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Forum on Franchising

The Franchise Lawyer

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Message from the Chair

By Ron Coleman, Bradley Arant Boult Cummings LLP

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This year, the franchise world has seen a great deal of discussion about new efforts to regulate franchise relationships. Traditionally, franchise regulation has focused on presale disclosure to provide prospective franchisees with sufficient information to make an informed investment decision among various franchise and non-franchise alternatives. Although a minority of states have some type of law governing the post-sale franchise relationship, the regulatory requirements affecting most franchisors and franchisees are through the Federal Trade Commission ("FTC") Franchise Rule and certain states' registration and disclosure laws and regulations. But that might be about to change.

The FTC has shown a big interest in franchising in 2023. First, in its notice of proposed rulemaking to ban employment non-compete agreements, the FTC asked interested parties to comment on whether that proposed ban should extend to non-competes in franchise agreements. Next, on March 10, the FTC addressed franchising head-on by issuing its request for information ("RFI") on a wide variety of franchise agreement issues and franchisor practices. The FTC is soliciting public comments on, among other things, the ability of franchisees to negotiate terms of franchise agreements, the ability of franchisors to make unilateral changes to the franchise system during the course of the relationship, franchise agreement provisions that impact workers like "no-poach" provisions and controls over franchisee workers, and procurement issues like use of required suppliers and supplier rebates.

Many commentators have recognized the significance of the FTC's efforts, and our own Forum Past Chair Ron Gardner described this as "the most severe and far-reaching investigation the federal government has engaged in and around franchising in history." No one knows where the FTC's efforts or other regulatory efforts at the state level will lead. One thing, however, is clear: the franchise business model is under scrutiny like never before in recent memory.

What role can, or should, the Forum on Franchising play in this important debate? Unlike some other Sections, Divisions, and Forums within the ABA, our group does not take formal positions

Continued on page 19

In This Issue

1 MESSAGE FROM THE CHAIR

3 FRANCHISE ARBITRATION: DEALING WITH A PARTY'S REFUSAL TO SHARE COSTS

6 FROM THE FRANCHISOR'S PERSPECTIVE—CHALLENGES AND STRATEGIES FOR FRANCHISEES SEEKING TO EXIT A FRANCHISE SYSTEM IN CHINA

9 PROFESSIONAL SPORTS TEAMS: FRANCHISE OR FAUX?

14 MANAGING PERSONAL INFORMATION ROLES IN THE FRANCHISE RELATIONSHIP: NEW PRIVACY LAWS MEAN ENSURING THE RIGHT PROCESSING ROLES IS MORE IMPORTANT THAN EVER

19 MESSAGE FROM THE EDITOR-IN-CHIEF

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Spring 2023 Vol. 26, No. 02

Table of Contents

1 Message from the Chair
Ron Coleman

3 Franchise Arbitration: Dealing with a Party's Refusal to Share Costs
Paul Halasz and Chelsea Turiano

6 From the Franchisor's Perspective—Challenges and Strategies for Franchisees Seeking to Exit a Franchise System in China
Dominic Hui and Danny Tsui

STUDENT AUTHOR SUBMISSION

9 Professional Sports Teams: Franchise or Faux?
Christine K. Taylor

14 Managing Personal Information Roles in the Franchise Relationship: New Privacy Laws Mean Ensuring the Right Processing Roles Is More Important than Ever
Tyler Thompson and Colin Krull

19 Message from the Editor-in-Chief
Erin C. Johnsen

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Franchise Arbitration: Dealing with a Party's Refusal to Share Costs

By Paul Halasz and Chelsea Turiano, Day Pitney LLP

Many franchise agreements contain mandatory arbitration provisions. In addition to designating arbitration as the exclusive adjudicatory process for most types of disputes, such clauses often designate a venue, identify the applicable arbitration procedures, and establish time limitations for instituting claims. Setting aside the question of whether the typical arbitration clause in franchise agreements affords any advantage to one side or the other, most disputants can agree that arbitration offers a quicker and often (but not always) lower-cost alternative to what could be a years-long litigation process. Moreover, the requirement that parties share the cost of the arbitrator (or panel) and the arbitration administration may bolster the fairness of arbitration. But what happens when one of the parties refuses to financially contribute to these costs? Generally, the arbitration will come to a screeching halt, suspended or terminated by an arbitrator unwilling to underwrite the costs themselves.

A franchisee or franchisor facing this situation may seek an assist from the judiciary to compel the delinquent party to pay up and return to the arbitration table. However, courts addressing this issue, somewhat contrary to what may be expected, have refused to invoke their injunctive powers under federal and state arbitration statutes to fashion such a remedy. Instead, as demonstrated in a recent decision from the District of New Jersey, courts have concluded that non-payment should be resolved in arbitration rather than through the courts. In

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other words, while courts can compel a party to honor their commitment to arbitrate, they may not be inclined to compel a delinquent party to pay its agreed-upon share of the costs when the arbitrator can address that issue. As a result, the complaining party should either advance the fees themselves—and seek recovery of that cost in the final award—or, in a rare case, abandon the arbitration and institute litigation of the underlying dispute with an additional claim for breach of the contractually mandated arbitration clause.

Sharing Costs of Private Arbitration

Private arbitration costs depend on user fees to both administer the case and pay the costs of the arbitrator or panel. The obligation to share arbitration costs can be expressly stated in the parties' franchise agreement or it may be incorporated by reference to the arbitral procedural rules designated by the parties.

For example, parties that require arbitration through the American Arbitration Association ("AAA") must post a deposit in an amount established by the AAA, which "[t]he AAA will allocate . . . among the parties," to cover the anticipated compensation and expenses of the arbitrator. AAA Commercial Arbitration Rule 58(d). In the event a party fails to do so, the AAA rules specify that "the AAA may so inform the parties so that one of them may advance the required payment." AAA Commercial Arbitration Rule 59. Failure to make the full payments requested may result in an order terminating the proceedings. *Id.*

Similarly, under the UNCITRAL Arbitration Rules, an arbitrator "may request the parties to deposit an equal amount as an advance for the costs." UNCITRAL Article 43(1). Those rules go on to specify that "[i]f the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment." UNCITRAL Article 43(4). "If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings." *Id.* The Rules of Arbitration of the International Chamber of Commerce ("ICC") also specify that the "advance on costs fixed by the Court . . . shall be payable in equal shares by the claimant and the respondent." ICC Article 37(2). If one party fails to pay its share of the advance costs, the rules provide that "any party shall be free to pay any other party's share," but also that "[w]hen a request for an advance on costs has not been complied with . . . the Secretary General may direct the arbitral tribunal to suspend its work and set a time limit . . . on the expiry of which the relevant claims should be considered as withdrawn." ICC Article 37(6).

Arbitration under the JAMS Managed Arbitration Process also obligates participants to pay their *pro rata* share of fees and expenses and grants the arbitrator the authority to award costs to a party that pays more than its allocated share. JAMS Comprehensive Arbitration Rules & Procedures, Rule 31.

