Faunce** **Natalma “Tami” McKnew** **Nicole Zellweger**

W10 The Strategy of Arbitration

Arbitration is a unique forum involving multiple strategic decisions by franchisor and franchisee counsel, even before an arbitration demand is filed. This workshop will focus on prehearing decisions and strategies involving arbitrations. Who may invoke or avoid an arbitration clause? How do state law principles of unconscionability impact arbitration? May franchisee groups or associations bring arbitration claims? Along with venue, injunctive relief, consolidation, panel composition, and parallel court action, these issues present counsel with multiple opportunities for procedural parries that require careful evaluation and consideration. Hear the latest and best strategies from experienced practitioners regarding practical, legal, financial and tactical considerations when a dispute arises between franchisor and franchisee that may involve arbitration.

Speakers: Justin M. Klein Arthur L. Pressman

W11 Fundamentals 201: The Art and Science of Drafting Multi-Unit Development Agreements

Even for experienced franchise lawyers, confusion can exist when counseling clients on the models available for multi-unit development. This confusion is primarily related to the lack of clearly defined terms describing the different types of structures and the imprecise use of these terms by many franchise professionals. This panel of experienced franchise lawyers will walk the participants through the different types of multi-unit development arrangements, including reviewing the terminology related to each type of arrangement, identifying the differences related to each type of arrangement, discussing the legal and business reasons for using one type of arrangement over another, including the use of multi-unit agreements in international transactions, and identifying drafting considerations related to these agreements. The panelists will also discuss NASAA's attempts to bring clarity to certain issues related to multi-unit development structures and identify state registration and disclosure laws that can trip up unsuspecting lawyers when it comes to these issues.

Speakers: Sarah J. Yatchak Will K. Woods

W12 Managing the Franchise Relationship through Franchisee Receivership and Bankruptcy

As franchise systems work to recover from the effects of the dismal economy, franchisors face obstacles in the form of failing or failed franchisees. Some franchisees go into default with the franchisor but remain in good standing with their primary lenders. Others remain in good standing with the franchisor, but go into default with their primary lenders and risk losing the franchised location. Still others default on obligations to all creditors. Depending on the situation, lenders may place franchised locations into receivership or franchisees may file bankruptcy. This workshop will explore the use of lender comfort letters (including best practices in the terms of such comfort letters); the substantive legal and procedural underpinnings of both receiverships and bankruptcies in the context of franchising; the legal and practical opportunities and constraints in the franchisor's response to both types of proceedings; how to get ahead of the curve in designing a process to identify troubled franchisees, and in working with franchisees and lenders to avoid bankruptcy/receivership.

Speakers: Steven M. Goldman Carolyn J. Johnsen Glenn D. Moses

W13 Roadmap for the Default and Termination Process

All franchise systems face the problems of franchisee non-compliance with various provisions of the franchise agreement. Although franchise agreements typically set forth a contractual process for addressing franchisee defaults, there is more to the default and termination process than meets the eye. This workshop will address business and legal issues that franchisors should consider both before and during the process of defaulting and terminating a noncompliant franchisee; deciding whether taking action is in the best interest of the franchise system and other franchisees; assessing the franchisee's (and any personal guarantors') financial situation; reviewing internal files and communications that might contain red flags about possible claims by the franchisee; and determining whether there are potential systemic issues that are better addressed without invoking the default process. The panel will also discuss how a franchisee might best respond to a default notice, including whether to attempt an untimely cure, how to best document franchise compliance and how to attempt a pre-suit resolution.

Speakers: Karen C. Marchiano Glenn J. Plattner Leonard D. Vines

W14 Changes In System Standards --What is the Extent of the Franchisor's Latitude?

Franchise systems inevitably change in an effort to remain relevant and meet shifting customer perceptions and marketplace demands. To effect change, nearly all franchisors reserve some right in their franchise agreements to modify the operating standards for their franchise systems through changes to the operations manual and other communications with their franchisees. However, at some point, does changing a system standard become a material modification of the parties' underlying agreement? In these cases, how can franchisees be encouraged to accept such changes where agreement terms make change difficult? This workshop will address the competing views on what changes can/should and cannot/should not be made to a franchise system through non-contractual modifications and will review cases discussing the breadth and limits of permissible change.

