The Early History of the ABA Forum Committee on Franchising and Its Publications

Steve Brown

In looking back forty years, many memories and lessons have been remembered and learned from my participation in the ABA Forum Committee on Franchising (Forum). These memories and lessons allow me to write this Article that will review the early history of

1. the publications of the Forum;
2. the Forum;
3. Franchise Law;
4. the purpose of both the Forum and its publications;

and conclude with lessons learned from all four.

I. The Early History of the Publications of the Forum

In the beginning, the publications of the Forum and the formation and organization of the Forum were intertwined. As the founding editor of the Forum publication that has come to be known as the Franchise Law Journal, many might consider me to be a dinosaur that was able to observe the beginning and in a very limited way to influence its growth and success. For the first year including the first issue, I was the only Editor and designed the layout of the publication, its graphics, its color, and its agreement with ABA Press for its printing and mailing. I also solicited and edited its articles, wrote both the Editor’s column, an article “Negotiating and Protecting the International Royalty,”1 an Editor’s Note to report on the on the second annual program in San Francisco, and worked with the Chairman and the Board on marketing efforts to increase both enthusiasm, participation, and acceptance of the Forum.


Steve Brown, of Dallas, Texas, was the Editor-in-Chief of the Franchise Law Journal (then known as the Newsletter of the Forum Committee on Franchising from 1980 to 1981, and the Journal of the Forum Committee on Franchising from 1981 to 1982).
The name, length and format of the Forum’s publications continually changed, with the first three issues being “Newsletter of the Forum Committee on Franchising,” and, the name changing in our fourth issue to “Journal of the Forum Committee on Franchising.” Always, quality was our goal. After the first issue we were fortunate to be able to add two Associate Editors, Sally Lee Foley of Detroit and L. Seth Stadfeld of Boston. Both were terrific. Sally was totally dedicated to the Forum and to its publications. She was a pleasure to work with and started the Forum’s Women’s Caucus. Sally became our second Editor, and Seth started the very popular section of the Journal titled “franchising currents.” He continued as Associate Editor and writer of “franchising currents” for many years. Starting with the fourth issue of our publication, the Journal added Bret Lowell as our third Associate Editor. Bret was exceptional and always delivered. He later became the Editor-in-Chief of the Journal and then the Chairman of the Forum. It was always a pleasure to work with Bret. The workload for the four of us was still heavy and almost a full-time job for me. We needed to expand in order to continue to scale up. As a result, the Editorial Board was again expanded with the support of the Forum Board, the Spring 1982 Issue that we designated as Volume 2, Number 1 of the Journal with Sally Foley, Seth Stadfeld, and Bret Lowell continuing as the Associate Editors, and Richard M. Asbill of Atlanta, Rupert Barkoff of Atlanta, Laurence R. Hefter of Washington, DC, Paul A. Lester of Bay Harbor Islands, Andrew C. Selden of Minneapolis, Harvey Shapiro of Toronto, Robert A. Shirnicks of New York City, and Erik B. Wulff of Chicago joining us as Topic and Articles Editors. All of our Topic and Articles Editors were exceptional and a pleasure to work with. I would like to specially mention four: Rupert Barkoff, Andy Selden, Richard Asbill, and Eric Wulff. Rupert Barkoff, Andy Selden, and Richard Asbill all became Chairman of the Forum through hard work and exceptional participation. Erik Wulff is the fourth. I admired Rupert Barkoff for his practical views, work ethic and always going beyond what was required or expected. Andy Selden had great vision and leadership qualities. Every time we have a new United States President being inaugurated; I expect Andy to be appointed as the Chief Executive Officer of Amtrak. Andy has the unique knowledge and skill set to hold that position. Richard Asbill had great people and legal skills. Eric Wulff was smart and exceptional. His work product was always excellent. Volume 2, Number 1 of the Journal was my last issue as Editor and was thirty-four pages long, over three times longer than our first issue.

Many editorial procedures and editorial processes were improved over the first five issues that now are used to produce the excellent work product of our current journals. First, we had to go through a process to agree on topics and, at the same time, obtain articles. This was most difficult when there was only one editor. For the first issue, I was forced to lean on the Governing Board. After the first issue, this became much more manageable when we

2. See, e.g., Front Matter, 2 Franchise L.J. 2 (Spring 1982).
had two, then three, then four, and finally on our fifth issue, twelve editors to assist on selection of topics and obtaining or soliciting articles. Next, we had to set up the peer review process for each article. For the first issue the peer review of each article became problematic as I was also the author of one of the Articles. Lewis Rudnick and Harold Brown, then two Governing Board members, came to our rescue. For the second issue, we had two editors, Sally and me. With the third issue, we were fortunate to have Sally and Seth’s help, and, with the fourth issue, we added Bret Lowell, making four editors to do such peer reviews. Next, we set up a process to obtain feedback from the Governing Board, the Forum members, and the ABA so we could produce a better product that reflected the substantial input from others. We received feedback that the newsletter was good, but a journal would be better, and starting with Volume 1, Number 4, in the Fall of 1981, we published the first Journal of the Forum Committee on Franchising. Subsequently, a few years later when Bret Lowell became the Editor-in-Chief, the Journal was renamed and continues to be named the Franchise Law Journal. This Summer 2020 issue is Volume 40, Number 1, the fortieth anniversary of the original issue.