Judicial Reluctance to Compel Payment

There may be several reasons why one party refuses to pay its share of costs after arbitration begins, including liquidity issues or, more sinisterly, an intention to derail or at least delay adjudication of the claims at issue. When that happens, the compliant party may attempt to seek judicial intervention to compel payment, especially when the arbitrator has dismissed or suspended the arbitration due to non-payment. Resort to the courts for such assistance appears to be available under the Federal Arbitration Act. Section 4 of the FAA provides that "[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction . . . for an order directing that such arbitration proceed *in the manner provided for in such agreement*." 9 U.S.C. § 4 (emphasis added). Similar statutes in aid of arbitration exist at the state level. Despite the existence of these remedies, courts have declined to compel payment, instead leaving the issue to the arbitrator.

In *Passion for Restaurants, Inc. v. Villa Pizza, LLC*, No. 20-15790, 2022 WL 18024209 (D.N.J. Dec. 30, 2022), the court considered "how § 4 applies in the scenario where arbitration *was* initiated and the parties did participate in it, but the proceeding was terminated before decision because the arbitrator's fee requirement was not met." *Id.* at *5 (emphasis in original). The agreements between Villa, the franchisor, and Passion, an international franchisee, provided for arbitration "in accordance with the then-current UNCITRAL Arbitration Rules . . . and enforced in accordance with the ["FAA"]." *Id.* at *1. In addition, the agreement expressly called for the sharing of all fees and costs of the arbitration on an initial basis. Passion initiated arbitration against Villa as a result of a dispute over Villa's representations concerning its right to

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license the use of certain trademarks. After initial submissions from both sides and a preliminary hearing, the arbitrator requested a $10,000 initial deposit. Passion paid its half, but Villa did not pay the balance. After the arbitrator requested, unsuccessfully, that Villa make its deposit, the arbitrator invited "Passion to pay the remaining half of the deposit in order for the arbitration to proceed," pursuant to Rule 43 of the UNCITRAL Arbitration Rules. *Id.* at *3. Passion did not accept the arbitrator's invitation to pay the balance, and Villa did not pay, so ultimately the arbitrator dismissed the arbitration. Passion then initiated an action in district court to compel Villa's payment under 9 U.S.C. § 4, and Villa filed a cross-motion to dismiss, arguing that arbitration had already taken place and that it was dismissed only because Passion failed to pay Villa's share of the costs.

The District of New Jersey denied Passion's motion to compel arbitration and granted Villa's cross-motion to dismiss. In denying the motion to compel arbitration, the court relied on the "UNCITRAL Arbitration Rules, which vest discretion in the arbitrator to determine how to allocate the costs of the arbitration and allow the arbitrator to request deposits from the parties." *Id.* at *5. The court held that "when the parties incorporated [the UNCITRAL] arbitration rules into their agreement, they incorporated the discretion those rules provide the arbitrator." *Id.* "The arbitrator simply exercised that discretion here to reach a result that the UNCITRAL arbitration rules permit." *Id.* The court noted that the "ultimate result, however unfortunate for Passion (which wanted to continue arbitrating), rewarded Villa for its nonpayment, but . . . was squarely within the arbitrator's discretion[.]" *Id.* The court explained that its decision "le[ft] closed the door the arbitrator closed when Passion declined to pay Villa's share of the deposit" but did not preclude Passion from pursuing "this matter in a Court of proper jurisdiction." *Id.* at *6.

In reaching its conclusion, the court in *Passion* relied on the holding in an earlier Ninth Circuit case. In *Lifescan, Inc. v. Premier Diabetic Services, Inc.*, 363 F.3d 1010 (9th Cir. 2004), the Circuit Court held that the arbitrators, under the AAA Rules, were well within their discretion to suspend the proceedings after the paying party declined to advance the non-paying party's share of the required arbitration fees. In that case, as in *Passion*, the parties participated in the initial stages of arbitration pursuant to the terms of their agreement, but a few days before the final hearings, one party announced that it would be unable to pay its *pro rata* share of the arbitrators' estimated fees and costs for the remainder of the proceedings. The other party to the arbitration refused the arbitrators' option of advancing those fees and costs so the arbitration could proceed and, as a result, the arbitrators suspended the proceedings. The *Lifescan* court did not consider a party's failure to pay its share of the fees a "failure, neglect, or refusal" by that party to arbitrate. Instead, the "arbitration [had] proceeded pursuant to the parties' agreement and the [AAA] rules they incorporated." *Id.* at 1012; *see also Dealer Computer Servs., Inc. v. Old Colony Motors*, 588 F.3d 884, 888 (5th Cir. 2009) ("The trial court erred when it granted the order to compel [the non-paying party] to pay the AAA deposit. Such conditions precedent to arbitration are procedural issues left to the discretion of the arbitrators.").

Realistic Options Available When a Party Refuses to Pay

One of the primary reasons parties choose to include an arbitration clause in their franchise agreement is to benefit from a faster and potentially more cost-effective means of dispute resolution. That goal can quickly get sidelined by the refusal of one party to pay their share of the costs. When that occurs, initiation of action under the FAA to enforce the agreement may not be the best choice, especially if the adverse party has already appeared in the arbitration and its only default under the arbitration agreement is non-payment of the required deposit or other proceeding-related costs and expenses.

In that situation, the paying party should first seek an order within the arbitration process itself to compel payment, assuming the forum's procedural rules grant the arbitrator the authority to do so. The compliant party can then address continued recalcitrance by either advancing the fees owed by the defaulting party or allowing the arbitrator to terminate the action in favor of litigation. The decision on which of these two options is preferable depends largely on cost and timing factors. In most cases, it is likely to be quicker, and ultimately less expensive, to front the arbitration fees and expenses and then seek to have the arbitrator award them in the final award. Completely abandoning the arbitration process to pursue litigation, armed with an additional claim for breach of contract, may only make sense when the benefits of the new venue outweigh the expected additional time it will take to obtain a final adjudication. ■

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From the Franchisor's Perspective—Challenges and Strategies for Franchisees Seeking to Exit a Franchise System in China

By Dominic Hui and Danny Tsui, Ribeiro Hui

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Since the outbreak of the pandemic in 2020 and China's vigilance in its response to the pandemic, there have been discussions about viable exit strategies, in part because of disruptions to franchising operations caused by the pandemic, but also partly due to the geopolitical tensions with different parts of the world.

It is prudent, therefore, for franchisors with a footprint in China to prepare themselves by considering the potential obstacles and strategies when franchisees wish to exit the market in China. This article discusses some common strategies for exiting the Chinese market as well as the legal and practical issues franchisors should expect to encounter.

Can the Franchisor Take over the Operations of the Franchisee?

Although most of the time franchisors will try to see if there are parties interested in taking over the departing franchisee's operation first, one frequently asked question is whether the franchisor can take over the operations of its franchisee in case the franchisee is no longer interested in running the business and regain absolute control of the franchise business. Many franchise agreements give the franchisor the option to take over the operation of the franchise outlets and purchase the assets of such outlets upon termination of the franchise agreement.