Speakers: David A. Beyer John Dent Himanshu M. Patel

W15 Building an Effective Supply Chain and Distribution System

This workshop will focus on the building blocks of a franchise system supply chain, both purchasing and distribution. The workshop starts with underlying franchise agreement provisions and special supply chain issues in the context of franchisor/franchisee relations. The speakers will analyze the terms of franchisee participation in supply chain arrangements, from franchisee controlled purchasing co-ops to purchasing committees to advisory boards. The panelists will discuss supplier and distributor selection, requests for proposal and the RFP review process, and provide checklists of terms and conditions for master agreements with approved system suppliers across the spectrum from proprietary items to core products to generic supplies. The workshop will address the mechanics of purchasing and distribution including pricing policies, ordering mechanisms, delivery and key drops, inspections and returns, invoicing and payment and remedies for nonperformance. Special issues will include importing supplies from overseas, private labeling, and captive distribution. This workshop excludes antitrust issues. It focuses on the nuts and bolts of an effective and efficient supply chain.

Speakers: Gina Romo R. James Straus Suzanne Loonam Trigg

W16 Proving Irreparable Harm: Have the Standards Changed?

Irreparable harm is one of the most important elements necessary to establish a right to injunctive relief. Historically, irreparable harm was presumed if a party was found to have infringed another's trademark rights, resulting in a lesser burden of proof for injunctive relief. The U.S. Supreme Court's 2006 decision in eBay, a patent infringement case, concluded that the presumption of irreparable harm is not always given. Since that decision, trademark, trade secret and copyright defendants have argued, with some success, that an owner of intellectual property must actually prove that it has suffered irreparable harm, as a prerequisite to injunctive relief. This workshop will discuss eBay and its progeny and analyze the elements that may be necessary to obtain injunctive relief in light of the changing case law.

Speakers: C. Griffith Towle Robert Zarco

W17 Don't Stop Me Now: Updating the Current Legal Status of Contractual Provisions Restricting Competition

All franchise practitioners are familiar with contractual provisions restricting in-term and post-term competition with the franchised business. In recent years, there has been an increase in litigation of these provisions and greater scrutiny of their validity by courts, in a variety of contexts. This session will provide a summary of recent developments that impact the drafting and enforcement of covenants against competition, with an eye towards drafting noncompetition provisions that on the one hand meet the needs of the franchisor but on the other hand are not unduly restrictive of the franchisee's activities. The panelists will discuss legislation and legal decisions that have altered the landscape of what constitutes a protectable interest, the use of non-solicitation agreements in lieu of, or to supplement, non-competes, whether the scope of a restriction is reasonable and who is subject to a contractual non-compete.

Speakers: Nina Greene Ellen R. Lokker

W18 Fundamentals 201: Effective Strategies for Working with State Franchise Examiners

Navigating the franchise registration and compliance process with state franchise regulators can be time consuming and expensive. This workshop will cover effective strategies for submitting franchise registration and exemption applications, responding to comment letters, and getting the golden ticket – the approval letter! Beyond registration, the panelists will discuss best practices for addressing informal administrative investigations involving a franchisor's sales practices before they escalate into formal complaints. The panelists will offer practical tips for efficiently getting and keeping your clients fully compliant with state franchise registration laws.

Speakers: Shelly Harris-Horn Theresa Leets
Susan Meyer Shelley B. Spandorf

W19 The Risks and Rewards of Franchising in Unconventional International Markets

As franchisors look for new and different markets to expand into, many franchisors are turning to obscure international markets that may have been initially overlooked in the international expansion process. In many instances, there is little guidance regarding the specific requirements of franchise disclosure documents and the form and content of franchise agreements. In these instances, the jurisdiction and application of franchise statutes may also be unclear. The panelists will discuss the unique challenges faced in franchising in these types of unconventional markets, provide tips on how to overcome these challenges and discuss the unexpected benefits that come with planting the flag in new terrain.