II. The Early History of the Forum

The Forum formation and organization were also intertwined with the announcement of, and then the promulgation of, the FTC Franchise Rule.\(^3\) Contemporaneously, the American Bar Association sections of Anti-Trust, Corporate, Litigation, and Intellectual Property recognized the rapidly expanding business format franchising concept, that touched on multiple legal areas and was rapidly becoming a regulated business, deserved to have a forum formed to focus on its development so that ABA members would have the opportunity to influence its growth and to educate and inform its members of developments.

A. First, the American Bar Association

Three American Bar Association Presidents, Justin A. Stanley of Illinois, William B. Spann of Georgia, and S. Shepherd Tate of Tennessee were all involved in the Forum’s formation. The above-mentioned ABA sections were also instrumental. As I remember it, from the ABA section involvement, Harold Brown of Boston [for Litigation], Lee N. Abrams of Chicago [for Antitrust], Albert Robin of New York [for Intellectual Property] Mark Rollinson of Washington, DC [for Corporate], and Harold L. Ward of Miami [also for Litigation] were designated from their respective sections to make it happen. Looking back over forty years ago, I was most fortunate to be invited and be able to participate in the organizational meeting of the

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Forum in Chicago with Harold Ward, Harold Brown, Lee Abrams, Albert Robin, Lewis G. Rudnick, Mark Rollinson, and Timothy H. Fine. It is most unfortunate that forty years later most of the group of founders has passed away, but what they started continues to be an outstanding Forum that we can all be proud of. Of the participants from the organizational meeting, only Lee Abrams and I are able to now memorialize this early history.

B. The Founding Members of the Forum’s Governing Board

Harold L. Ward of Miami was the founding chairman of the Forum Committee on Franchising, with Lee N. Abrams of Chicago, Judith M. Bailey of Phoenix, Harold Brown of Boston [deceased], Timothy H. Fine [deceased] of San Francisco, Albert Robin [deceased] of New York City, Mark Rollinson [deceased] of Washington, DC, and Lewis G. Rudnick [deceased] of Chicago, joining our first chairman as the other members of the first Board. Each one was vary accomplished professionally and academically. For three years, I was able to interact with each one on a regular basis, getting together at least three times each year. I learned a great deal. Most were larger than life, and all were extraordinary practitioners. The Board agreed, and I welcomed at least one and generally multiple articles from each. Harold Ward, our first chairman, established the early direction for the Forum and tirelessly created the policies that would allow the Forum to grow and prosper. But most important, his policies allowed the Forum to meet its goals and objectives. Lewis Rudnick, our second chairman, had an encyclopedic knowledge of franchise law. He was outstanding in every way. To know him was to love him. He regularly kept up with new developments and brought a tremendous amount of passion and the pursuit of excellence to the Forum. Lee Abrams, our third chairman, was brilliant. His ABA experience generally, as well as previously being the finance officer of the Antitrust section, allowed him to guide us through the ABA requirements and regularly obtain the funding that was especially needed in the early days, as the Forum scaled to a self-funded organization. Lee’s management skills that he honed from serving in management positions in his firm were also very useful to the Forum, which continued to grow and prosper under Lee’s guidance and leadership. Harold Brown, I believe, was the most instrumental founding member in forming the Forum. He first suggested its formation. He considered himself a franchisee advocate and became an author of franchise books and franchise articles including regular newspaper columns. His style and personality always brought him centerstage. He dedicated himself to educating others. He was a showman. Albert Robin was a very knowledgeable and able intellectual property attorney. He held leadership positions in the ABA Intellectual Property section as well as serving as President of the American Intellectual Property Association. For those governing board members that I have not mentioned, I want to state you were terrific, and I plan to mention you in other parts of this article.
III. The Early History of Franchise Law

In 1978, we had the beginning of a federal-state web of laws that included the newly promulgated FTC Franchise Rule, the state “pre-sale” registration laws, the state relationship laws, and the state “little FTC acts.” At that time, the FTC Franchise Rule did not provide for a private right of action but did provide for certain disclosure requirements. Certain state franchise statutes began to be passed such as “Termination and Nonrenewal Statutes,” and “Repurchase on Termination Statutes.” Also the delicate and sensitive relationships between franchisors and franchisees were studied, and relationship planning became important. Forum members discussed fairness and balance in the franchise relationship from all perspectives. More state laws were passed, and associations were formed. Because of the Forum, the attorneys representing both franchisors and franchisees were able to work together on publications, educational annual forums, and other projects that were the beginning of a unique bond and appreciation that only the Forum could offer to its members.