The purchase of assets is not a difficult process under Chinese law, but a franchisor who intends to buy out a franchisee must decide whether to set up a Chinese entity to serve as the purchaser. China strictly regulates foreign exchange control, making the process of purchasing assets more complicated if the franchisor does not have any corporate existence in China. There is no law requiring that creditors of the franchisee must be notified or that a public notice should be advertised before the transfer, but upon transfer, the "transferee" (the franchisor in this case) will be held liable to existing liabilities of the "transferor" (the franchisee). There are also rules that will void fraudulent transfers—transactions intended to defraud creditors. But a franchisor should be able to avoid this pitfall so long as the purchase is at arm's length.

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Under Chinese corporate law, the business license of a company cannot be transferred to another party, and it is tied to a particular location. Therefore, if the franchisor wishes to take over operations at a previously franchised location, it will need to either (a) set up a new Chinese entity and re-apply for the license or (b) if the franchisor already has a Chinese entity, either move the corporate headquarters to the location of the license or apply for a separate business license for a branch.

In this scenario, franchisors frequently ask whether they can make the application for a license in advance. Practically speaking, the answer is no. Assuming the parties are cooperative, the procedure in China is for the franchisee to relocate first, as the franchisee must revoke its business registration, and that process could take months to complete. That will enable the franchisor to physically "take over" the premises. Once the franchisee is relocated and has revoked its registration, the franchisor should sign the tenancy agreement with the landlord and provide the tenancy agreement to the local authority as part of an application for a new business license. Although the timeframe for securing a business license can be quite fast in major cities, if the franchise is in the food and beverage industry, the franchisor will also need to secure a food circulation license and sewage discharge license from the administrative authorities for different outlets and any central kitchen. Franchisors should accordingly expect an interruption of operation during this process. If the franchisor and franchisee agree on a transfer, they should carefully plan this process for taking over the operations. A gradual transfer such as the franchisee closing operations on a staggered basis according to a timetable (not to close all outlets at the same time) may be the best approach in many cases to minimize business disruption.

Can the Franchisor Buy the Remaining Inventory?

In retail franchises, it is common to have a provision allowing the franchisor to acquire the remaining inventory of the franchisee at the end of the relationship. The usual objective is to avoid undesirable chaos in the market when there will be a new franchisee to be appointed, especially if the current franchisee may be unwilling to discontinue the operation of their business. Another objective of such provisions is to avoid the impact of a liquidation sale to the market when a franchisee sells the remaining inventory to third parties (or even other franchisees without franchisor approval) at "fire sale" prices.

In any purchase of inventory, franchisors should be mindful of the transfer rules discussed above regarding asset purchases.

One important issue is the price to be paid for the remaining inventory. Often the franchise agreement will set guidelines for pricing. But it is not uncommon that a selling franchisee will talk to another franchisee in the region. The other franchisee may be willing to purchase the remaining inventory at a higher price than what the franchisor is expected to pay under the franchise agreement. But many franchisors will have a right under the franchise agreement to add a surcharge to the franchisee's sale of inventory to another franchisee. All three parties, of course, are free to renegotiate these terms. In certain circumstances, the franchisor may prefer for the franchisee to purchase the remaining inventory and may be willing to waive the surcharge.

When we discuss this issue, we should also consider the available judicial options if these provisions in the contract are not observed. Technically speaking, Chinese law does not recognize the concept of specific performance. In practice, while there have been cases where local courts have made similar orders, Chinese law also lacks the concept of contempt of court. Any breach of a Chinese court order, such as an injunction, will usually lead to a fine or administrative detainment but not imprisonment. Thus, Chinese courts have much less power to compel a party to observe a court order. The situation slightly changed in recent years when the government established the social creditability system. Under that system, the government can put the legal representative of a company that has refused to observe a court order on a "blacklist." The legal representative will thereafter be subject to certain restrictions that will tend to impede his or her business pursuits. For example, the legal representative may find themselves unable to buy high-speed train tickets or airline tickets. Accordingly, even without contempt of court, it is not advisable for businesses to ignore or reject a court order. So while a franchisor is not entirely without options if a franchisee refuses to cooperate with these types of franchise agreement provisions, franchisors should endeavor to secure franchisee cooperation whenever possible.

Despite these obstacles to inventory purchases, a set of carefully drafted provisions, such as detailed rules on the inventory purchase process and specific rules on warranties of products, may improve the position of the franchisor in such situations.

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What Happens to the Franchisees' Social Media Accounts?

It is common for franchisees to establish social media accounts on highly trafficked platforms (for example, Wechat, Weibo, and Tiktok) for advertising their services or products. But many franchise agreements, especially older ones, do not address what happens to these accounts upon termination or expiration of the franchise agreement. Under Chinese law, the transfer of social media accounts is always a matter to be agreed upon by the parties, either in the franchise agreement or by a separate agreement. Additionally, any transfer is subject to the service terms or agreement with the social media platform.

Based on the service terms of mainstream social media accounts, the user of these platforms usually does not have any ownership rights to the account. Rather, they are merely granted a license to use the platform. Moreover, the transfer, rental, and sale of these accounts are usually prohibited by such agreements. Nevertheless, transfer of control of the social media account can be accomplished through extensive discussion with the social media platform with the assistance of the franchisee.

Newer franchise agreements now provide specific terms governing the approval and operation of social media accounts, as well as the transfer or closure of such accounts upon termination. Some franchisors, upon transfer, will operate these social media accounts directly through their local team.

What about Accounts for Online Shopping Platforms?

Though Chinese legislation does not prohibit the transfer of online shopping platform accounts, a successful transfer in practice requires not only the agreement of both the franchisor and the franchisee but also the permission of the e-commerce platform.

Take, for example, Alibaba's Tmall platform, one of the largest e-commerce platforms in China. Alibaba operates three types of Tmall stores: (1) flagship stores, referring to branded stores operated by the brand owner or its exclusive licensees; (2) specialty stores, which are normally branded stores of non-exclusive licensees; and (3) multi-brand stores, which are stores selling products of two or more brands. Tmall currently only supports the transfer of the flagship stores, and there is no official channel for transferring specialty stores and multi-brand stores. Without the consent of the Tmall platform, any private transfer of stores of the second and third categories may face the risk of being considered invalid. Therefore, franchisors should closely monitor the kind of online presence their franchisees operate. Their franchise agreements should have detailed provisions for the operation and transfer or closure of these online stores upon termination.

What Happens to Coupons and Prepayments?

It is common to see coupons, prepaid cards, or apps for award points in franchise businesses. Franchise agreements will usually provide that coupons and prepayments are subject to the approval of the franchisor, and the franchisor shall have audit rights.

In China, this issue is now regulated by the Consumer Rights Protection Law and other consumer protection statutes that were adopted in China in recent years. Franchisees operating prepayment schemes are required to register with the authority within 30 days of commencing such a scheme. Moreover, a specific account must be set up by the franchisee for handling the funds received, together with agreements to be signed with the corresponding bank authorizing the bank to conduct supervision. Unused funds are required to be refunded to the customers.