Speakers: Michael Laidhold Karen B. Satterlee

W20 Ancillary Agreements: The Other Contracts Needed in the Franchise Relationship

In addition to franchise agreements and Franchise Disclosure Documents, franchise systems need a variety of ancillary agreements to operate successfully and help further define the expectations of both the franchisor and the franchisee. These contracts are necessary at all stages of the franchise relationship. Examples of commonly used ancillary agreements include option agreements, letters of intent, confidentiality agreements, broker agreements, promissory notes, personal guaranties, software license agreements, transfer agreements, terms of use agreements for shared networks and online access, collateral assignments of lease agreements, supplier agreements, telephone number assignment agreements and termination agreements. This workshop will provide in-house and outside franchise practitioners with best practices for creating template forms that can serve as the starting point for contract negotiations and effective system administration.



Speakers: Alan R. Greenfield Kathryn M. Kotel

W21 There Is No Such Thing As Boilerplate!

The standard miscellaneous provisions of a franchise agreement are often overlooked, unless and until they become the subject of dispute. The panelists will identify those standard provisions that are most frequently litigated and discuss the lessons learned from the case law where these provisions have been in dispute. These include provisions relating to contract modification, disclaimers, integration, forum selection, contractual statutes of limitations, governing law and clauses attempting to require neutral interpretation of the franchise agreement. Come hear how two seasoned litigators use these provisions to the benefit of their clients and how these provisions can sometimes result in unintended consequences.

Speakers: John D. Holland William K Whitner

W22 Ethics in Lawyer Advertising, Websites and Social Media

Facebook, Twitter and other social media have enabled lawyers to communicate more easily with the public at large and to tout both their credentials and accomplishments. Lawyers need to be certain that their use of these new client development tools comply with ethical obligations. What are the best practices for using these tools to promote your practice? When do communications via these new avenues regarding recent successes cross the ethical line? What restrictions exist on law firm web pages to discussing recent case results or individual accomplishments? This workshop will provide case examples of the do's and don'ts to keep in mind when it comes to using today's social media, websites and advertising to tout your practice.

Speakers: Constantine T. Fournaris Kat Tidd

W23 Group Litigation--Strategic Considerations for Cases Involving Numerous Parties, Mass Actions, Class Actions and Claims Brought by Franchise Associations

Group actions are common in the franchise setting. This workshop will focus on the procedural devices best used to pursue and defend claims involving large numbers of parties, in both the non-class and class action context. The panelists will analyze when a franchisee association is an appropriate party to maintain such a claim, the procedural considerations on whether the case should be maintained as a class action, what claims are appropriately brought on behalf of large numbers of individually named franchisees, and when separately filed lawsuits should be consolidated as a single mass action. The panelists will also identify the factors to be considered when franchisees deploy "mass actions" as a means of leveraging system-wide relief, or redressing system-wide wrongs.

Speakers: Joseph S. Goode William L. Killion

W24 Franchise Expansion Across Our Borders: Canada and Mexico

For many U.S. franchisors, expanding across our borders into Canada and Mexico is a natural and logical progression for system growth. This workshop will focus on practical and legal issues that U.S. franchisors should consider when granting franchise rights in these countries. This workshop will address the unique challenges associated with franchising in Canada and Mexico, including common methods of expansion, corporate and tax structures, disclosure regimes, modification of franchise documents (including modifications that are legally required and those that may be necessary for business purposes), trademark protection, competition laws, relationship law concerns, and enforcement and dispute resolution issues including class action practices. Finally, the panelists will touch upon issues such as the differences in language, culture and legal systems, as well as business issues that must be addressed as a prerequisite to expansion.