The first five issues of the Newsletter of the Forum Committee on Franchising and the first issue of the Journal of the Forum Committee on Franchising reflect a balanced and fair presentation of this early history.4

IV. The Purpose of the Forum and Its Publications

The ABA recognized the rapidly expanding business format franchising concept that touched on multiple legal areas and was rapidly becoming a regulated business and believed the Forum would be able to provide ABA members the opportunity to participate in its development and growth. The Forum also provided a platform to help educate and inform its members.

4. See, e.g., Harold Brown, Survey of Private Remedies, 1 Franchise L.J. 1 (Winter 1980); Albert Robin, Trademark Licensing and the FTC Franchise Rule, 1 Franchise L.J. 3 (Winter 1980); Brown, supra note 1; Harold L. Ward, Siegel—Is It Still a Delight?, 1 Franchise L.J. 1 (Spring 1980); Timothy H. Fine, Developments in State Law Affecting Franchising, 1 Franchise L.J. 3 (Spring 1980); L. Seth Stadfeld, Franchising Currents, 1 Franchise L.J. 7 (Spring 1980); Lewis G. Rudnick, Structuring a Franchise Relationship, 1 Franchise L.J. 9 (Spring 1980); Lewis G. Rudnick, Structuring a Franchise Relationship Part II, 1 Franchise L.J. 1 (Summer 1981); Albert Rubin, Ipso Facto Clauses, 1 Franchise L.J. 3 (Summer 1981); Jeffrey J. Keyes, Antitrust Problems in Franchise Advertising Programs, 1 Franchise L.J. 5 (Summer 1981); Allen Carp, Franchising in Canada, 1 Franchise L.J. 17 (Summer 1981); L. Seth Stadfeld, Franchising Currents, 1 Franchise L.J. 27 (Summer 1981); Lee N. Abrams & T. Mark McLaughlin, Rights of a Franchise Against a Franchisee Who “Holds Over” Without Permission, 1 Franchise L.J. 1 (Fall 1981); Harold Brown, Unfairness Doctrine in Franchising, 1 Franchise L.J. 3 (Fall 1981); Structuring a Franchise Relationship Part III, 1 Franchise L.J. 5 (Fall 1981); L. Seth Stadfeld, Franchising Currents, 1 Franchise L.J. 13 (Fall 1981); Bret Lowell, Bibliography of Sources and Trends for Franchise Law in the Eighties, 1 Franchise L.J. 18 (Fall 1981); Mark Rollinson, Franchise Attorney Responsibility to Franchise Purchasers, 2 Franchise L.J. 1 (Spring 1982); Laurence R. Hefter, Selection of Marks, 2 Franchise L.J. 3 (Spring 1982); John P. James, Federal Income Tax Issues in Franchise Advertising Programs, 2 Franchise L.J. 7 (Spring 1982); Harold Brown, Franchising: The Duty to Perform in Good Faith and Fair Dealing, 2 Franchise L.J. 17 (Spring 1982); Michael J. Walter, Civil RICO: An End to Franchise Fraud?, 2 Franchise L.J. 26 (Spring 1982); L. Seth Stadfeld & Erik B. Wulff, Franchising Currents, 2 Franchise L.J. 28 (Spring 1982); Bret Lowell, Bibliography of Sources and Trends for Franchise Law in the Eighties Part 2, 2 Franchise L.J. 33 (Spring 1982).
through the Forum’s publications and programs with fair and balanced presentations. It has been a success. If you have any comments or memories that you would like to share, please send me an email at hbrown@brownplc.com, and I will attempt to have them published on the Forum’s website or in a subsequent Journal.

V. Lessons Learned and Conclusion

The early history of participating in the Forum and its publications taught me many lessons that I have used throughout my career. I would like to share them with you. I hope that each of you that read this article, especially our newer members, will be able to benefit from my lessons learned.

Lesson 1. The first was the more work and effort contributed results in even more returns, rewards, or output being returned or received. Either go all in or do not go at all.

Lesson 2. Set individual goals or plans that make a difference for the group and for others.

Lesson 3. Be respectful and sensitive to the feeling of everyone you interact with.

Lesson 4. Set realistic expectations, and then exceed them.

Lesson 5. To be successful you should make more right decisions than wrong; but use your wrong decisions as a learning exercise.