China's new rules bring much-needed regulation to this area. Nevertheless, franchisors operating in China may also consider requiring franchisees to provide additional collateral before approving such prepayment schemes to account for unexpected situations and to ensure that the franchisor can intervene to correct a franchisee that fails to comply with the law.

Choice of Law and Jurisdiction

In recent years, more franchisors operating in China have elected to use Chinese laws as the governing law of the contract and Chinese courts as the venue for dispute resolution. Nevertheless, there remain a considerable number of franchisors who continue to insist on the use of foreign law and foreign venues in their franchise agreements.

Franchisors who want to ensure that their choice of law and choice of venue clauses will be respected should strongly consider mandating arbitration for dispute resolution and require franchisees to generally waive their right to file suit in court. Practically speaking, most arbitrators will respect the choice of law and choice of forum provisions as they are set out in the contract.

Continued on page 13

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Professional Sports Teams: Franchise or Faux?

By Christine K. Taylor, Quinnipiac University School of Law

For the average consumer, the term "franchise" invokes images of food and beverage chains like McDonald's and Starbucks. Professional sports teams are often overlooked in the franchise space compared to other, more mainstream franchises. When it comes to legal requirements, however, it is inconsequential whether the parties call their relationship a "franchise," whether they "feel" like they are in a franchise relationship, or even whether they intended to create a franchise relationship. For regulatory purposes, whether a business arrangement amounts to a franchise is a matter of law, not a matter of semantics or opinion. *See* William L. Killion and Sarah J. Yatchak, *But It Doesn't Walk or Talk Like a Duck*, 17 Bus. L. Today 55 (2007). The determination as to whether a business arrangement meets the legal definition of a franchise is important because, when a franchise relationship exists, a web of federal and state laws come into play that regulates the disclosures required to sell a franchise as well as the contours of the relationship between franchisor and franchisee.

Professional sports teams, like the Boston Red Sox as one example, are often referred to colloquially as "franchises." But are they franchises in the legal sense that the league must comply with state and federal franchising laws? The answer may surprise you and provides a cautionary tale and helpful reminder to franchise attorneys in illustrating that franchise laws define the term "franchise" broadly, such that it can encompass business relationships that do not look and feel like traditional franchising relationships.

What Is a Franchise?

In its "Franchise Rule," the Federal Trade Commission ("FTC") defines a "franchise" as any continuing, commercial relationship or arrangement in which the terms of the offer or contract specify: (1) that the franchisee will obtain the right to operate a business that is identified or associated with the franchisor's trademark; (2) the franchisor will exert or has the authority to exert a significant degree of control over the franchisee's method of operation or provide significant assistance in the franchisee's method of operation; and (3) as a condition, the franchisee makes a required payment or commits to make a required payment to the franchisor or its affiliate. 16 C.F.R § 436.1(h). Most states have similar definitions.

How do these three elements apply in the context of professional sports leagues?

Franchise Element #1: The Grant of a Trademark

The granting of rights to use a trademark is the cornerstone of most franchise agreements. A trademark is any word, name, symbol, logo, or design used by a merchant to identify that merchant as the source of its products and services and to

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distinguish its products and services from those products and services sold by other merchants. Lanham Act § 45, 15 U.S.C. § 1127; Restatement (Third) of Unfair Competition § 9 (1995).

Professional sports associations, like Major League Baseball ("MLB"), grant the use of their distinctive logos to each team in their league. The iconic MLB logo, the white silhouette of a batter atop a red and blue backdrop, was created and trademarked in 1968. The logo is owned by the MLB, but the league grants permission to its teams to affix the logo on teams' uniforms, websites, merchandise, and promotional materials. Each team's use of the trademark in this way conveys to consumers the association between the teams and the league. Any baseball fan in the country recognizes the MLB as the organization responsible for facilitating the highest level of baseball in the world. If a team is associated with the MLB, fans of the sport are not left to wonder whether or not they are professionals, which rules are applicable, or how their season schedule will unfold. The MLB consists of 30 baseball teams from around the country, each of which belongs to a designated home territory and plays 162 games per regular season.

This usage of a league logo is not exclusive to the MLB, as other professional sports leagues like the National Football League ("NFL"), the National Hockey League ("NHL"), and the National Basketball Association ("NBA") similarly grant the use of their iconic trademarks to professional sports teams in their league for the same reasons.

The success of professional sports leagues depends on the indispensable affiliation between the team and the league. The NFL website terms and conditions provide that "we (or our affiliates) and our member professional football clubs own all rights in the product names, company names, trade names, logos, product packaging and designs ("Trademarks") of the National Football League." *Terms and Conditions*, NFL.com (Jun. 20, 2017). It goes on to explain that "unauthorized use of any such Trademarks . . . is prohibited under the trademark laws of the United States and other countries. You are expressly prohibited from using or misusing any Trademarks. . . ." *Id*. In short, through its terms and conditions, the NFL permits only the NFL and its affiliates with authorization to use their logo and trademarks. Through this exclusivity, the NFL enhances the value of its trademarks for itself and its member teams.

Consumers are creatures of habit and develop strong associations between marks and products. While a sports team is not a tangible product in the traditional sense, the team's athletic performance and competition with other teams is the product. The value of the trademark derives not from the value of the image or mark itself but from the positive association between the product or service and consumer goodwill. Since consumers associate the NFL with a premier level of football, they are inclined to trust that any team participating in the league is likely to be of a high caliber. The same sentiment applies to the MLB, NHL, NBA, and other sports associations which continually hold themselves out as having some of the highest standards of sports performance in the world.

This association promotes brand recognition even among consumers and individuals who may not be fans of the particular sport. For example, if someone is wearing official Tampa Bay Rays merchandise with the MLB logo, an individual who may not be familiar with that particular team is still likely to correctly associate the team with baseball and the MLB due to the iconic and well-known nature of the mark.

Since the granting of trademark usage rights is often the foundation of a franchisor-franchisee relationship, the easiest way in which a business can avoid being classified as a franchise is if it expressly prohibits the use of its trademark, *and* the business does not use the trademark in any manner or otherwise suggest an association with the trademark. *See Wright-More Corp. v. Ricoh Corp.*, 908 F.2d 128 (7th Cir. 1990) (holding that Indiana franchise laws applied to protect a distributor of Ricoh products because, even though the distribution agreement generally prohibited the distributor from using Ricoh's trademark, the agreement did allow the distributor to advertise that it was an authorized Ricoh dealer, and Ricoh provided the distributor with advertising materials that included the trademark). But completely disassociating a professional sports team from its league would entirely defeat the purpose and value of the league.

In the case of professional sports leagues, the teams' use of the league's trademark is an element that benefits both and suggests the formation of a franchise relationship.