Speakers: Joseph Y. Adler Michael K. Lindsey Ramiro Rangel Sánchez

Speaker List

Lee N. Abrams

Mayer Brown LLP
Chicago, IL

Joseph S. Adler

Hoffer Adler LLP
Toronto, ON

Kay Ainsley

Michael H. Seid & Associates, LLC
Kennesaw, GA

Rupert M. Barkoff

Kilpatrick Townsend &
Stockton LLP
Atlanta, GA

Gary R. Batenhorst

Cline Williams Wright Johnson
& Oldfather, L.L.P.
Omaha, NE

David A. Beyer

Quarles & Brady LLP
Tampa, FL

Victoria T. Blackwell

Papa Murphy's
Vancouver, WA

Kay Lynn Brumbaugh

Andrews Kurth LLP
Dallas, TX

Timothy J. Bryant

Preti Flaherty
Portland, ME

Christopher P. Bussert

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Atlanta, GA

Harris J. Chernow

Chernow Kapustin, LLC
Horsham PA

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Haynes and Boone, LLP
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John Dent

Hilton Worldwide, Inc.
McLean, VA

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Dady & Gardner, P.A.
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W. Michael Garner

W. Michael Garner, P.A.
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James A. Goniea

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Steven M. Goldman

Marriott International, Inc.
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Joseph S. Goode

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Greenberg Traurig, LLP
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Susan Grueneberg

Snell & Wilmer LLP
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Shelley Harris-Horn

Illinois State Attorney General
Springfield, IL

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Allan P. Hillman

Kern & Hillman, LLC
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Carolyn J. Johnsen

Jennings, Strouss & Salmon, PLC
Phoenix, AZ

William L. Killion

Faegre Baker Daniels LLP
Minneapolis, MN

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Gray Plant Mooty
Washington, D.C.

Justin M. Klein

Marks & Klein, LLP
Red Bank, NJ

Kathryn M. Kotel

Carlson Restaurants Worldwide
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Jane W. LaFranchi

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Michael R. Laidhold

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Michael K. Lindsey

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Zarco Einhorn Salkowski
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Patricia Slovak

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Rochelle B. Spandorf

Davis Wright Tremain LLP
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Haynes and Boone, LLP
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Leonard D. Vines

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Will K. Woods

Baker Botts LLP
Dallas, TX

Sarah J. Yatchak

Buffalo Wild Wings
Minneapolis, MN

Robert Zarco

Zarco Einhorn Salkowski & Brito, P.A.
Miami, FL

Nicole S. Zellweger

Stinson Morrison Hecker LLP
St. Louis, MO

Special Events

WEDNESDAY, OCTOBER 3

5:00 p.m. – 6:30 p.m.

Welcome Reception

JW Marriott Pool Deck

Welcome to L.A. Live – Where the Forum on Franchising comes to celebrate! In the heart of the city synonymous with entertainment, L.A. Live offers world class music, film, sports, dining and accommodations. Gather with colleagues and friends for cocktails and hors d'oeuvres on the rooftop of the JW Marriott which overlooks the L.A. Live complex. **Complimentary for all attendees and their guests.**

6:45 p.m. – 10:00 p.m.

Newcomers' Networking Night

Perch Restaurant

Transportation Provided

Come soak up the lights of downtown at one of L.A.'s trendiest rooftop restaurants and lounges. Young lawyers (that is, those lawyers under the age of 36 or who have been admitted to practice for less than 5 years) and first and second time attendees to the Forum always enjoy meeting and socializing after a long day at the intensive programs! This year we are off for dinner and cocktails at Perch, a French inspired rooftop bistro with uninterrupted views of the city. Sitting 15 floors above downtown L.A.'s Pershing Square, Perch features stunning views of the downtown skyline, along with multiple fireplaces and fire pits. There really is something for everyone! Come for the entertainment and networking and enjoy some alfresco cocktails. Don't get left behind! **Additional fee for attendees and guests.**

THURSDAY, OCTOBER 4

7:00 a.m. – 8:15 a.m.

Women's Caucus Breakfast

Networking Intensive Breakfast:

Greet old friends, meet new ones.

This year, the Women's Caucus Breakfast is getting back to its roots of networking, mentoring and collaboration. Our focus this year is on creating new connections for everyone in attendance. Roundtable discussion topics will facilitate introductions and spirited discussion of issues each of us face in the business of law. The format will ensure that you have a chance to truly meet more than just those at your own table. We guarantee that you'll make new contacts. Please join us! **Additional fee for attendees.**

9:30 a.m. - 4:00 p.m.

Guest/Spouse Tour

The J. Paul Getty Museum -

Transportation Provided

Discover the Getty Center in Los Angeles, one of the world's premier cultural destinations! See masterpieces of art in the J. Paul Getty Museum and breathtaking views of the historic Sepulveda Pass. Enjoy spectacular, tranquil gardens, magnificent architecture and a variety of exhibits. There's always something new at the Getty Center! You will begin with a guided 45-minute overview tour of the architecture and gardens, followed by lunch in the restaurant and then you will have time to yourself to explore those exhibits that peek your interest. **Additional fee for attendees.**

11:30 a.m. – 12:30 p.m.

Diversity Lunch

The Diversity Caucus invites all diverse members, and those interested in diversity of the Forum to join us for a lunch discussion about how to get involved in Forum related activities such as writing, speaking and much more. Come with your suggestions about how we can support our diverse members and reach more diverse members to get them involved.

5:00 p.m. – 6:15 p.m.

Networking Reception

Sponsored by Litigation and Alternative Dispute Resolution Division

All attendees of the 35th Annual Forum on Franchising are cordially invited to a networking reception on Thursday afternoon hosted by LADR. LADR is the Forum's committee for issues concerning litigation and ADR. Renew old acquaintances and make new ones at this reception while unwinding from the day's seminars before heading out to the Annual Reception. **Complimentary for all attendees.**

5:00 p.m. – 6:15 p.m.

Corporate Counsel Reception

The Corporate Counsel Committee will once again host a cocktail party for this year's member event. You will not want to miss out on the only event at the Forum intended specifically for, and restricted to, in-house counsel. The goal of the event is to create a networking opportunity for in-house counsel and to share the unique challenges, perspectives and experiences that in-house counsel face in their daily work routines. This will be a relaxed, casual atmosphere complete with cocktails and light hors d'oeuvres. Do not miss this very special opportunity to spend some quality time with your in-house peers. Only attendees with tickets will be admitted. **Additional fee for attendees.**

6:30 p.m. – 9:30 p.m.
Annual Reception/Dinner
The Belasco Theater
Transportation Provided

In the heart of downtown Los Angeles resides an unparalleled host of rediscovered historic theatres—and the Belasco Theater is LA's newest "old" gem to be lovingly restored. Transporting modern Angelenos to another time, the theater's rich and diverse history is evident to anyone who steps through its storied doors. Inside the Belasco are a variety of stand-alone spaces such as the main ballroom and the vintage wine bar, each housing its own unique atmosphere and entertainment. Your visit to the Belasco Theater will truly be a visceral—and visual—experience. Join us at this amazing landmark for good food and live entertainment! **Complimentary for all attendees. Additional fee for guests.**

FRIDAY, OCTOBER 5

7:30 a.m. - 8:45 a.m.
International Franchise and
Distribution Division (IFDI)
Breakfast
Getting Paid

The Forum's International Division provides an opportunity for education, networking and the exchange of ideas among franchise lawyers from around the world. This year's Division breakfast program will focus on the challenges that franchisors face when entering international markets and dealing with the critical issue of how to get paid. The breakfast program will consider appropriate due diligence in the development phase, proper legal structure and agreement language, and the practical hurdles business people face when putting "collection" into practice. A panel of speakers with a wealth of international franchising experience will discuss both the successful and the not-so-successful strategies they have pursued in the course of their international franchise activities across various jurisdictions. **Additional fee for attendees.**

7:30 a.m. – 8:45 a.m.
Solo and Small Firm Breakfast

The Solo and Small Firm Network is open to attorneys who are members of or employed by law firms of ten or fewer attorneys. This dynamic group will meet over breakfast to network and exchange ideas. Our focus will be on current law practice management issues facing solo and small firm franchise attorneys, with an emphasis on technology, client development, use of social network tools and a solo/small referral network. Take advantage of this opportunity to get to know other solo/small firm practitioners, share knowledge, and get face to face input from your peers in roundtable and open meeting discussions. Participants can expect to gain ideas and information that will help them build more successful and efficient practices. Registrants are asked to bring hot topics, issues and ideas to discuss with the group. **Additional fee for attendees.**

6:30 p.m. – 9:30 p.m.
Reception/Dinner
Celebrate the Power of Music!
Target Terrace at the Grammy Museum

The Grammy Museum is an exciting and interactive celebration of the power of music occupying a vibrant new space in downtown Los Angeles. Four floors of cutting edge exhibits, interactive experiences and films provide a one-of-a-kind visitor experience — engaging, educational, celebratory and inspirational.