Franchise Element #2: Exertion of Authority

Franchisors are required to be able to exert or have the authority to exert a significant degree of control over the franchisee's method of operation or provide significant assistance in the franchisee's method of operation. 16 C.F.R. § 436.1(h)(2). To be considered "significant," the control or

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assistance must be related to the franchisee's overall method of operation rather than just a small or insignificant aspect of the franchisee's business. *See* FTC, *Franchise Rule Compliance Guide* (May 2008), at 2.

Professional sports leagues exert a significant amount of control over their teams in several ways. At the most basic level, sports teams agree to abide by the league rules, comply with uniform requirements, and adhere to the game schedule and structure. More specifically, teams are required to adhere to the specific marketing and broadcasting schedule prescribed by the league.

Fans have come to expect that seasons will follow the patterns and schedules that they have in the past. For this reason, the MLB prescribes that each team compete in a specific number of regular season games, participate in a postseason tournament, and the season culminates in the final two league champions competing in the championship, the World Series. The New York Yankees, for example, could not simply elect not to participate in the schedule that the MLB has come to follow without severe consequences for breaching their agreement with the MLB.

An example of the extent of the league's exertion of authority is that dress codes prescribed by the league go beyond dictating that players wear uniforms during their time on the field. The MLB dress code is as specific as requiring that all players' shoes are at least 51 percent team colors, undergarments match team colors, belts are worn at all times, shirts remain tucked-in, and hats are worn facing forward. Failure to comply with the dress code may result in punishment in the form of fines or even suspension, depending on the severity and frequency of the offense.

More heavy-handed leagues even enforce salary restrictions, strictly regulating how teams can compensate their players. For example, the NFL provides that each team's salaries must meet a minimum of 50 percent of the team's average defined gross revenue but cannot exceed 63 percent of the team's Defined Gross Revenue ("DGR"). The NFL states that this "salary cap" helps to promote competitive balance among the league by forcing teams to spend similar amounts of money on player payrolls. Similarly, the NFL participates in revenue sharing. This structure prevents the lowest revenue-generating teams from becoming insolvent, thus decreasing the number of teams in the league and the overall value. Therefore, much of the value of a professional sports team comes from being a member of the league and is not simply dependent upon fielding a competitive team. This once again speaks to the symbiotic relationship between the professional teams and the leagues.

Additionally, the Commissioner of a professional league is typically authorized to disapprove any contract entered into by a team with a player or with television networks, and no sale is binding without the approval of the Commissioner. *See* Gregor Lentze, *The Legal Concept of Professional Sports Leagues: The Commissioner and an Alternative Approach from a Corporate Perspective*, 6 Marq. Sports L.J. 65 (1995). The Commissioner can intervene in the affairs of the teams themselves, which is certainly a substantially significant degree of control extending far beyond small and insignificant aspects of the franchise.

Another important method of control that franchisors typically exercise over their franchisees is the setting and managing of geographic territories. Likewise, in professional sports, leagues exert control over their teams' freedom to relocate to different markets. *See* John K. Harris Jr., *Fiduciary Duties of Professional Team Sports Franchise Owners*, 2 Seton Hall Sports L.J. 255 (1992). When teams attempt to change cities, they can inadvertently destroy rivalries, inflict financial loss on the cities that they are abandoning, and cause fan animosity toward the league. *Id*. at 256. While the freedom of movement may be advantageous to individual teams, it is not necessarily beneficial to the league as a whole. Rather, it is often in the league's best interest to prevent teams from changing locations. As a result, the NFL, for example, enforces a system in which teams must apply for relocation, and 75 percent of the league's 32 teams must favor the relocation for the team to acquire official approval.

Franchise Element #3: Franchisee Pays Franchisor a Fee

The fee required to be deemed a franchise is defined broadly as "all consideration that the franchisee must pay to the franchisor or an affiliate, either by contract or by practical necessity, as a condition of obtaining or commencing operation of the franchise." 16 CFR § 436.1(s).

Professional sports teams pay substantial predetermined fees to their leagues to be permitted to participate in the league, but they also are subject to continuous fees and fines. All professional teams pay fees to their league, many of which resemble initial franchise fees commonly seen in retail business franchise relationships. *See* David Gurnick & Tal Grinblat, *Are Baseball Franchises Actually Franchises?*, Los Angeles Daily Journal (Jun. 6, 2011). Teams are also subject to fees through

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fines. For example, the MLB has a Competitive Balance Tax, which it requires clubs that exceed a predetermined payroll threshold to pay. The MLB taxes teams whose payrolls exceed the threshold on each dollar above the threshold, and the rate increases based on the number of years they have spent above the threshold.

Additionally, according to Article II Section 3 of the MLB Constitution, the Commissioner may impose fines of up to $2 million as a punitive action against a team. Not only does this speak to the fees that teams pay to their leagues but also to the exertion of control element. These fees may apply "in the case of conduct by Major League Clubs, owners, offices, employees or players that are deemed by the Commissioner not to be in the best interest of Baseball." Major League Const. art II, § 3. Teams that fail to adhere to league rules are subject to fines by the Commissioner, who wields broad discretion in enforcing league rules.

Are Professional Sports Leagues Subject to Franchise Laws?

In exploring the required elements of a franchise, it appears that professional sports teams could, at least theoretically, meet the legal definition of a "franchise." If that were indeed the case for some leagues, the teams within those leagues may be protected by franchise disclosure and relationship laws in some states. This analysis is not merely hypothetical, either. In one case, in fact, the Indiana Supreme Court expressly held that a professional basketball team was a franchise of its league. *See Cont'l Basketball Ass'n, Inc. v. Ellenstein Enterprises, Inc.*, 669 N.E.2d 134 (Ind. 1996).

The Continental Basketball Association ("CBA") operated a minor league professional basketball league in the United States from 1946 to 2009, which largely followed the same rules and structure as the NBA. *Id.* at 135. The league became embroiled in litigation when one of its member teams, the Evansville Thunder, sought an injunction to prevent the CBA from barring the Thunder from the league playoffs. As the Supreme Court explained, the litigation "evolved into a dispute between Ellenstein [the Thunder's owner] and the CBA, with the CBA seeking amounts due under the franchise agreement and Ellenstein seeking damages from the CBA under the Indiana Franchise Disclosure Act (the "Disclosure Act") and the Indiana Deceptive Franchise Practices Act (the "Practices Act") (together, the "Franchise Acts")." *Id.* at 136. Ellenstein alleged that the CBA had breached disclosure requirements, that he had relied on false and misleading information at the time he purchased the Thunder, and that the CBA had wrongfully terminated his franchise. *See id*. In order to obtain the relief he sought, Ellenstein was required to prove the existence of a franchise relationship. The lower courts sided with Ellenstein, ruling that a franchise relationship existed, and therefore Ellenstein was protected under the Franchise Acts. *Id*.

The Supreme Court upheld the lower court rulings, finding that Ellenstein's agreement with the CBA was governed by the Franchise Acts due to the nature of their relationship and agreement falling squarely within the definition of a franchise. *Id.* at 36.