Whether you're a fan of Michael Jackson, the Beatles, Ray Charles or the Rolling Stones, - you will be amazed. We will rock on with drinks and dinner on the Target Terrace which is above the Grammy Museum and offers incomparable 360 degree views, under the stars and city lights, from Downtown to the Hollywood Sign together with exclusive access to the Museum's exhibits throughout the evening. **Additional fee for attendees.**

SATURDAY, OCTOBER 6

8:30 a.m. – 12:30 p.m.
Community Service Event
Transportation Provided

Ever donated canned food and non-perishable items but wonder what happens next? Participate in the ABA Forum on Franchising's 10th Annual Community Service Event and find out! We'll assemble food packages at the Los Angeles Regional Food Bank, which will distribute them to those in need. The Food Bank has served the local community for 39 years, and last year distributed 60 million pounds of food through 640 partner agencies with over 1,000 sites, including abused and abandoned children homes, battered women shelters, senior centers, local food pantries, soup kitchens, AIDS hospices and more. This event is a wonderful opportunity to socialize while working side-by-side with other Forum attendees by donating your time to the community we are visiting. Also, please consider making a donation to this worthwhile cause by dropping off a check (made payable to the LA Regional Food Bank) or cash at the ABA Registration Desk on behalf of your firm, yourself, or on behalf of someone you know!

Conference Information

1. Hotel Information:

The conference will be held at the JW Marriott at L.A. Live, 900 West Olympic Blvd. Los Angeles, CA 90015; Phone 213-765-8600 - Guest Fax 213-765-8601. Arrangements for childcare can be made by contacting the hotel's concierge. Visit the hotel's website at www.lalivemarriott.com for further information.

2. Hotel Reservations:

The Forum on Franchising has negotiated a special room rate of \$289 per single/ double room at the JW Marriott. A 14.15% sales tax will also apply per night. To make your hotel reservations online, please go to <https://resweb.passkey.com/go/ABAForumOnFranchising>. You may call the hotel directly at 877-622-3056 and mention the ABA Forum on Franchising 2012 meeting. We have reserved a limited block of rooms through September 11, 2012. You must register for the conference prior to making your hotel reservation. After this date, the Hotel Reservation Office will assign rooms on a space available basis. All changes and cancellations to guaranteed hotel reservations must be made within 72 hours of the scheduled day of arrival to avoid a one night cancellation charge.

3. Air Travel:

Airfare discounts to ABA meetings are available through ABA Online Travel. To access ABA Online Travel, go to http://www.americanbar.org/membership/travel_services.html. At ABA Online Travel you will have automatic access to meeting airfare discounts, web fares and web book only airlines. The ABA's toll-free number for Orbitz for Business (OFB) is 1-877-222-4185.

Ground Travel: The JW Marriott is only a 17 mile drive from LAX Airport. Taxis are available at a rate of \$50 from the airport. Super Shuttle is available for \$16 per one-way trip, however, reservations are required. On-site valet parking for guests at the JW Marriott is \$40.00 per day. Offsite parking options are available across the street from the hotel.

4. Program Registration:

To register for all programs and events described in this brochure, we encourage you to register online at www.americanbar.org/groups/franchising. Confirmations will be faxed to you within 72 hours of registration receipt. In order to be included in the list of program attendees, you must register by September 11, 2012. Guest tickets for special events are available for an additional fee. Please see the registration form for price details.

5. On-Site Check-In:

Beginning Wednesday, October 3, 2012 at 10:00 a.m. – 5:30 p.m., attendees may check-in at the ABA registration desk to pick up registration packets that contain name badges and course materials.