Similar to the FTC's Franchise Rule, both Indiana's Disclosure Act and its Practices Act define "franchise" as a contract by which: (1) a franchisee is granted the right to engage in business under a marketing plan or system prescribed by a franchisor; (2) the operation of the franchisee's business is substantially associated with the franchisor's trademark; and (3) the person granted the right to engage in this business is required to pay a franchise fee. Ind. Code § 23-2-2.5-1(a), and Ind. Code § 23-2-2.27-5.

The Indiana courts determined that the Indiana Franchise Acts applied to Ellenstein's purchase of the team for the following reasons: (1) Ellenstein bought the right to operate a team in the league, entitling it to an equal share of the revenue generated by the league; (2) Ellenstein agreed to comply with CBA requirements; (3) Ellenstein purchased the rights to associate the Evansville Thunder with the CBA; and (4) the Evansville Thunder would be substantially associated with the CBA's service mark, trade name, and advertising. *See Cont'l Basketball* at 136–137. This analysis makes clear that under the Indiana definition of a franchise (which mirrors the FTC's definition), the CBA had effectively granted trademark rights, exerted a substantial amount of control, and required the payment of a fee resembling a franchise fee. Having found that a franchise existed within the meaning of the Franchise Acts, the Indiana Supreme Court concluded that the Thunder's owner was entitled to the protections of Indiana's Franchise Acts. *Id.* at 137.

While the relationship between the CBA and Ellenstein's team is not representative of the contractual relationship between all sports teams and their leagues, the court's ruling is instructive with regard to how courts may analyze the franchise question. The ruling in *Ellenstein* is a cautionary tale for professional sports leagues and

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other similar business associations or arrangements that might also check the three boxes necessary for finding a franchise relationship. It is impossible to assume an association of businesses is not a franchise simply because the arrangement does not *appear* to fit the standard franchise business model we have come to widely recognize.

Conclusion

In analyzing the relationship between the "Big Four" sports franchises in the United States—the MLB, the NHL, the NFL, and the NBA—it is clear that each league undeniably grants their teams the use of their trademark, exerts a significant degree of authority and control over each team's method of operation, and that each team pays fees and fines that could be considered akin to franchise fees. While each professional sports league conducts business differently, it is at least possible that a court could find any one of these leagues to constitute a franchise system, thereby triggering the applicability of state and federal laws that further define the relationship and the respective rights and obligations of franchisors and franchisees. ■

From the Franchisor's Perspective—Challenges and Strategies for Franchisees

Continued from page 8

Chinese courts are also increasingly comfortable with enforcing agreements in accordance with their terms, including on matters such as governing law and venue. But when a franchisee initiates a lawsuit against a franchisor in a Chinese court, asserting breaches by the franchisor, the Chinese courts are more wary about applying the franchisor's terms. This is especially so in cases where the franchisee alleges that the franchisor violated mandatory requirements under the applicable laws and regulations of China (for example, where the franchise agreement lacks a cooling-off period provision, as required under Article 12 of the Regulations on Commercial Franchising 2007). In such cases, local Chinese courts will not hesitate to disregard the law and venue choices.

Franchisors should also be aware that even in cases where a Chinese court accepts a choice of law provision designating the application of foreign law, the use of foreign law in the proceedings will be a challenge. The difficulty is not just in the translation and the court's ability to interpret the foreign statutes. Many Chinese judges are simply more inclined to rule according to the Chinese law with which they are familiar. Therefore, if a franchisor wants to ensure that foreign law is applied to disputes with their franchisee, they should strongly consider mandating arbitration for the resolution of disputes.

Is Injunctive Relief Available in Chinese Courts?

The answer to this question used to be no. The good news is that injunctive relief is now available, for example, in trademark cases. A brand owner can file an interlocutory injunction application in local court and will obtain an injunction if it can show there will be irreparable injury or difficulty in enforcement of judgment if an injunction is not granted. The Chinese courts will usually require the brand owner to post security (cash or a guarantee issued by a designated financial institution) before entering the injunction. In many cases, unless the franchisor has already set up an entity in China and is able to secure a guarantee issued by a designated financial institution, this procedural requirement could create a significant roadblock in obtaining an injunction.

Another option in China is to seek administrative relief. An administrative injunctive can be secured by filing a complaint with the Administration of Market Regulation ("AMR"). Indeed, many brand owners have been utilizing this option to close down shops selling counterfeit products for many years. However, the AMR seldom takes action if there are material disputes. For example, if the franchisee disputes the termination and claims that they still have the right to continue operations, the AMR is unlikely to get involved. Indeed, we seldom see franchisors going through the administrative process in termination situations.

Conclusion

One should anticipate challenges when either party in the franchise relationship wishes to exit. Nevertheless, with careful planning and advance attention to details, these challenges and risks can, to a large extent, be overcome and controlled. For franchisors with older franchise agreements, now is a good time to revisit these practical issues and consider making changes that will facilitate future maneuvers, including potentially buying out or terminating and forcing the closure of franchisees. ■

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Managing Personal Information Roles in the Franchise Relationship: New Privacy Laws Mean Ensuring the Right Processing Roles Is More Important than Ever

By Tyler Thompson and Colin Krull, Greenberg Traurig, LLP

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Personal information in the franchise relationship is an asset now more than ever. Whether the personal information is customer data, employee data, device data, loyalty, and rewards data, or otherwise, and regardless of the method of collecting the data, managing such personal information once collected is a crucial part of the franchise relationship. As the usefulness of personal information has expanded, so has its compliance burden. By the end of 2023, five states (California, Colorado, Utah, Connecticut, and Virginia) will have comprehensive privacy laws in place. These state laws join myriad international privacy laws regulating the same space. Beyond imposing burdensome compliance obligations, these laws also restrict how data can be used, shared, stored, or anything else ("processing") in a franchise relationship. The laws do this by assigning processing roles, which are legal classifications that determine rights and compliance obligations when processing personal information to different entities in that relationship.

Many writers have addressed how companies should comply with these new obligations. However, franchise relationships present an initial, more pressing question: *what processing role is right for both the franchisor and the franchisee?*

Positioning each entity for the correct processing role is critical for privacy compliance, as failure to do so can lead to breaches of data privacy laws and regulatory penalties. Correct data processing role positioning is also necessary to ensure both the franchisor and franchisee can use personal information as needed for the franchise

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relationship, as positioning the entities incorrectly can restrict their legal use of personal information.

This article will discuss (1) the different processing role types, and what each type entails; (2) what effect the processing role has on the franchise relationship; (3) how to determine which processing role structure is right for each entity in the franchise relationship; and (4) what steps a franchisor can take right now to determine its current processing role and address potential issues.

Data Processing Roles

Properly addressing privacy compliance and ensuring the ability to use personal information as needed between franchisors and franchisees requires that the parties understand the different data processing roles under applicable data privacy laws. Data processing laws generally sort entities into one of two categories: "controllers" or "processors." While terminology varies, the concepts are generally analogous across multiple privacy regulatory schemes.

Controllers are responsible for determining the purpose and means of processing personal information. You may think of them colloquially as the personal information "owners," although ownership is not a relevant concept under modern privacy laws. Data privacy laws may define controllers by other terms, such as a "business" under new U.S. state privacy laws.

In contrast, *processors* can only process personal information on behalf of a controller. A processor can only use, share, store, modify, and perform other processing activities if the controller authorizes it on its behalf. Processors therefore cannot keep any of the processed personal information if the relationship with the controller ends. Processors are bound to these narrow use cases typically via an agreement with a controller that contains legally required provisions restricting a processor's use of the personal information.

It is important to note that *determining an entity's processing role is a fact-based analysis looking at all the circumstances involved*. This means that the parties need to clearly define their obligations with respect to personal information in a way that places parties in their appropriate processing roles because simply attempting to designate roles in a contract may not be enough in the eyes of a privacy regulator. In other words, the parties have to "walk the walk" and follow through with what they contractually say is happening to personal information. If they do not, regulators may decide that the parties are acting in different roles *despite* how the contract is structured. However, with careful planning, good personal information practices, and clear obligations and responsibilities set out in the franchise agreement, the parties to a franchise agreement can position themselves in a way that is likely to lead to a regulator labeling them with their desired processing roles.

The Effects of the Processing Roles on the Franchise Relationship

While processing roles may seem academic, they have real effects on the franchise relationship. Each entity in a franchise relationship must know its role to understand which of the myriad new data privacy law obligations apply to it, as well as what it can and cannot do with personal information.

Compliance Responsibility

Updated state privacy laws as well as international privacy laws impose multiple rigorous compliance obligations. It is crucial that the parties understand whether the franchisor or franchisee is responsible for each compliance obligation in order to reduce risk and liability.

Controllers are responsible for the majority of privacy compliance elements. In particular, many of the "public-facing" elements of privacy compliance fall to the controller. This includes things like providing and ensuring the accuracy of the privacy policy, providing notice of privacy practices at the point of personal information collection, and data subject request (access, deletion, and similar) intake and management. It is also typically within the controller's purview to maintain a data inventory or record of processing that describes all personal information-processing activities, and some international privacy laws require it.

Processors have a narrower compliance role: they must comply with the contractual obligations that applicable privacy law places on controllers. These obligations mainly consist of strictly adhering to personal information processing instructions from the controller, breach response, security, and providing the controller with information necessary to assist in complying with the controller's obligations.

Data Control and Sharing

Separate from compliance obligations, different processing roles implicate data control and sharing issues. Ultimately, the processing role applicable to each party in the franchise relationship will have a significant effect on what that entity can do with

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personal information and with whom they can share personal information. For example, the processor entity cannot conduct its own marketing activities for its own purposes using customer data, as this would violate the contractual provisions that the law requires the controller to impose on the processor.

Processing roles also ultimately control who keeps personal information when the relationship ends, as processors typically cannot keep personal information once their relationship with the controller has ended.

Determining the Right Processing Role

Determining the right processing role for each entity in the franchise relationship requires that the parties understand the strengths and weaknesses of each role. The right structure for a given franchise relationship may also be heavily dependent on what current personal information processing is taking place. Again, processing roles are a fact-based analysis, so changing existing processing roles may require changing actual processing activities. Such changes may not be business practical or may take significant time and effort.

Franchisor Controller and Franchisee Processor

One way to structure a franchise processing relationship is by having the franchisor as the controller and the franchisee as the processor.

When This Relationship Applies: This processing relationship may be the right fit for a franchise relationship where a franchisor plays an active role, including when individual franchisees do not have sophisticated compliance capabilities. For example, the franchisor may be the central repository of personal information collected by all franchisees and use the personal information for purposes such as a customer loyalty program, marketing, or data analytics, for the benefit of all franchisees as well as the franchisor itself. As processors, individual franchisees can do little with the personal information they collect other than pass it on to the franchisor.

What Does Compliance Look Like?: Compliance obligations for this relationship largely fall on the franchisor controller. For example, the franchisor should distribute its privacy policy for the franchisees' use and contemplate the franchisees' processing activity in that privacy policy. The franchisor controller should also be responsible for data subject requests and maintaining any data inventory. The processor franchisee's compliance obligations are often limited to ensuring required contractual provisions are in place with the franchisor, processing personal information at the franchisor's direction, and protecting personal information.

Franchisor Processor and Franchisee Controller

The parties could reverse the processing roles, with the franchisor as a processor and the individual franchisee as the controller.

When This Relationship Applies: This relationship structure may be the right fit for franchise relationships where individual franchisees have a need to conduct significant amounts of data processing, for example, processing of marketing data on a franchisee-by-franchisee basis. Typical franchisee controllers are larger and more sophisticated than franchisee processors in order to deal with the compliance obligations inherent in being a controller. Franchisors acting as processors can process data for limited purposes designed to help franchisees, such as providing workforce management functions.

What Does Compliance Look Like?: The franchisee, as a controller, bears the majority of compliance obligations under this structure. Each franchisee will need a unique privacy policy that the franchisee itself is responsible for updating and maintaining. Franchisees will be ultimately responsible for fulfilling data subject requests as well. The processor franchisor's compliance obligations are often limited to ensuring required contractual provisions are in place with the franchisee, processing personal information at the franchisee's direction, and protecting personal information.

Joint Controller Relationships

For complex franchise relationships outside of the United States, a "joint controller" relationship may be advantageous. Article 26 of the European Union's General Data Protection Regulation ("GDPR") originally contemplated the joint controller relationship. The concept has since made its way into other international privacy laws, but it does not meaningfully exist in U.S. law.

Under a joint controller relationship, a franchisor and franchisee can *both* be controllers and jointly determine the purpose and means of processing. Entities can allocate privacy compliance responsibilities among themselves. Joint controller relationships allow for maximum flexibility with both data usage and compliance obligations, as

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the parties can determine what makes sense for each compliance obligation. It is important to note that joint controllers are jointly and severally liable for compliance obligations, but the parties can account for this risk via indemnification and similar provisions in the franchise agreement. Joint controller relationships typically require both franchise parties to be fairly sophisticated in order to correctly deal with their allocated compliance obligations and provide adequate indemnification to the other party.

Separate Controller Relationships

While it is possible to have each party in the franchise relationship act as an independent separate controller, this typically creates unique challenges that the parties must directly address. For example, each entity would have full controller compliance obligations. Beyond the obvious burden, this can also be confusing for end customers. For example, each controller would have to provide a detailed notice at the point of collection that discusses the nature of the relationship. Without such notice, one controller sharing personal information with the other controller can trigger additional compliance burdens, for example by constituting a "sale" under state data privacy laws. Each controller would also need a separate privacy policy. Customers may also be confused when they submit a deletion or other request because they would need to make duplicative requests to each controller to exercise their rights for all of the personal information.