6. On-Site Registration:

On-site registration is available for those persons who missed the registration deadline. If you plan to register at the door, please call Christianna Tucker at 312/988-6319 on or before Friday, September 29th, to confirm that space is still available. Failure to call in advance may preclude admission to a sold out conference. On-site registrants must pay the registration fees by check, money order, Visa, MasterCard, or American Express. NO registrations will be accepted without payment.

7. Tuition Information:

Tuition for the intensive programs is separate and in addition to the main program registration fee. Intensive program tuition includes course materials, box lunch, and welcome reception. Tuition for the main program includes admission to the two-day program, welcome reception, continental breakfasts, beverage breaks, lunches, course materials and the Annual Reception/Dinner. The Forum will be providing this year's program materials on CD-Rom and via a web link only in effort to help "green" the environment.

8. Cancellation Policy:

Registrants who are unable to attend the conference will receive a refund less a \$50 administrative fee if written cancellation is received by September 11, 2012. Cancellations may be e-mailed to christianna.tucker@americanbar.org. No refunds will be granted after September 11, 2012. Substitutions are acceptable, or conference materials will be sent in lieu of a refund after the program. The ABA reserves the right to cancel any programs and assumes no responsibility for personal expenses.

9. CLE Credit:

CLE accreditation has been requested for this conference from every state with mandatory continuing legal education requirements for lawyers. Please be aware that each state has its own rules and regulations, including its definition of CLE. Check with your state agency for confirmation of this program's approval. Attorneys seeking to obtain MCLE credit in Louisiana and/or Pennsylvania will be required to pay state accreditation fees directly to these states. Certificates of attendance will be available the last day of the conference at the registration desk. You may contact your respective state(s) for confirmation of the number of CLE credit hours requested by the ABA or credit approved by any particular state.

10. Membership:

To encourage registrants to join the ABA Forum on Franchising, the reduced member's tuition rate will be extended to registrants who join the Forum when they register for the conference. Forum membership dues are \$50 for attorneys/associates and \$10 for law students. Membership in the ABA and one Section is a prerequisite to Forum membership. Please include a separate check (payable to the American Bar Association) for membership dues.

11. Additional Course Materials:

Materials for all programs may be available for purchase after the conference by calling the ABA Service Center at 1-800-285-2221.

12. Forum Policy Regarding Self-Promotion and Conflicts:

In order to insure a spirit of collegiality at the Annual Forum, please respect the Forum on Franchising's policy that provides that no individual, group or entity (other than the ABA) may engage in any type of self-promotion or conflicting activities (such as giving gifts; hosting group functions—i.e., more than six guests—including meals, parties, sporting events, meetings or seminars; or displaying or distributing advertising, marketing materials, books, articles, case reports or anything of value or scheduling non-Forum sponsored group meetings) at or in connection with the Annual Forum or any Forum-sponsored events (i.e., from the time the first event or program starts to the time the last event or program ends), in or near the city where the Forum event is taking place. The 2012 Annual Forum starts at noon, Wednesday, October 3, 2012 and concludes at the end of the Community Service Event on Saturday, October 6th at noon.

13. Tax Deduction for Educational Expenses:

In the United States, an income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals and lodging expenses (see Treas. Reg. Sec. 1.162-2) *Coughlin v. Commissioner*, 203 F.2d 307 (2nd Cir. 1953).

14. Americans with Disabilities Act:

If special arrangements are required for disabled individuals to attend this program, please contact Kelly Rodenberg in writing by September 11, 2012 at the American Bar Association, 321 N. Clark Street, Chicago, Illinois, 60654, and Kelly.rodenberg@americanbar.org.

15. Dress:

In keeping with Forum tradition, participants are encouraged to wear business casual attire during the programs and to the special events.

16. For the latest program information:

Please visit the Forum on Franchising at www.americanbar.org/groups/franchising. For further information on the city, travel, activities and entertainment options, visit www.discoverlosangeles.com.

17. Questions:

If you have questions or require additional conference information, please call 312/988-6319, fax: 312/988-5677; e-mail: christianna.tucker@americanbar.org.

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