Action Items

Processing roles and the resulting implications are complicated and fact-intensive issues for any franchise relationship. Franchisors and franchisees should consider taking the following steps, whether for existing or new relationships:

1. *Review the Franchise Agreement and Operations Manual.* As discussed, any allocation in a franchise agreement is not dispositive for an analysis of processing roles. Still, understanding the franchise agreement and operations manual is crucial to understanding the processing roles of the parties. The franchise agreement and operations manual may already have comprehensive data protection provisions or an addendum that establishes processing roles. If not, the agreement and operations manual may contain general provisions that still point toward certain processing roles. These provisions include data ownership and licensing provisions, confidentiality provisions, provisions relating to customer data, and termination provisions dealing with post-termination data considerations.
2. *Understand the Processing.* Understanding what is happening or will happen between the parties regarding personal information is key to understanding what processor roles apply. The franchisor and franchisee must determine the flow of personal information between them, how each party is using the personal information, and what should happen with the personal information at the end of the relationship. Each fact will help determine what current processing roles apply and what the parties may need to change if they would like to change their processing roles.
3. *Determine Compliance Logistics.* Any strategic decision about processing roles will necessitate an understanding of how each role affects the franchise parties' compliance obligations under applicable privacy laws. The parties must be careful to match each party with the role that will allow them to best facilitate compliance for the relationship as a whole.
4. *Consult the Experts.* While this article addresses data processing roles using high-level concepts applicable to multiple data privacy laws, in reality, any analysis of processing roles or strategic decisions regarding them will require the parties to tailor them to the data privacy laws applicable to the franchise relationship. Parties should consult with privacy counsel familiar with both the jurisdiction at issue and franchise relationships generally.
5. *Memorialize.* It is common for processing activities for the parties in a franchise relationship to change over time. This "processing creep" can create a risk that the parties are no longer adhering to their designated processing roles. When possible, it is best to comprehensively memorialize the relationship between the parties and their respective processing roles. The parties can do this via the franchise agreement itself or via an internal memorandum presenting a detailed analysis of which party is undertaking this role. Memorialization will help reduce processing creep over time by creating a static point-in-time position that the parties can return to if necessary. ■

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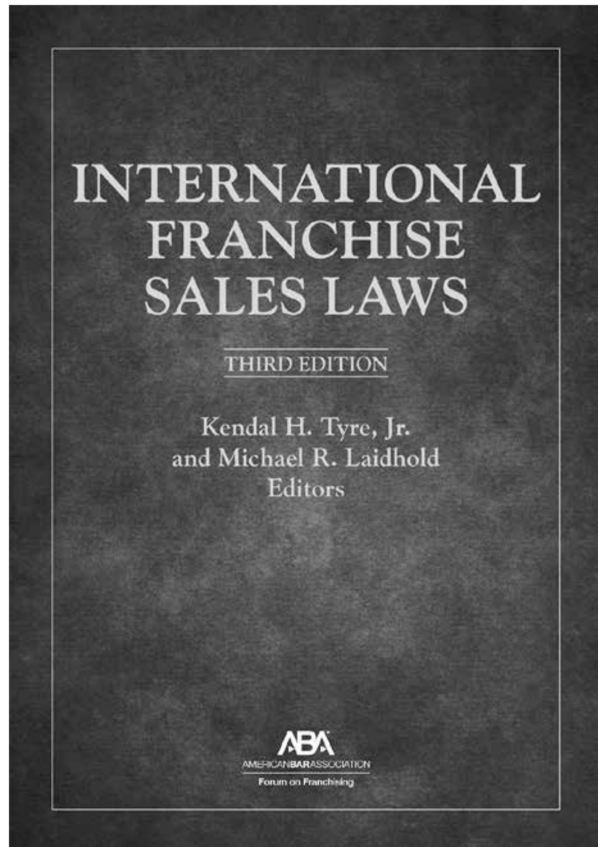

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Message from the Chair

Continued from page 1

on proposed legislation or regulations affecting our area of practice. Our diverse membership represents constituencies from all aspects of franchising, and therefore it is neither likely nor reasonable to expect that the Forum could speak with one voice on most issues.

But the Forum has an important role to play, consistent with our mission "to be the preeminent forum for the study and discussion of the legal aspects of franchising." Throughout our history, the Forum has provided opportunities through our programming and publications to present and discuss significant, and even controversial, legal and regulatory issues related to franchising. Recall our plenary program from several years ago featuring David Weil to address the National Labor Relations Board's joint employer regulations. And each year at our annual meeting, we are privileged to have state officials participate in workshops discussing recent regulatory activities and trends. The Forum is uniquely positioned to facilitate and promote informative and respectful dialogue among interested stakeholders, even on difficult and controversial subjects.

This year will be no exception. At our 2023 Forum annual meeting in Dallas, we will again have an interesting workshop featuring state regulators and discussing important regulatory developments. Forum leadership also is engaging directly with the FTC to facilitate an exchange of information on the topics in its RFI and about franchising issues generally. We hope this will lead to greater involvement of FTC representatives in our programming and activities going forward.

More substantive involvement by all interested parties can only benefit our members. Discussion and presentation of all perspectives will give us more information and a better understanding of all sides of important issues. We also encourage our members to provide input in response to legislative and regulatory solicitations like the FTC's RFI. Although we will not always agree with each other or agree on the best way to address controversial issues, these discussions ultimately should lead to better outcomes in franchise relationships.

Speaking of the annual meeting, co-chairs Nicole Micklich and Heather Perkins are preparing an excellent program, so mark your calendar to be in Dallas on November 1–3. Our presenters are busy writing their papers and preparing to deliver the top-quality content that is the hallmark of our Forum.

It's hard to believe that my term as Forum Chair is about to come to an end, but I am excited to pass the baton to Elizabeth Weldon in August. Please feel free to reach out to me if you have ideas, questions, or comments about the Forum generally, how we can do a better job serving our members, or how you can get more involved. I have new contact information: rtcoleman@bradley.com, 404.868.2003. You also should feel free to contact any other member of the Governing Committee or senior leadership with any questions. We look forward to seeing everyone in Dallas this November! ■

Message from the Editor-in-Chief

By Erin C. Johnsen, Garner, Ginsburg & Johnsen, P.A.

With my term as editor-in-chief of *The Franchise Lawyer* drawing to a close in just a few short months, I find myself reflecting (not for the first time) on the wonderfully enthusiastic and engaged membership we have in the Forum on Franchising. I've had the opportunity to work alongside authors, editors, and Forum leadership over the past few years in a way that has shed new light on the many hours Forum members commit regularly to making this such a unique community full of valuable insights into our common area of practice.

The contributions to this issue are no exception, including articles discussing the management of personal information in franchise relationships, what happens when a party refuses to pay their share of arbitration costs, an international perspective on how franchisors should manage franchisees exiting the Chinese market, and a student article on professional sports teams as franchises. Many thanks to our Spring authors for their valuable contributions to this issue, as well as to the Franchise Professors' Committee and Kristin Corcoran for connecting us with our student author. ■

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