Franchising Opportunities in Southern California

A Franchise Business Primer: What to Consider and What to Expect

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ant to be your own boss, but not willing to take on the risk of starting your own business from scratch? Franchising can be a great alternative if you want to have some guidance in the start-up phase of the business. A franchise is a business model that involves one business owner licensing trademarks and methods to an independent entrepreneur. Sometimes, franchises are referred to as chains. There are two primary forms of franchising:

- **Product/trade name franchising**
  
  Franchisor owns the right to the name or trademark and sells that right to a franchisee.

- **Business format franchising**
  
  Franchisor and franchisee have an ongoing relationship, and the franchisor often provides a full range of services, including site selection, training, product supply, marketing plans and even assistance in obtaining financing.

**Before Investing in a Franchise**

Before you decide to franchise, you need to do your research. You could lose a significant amount of money if you do not investigate a business carefully before you buy. By law, franchise sellers must disclose certain information about their business to potential buyers. Make sure you get all the information you need first before entering into this form of business.

**Franchising Strategy**

You need a strategy before investing in a franchise. Doing your homework about the franchise first will help you gain a solid understanding of what to expect as well as the risks that could be involved.

- **Be a Detective:** In addition to the routine investigation that should be conducted prior to any business purchase, you should be able to contact other franchisees before deciding to invest.

- **Know What You are Getting Into:** Before entering into any contract as a franchisee, you should make sure that you would have the right to use the franchise name and trademark, receive training and management assistance from the franchisor, use the franchisor’s expertise in marketing, advertising, facility design, layouts, displays and fixtures and do business in an area protected from other competing franchisees.

- **Watch Out for Possible Pitfalls:** The contract between the two parties usually benefits the franchisor far more than the franchisee. The franchisee is generally subject to meeting sales quotas and is required to purchase equipment, supplies and inventory exclusively from the franchisor.

- **Seek Professional Help:** The tax rules surrounding franchises are often complex, and an attorney, preferably a specialist in franchise law, should assist you to evaluate the franchise package and tax considerations. An accountant may be needed to determine the full costs of purchasing and operating the business as well as to assess the potential profit to the franchisee.

**Get More Information**

Many blog articles covering franchise tips and best practices are available from SBA at sba.gov. If you are considering purchasing a franchise, FTC’s Bureau of Consumer Protection has a wide range of resources and guides at business.FTC.gov to help you buy a franchise avoid franchise taboos.

Information for this article was provided by the SBA.
Is it Time to Franchise?

By LARRY SCHWARTZ

The franchise industry has experienced a radi-
cal transformation over the past 5 decades. This pros-
perous and dynamic industry has evolved from what was once a restaurantentric
expansion strategy to a major component of the U.S. economy. Franchises represent several hundred industry segments, 3,000+ brands, and contribute to more than $889 billion in economic output and $521 billion in GDP.

Like the majority of the U.S. economy, franchising was severely affected by the recessionary period of 2008-2011. During this timeframe, business capital was virtually non-existent and new business development came to an abrupt halt. However, the very circumstances that overwhelmed an industry, simultane-
ously established the foundation for its growth. With so many people losing confi-
cidence in the perceived stability of cor-
porate America, as well as having experi-
cenced devastating losses in real estate and securities markets, franchising has emerged as a viable alternative for people to become entrepreneurs and have more control over their financial future.

Today, the franchise industry is thriv-
ing. Industry leaders and key perform-
ance indicators across the board support this fact. This year, the International Franchise Association (IFA) reported record attendance at its industry annual conference. According to the Franchise Business Economic Outlook for 2015, franchise organizations are reporting record sales and the number of new fran-
chise systems and locations being devel-
oped are at their highest level in years.

Additional factors contributing to this level of growth is the increasing number of entrepreneurs seeking ways to own and operate a proven business model with the support of the franchisor and their estab-
lished brand equity. In addition, emerging markets overseas thirsty for U.S. brands and support of the franchisor and their estab-
lished brand equity. In addition, emerging markets overseas thirsty for U.S. brands and are finding opportunities here with a growing and diverse con-
sumer base showing an appetite for new and unique products and services.

Investment activity has also spiked. Private equity firms and other investment groups are seeking out opportunities in the franchise industry based on its cur-
rent and projected growth. Diversifica-
tion, quick expansion capabilities, rela-
tively lean operating structure and recur-
ing royalty structure. Many of these investments and acquisitions are being based on extraordinary valuation’s, often exceeding 8-10 time earnings multiples.

Industry experts are confident that this is not simply a reactionary trend, but a permanent shift in entrepreneurship and a solid investment strategy. This has led to strong growth not only among established franchise organizations; it has also prompted other successful business owners to consider franchising as a viable strategy to expand existing businesses.

Franchising is Regulated

Before you decide to franchise your business, or invest in a franchise concept, it is important to under-
stand that franchising comes with its own set of rules. The industry is highly regulated and its unique operational requirements must be understood.

Feasibility

With all of its success, there are some cases where franchising may not be the right strategy for some companies. Making that determination can only be made after developing clear growth objectives. These objectives must be supported by thorough due diligence in consultation with industry experts.

Questions To Consider:

• Do I want to achieve significant growth in my company/business?
• What are the options available to my company and me to achieve my growth objectives?
• Is there a big enough market for my product or service in other markets?
• Does my product or service have long-term staying power?
• Is my business model scalable?
• Is my team committed to the process of building and managing a fran-
chise system?

Franchising Your Business – What You Need To Know

For new and early stage franchisors, significant effort must be put into build-
ing the right system infrastructure and planning how the franchise is going to operate. Proper planning will ensure that companies have the confidence and know-how to successfully operate and build the organization. To accomplish this, it is critical for early stage franchisors to surround themselves with the right team of industry advisors and develop the key support tools they will need.

Your franchise logo is an important way to carve out your identity. Here is an example logo of a successful, emerging franchise: ElectroBike.

The Team

For new and early stage franchise organizations it is important to seek out industry professionals that can provide a "turn-key" consulting and advisory package to help establish the franchise. An experienced and reputable franchise consulting firm will be able to provide the guidance, insight and professional advice needed to assist the franchise company with all aspects of strategic planning, operational readiness, and organization-
al infrastructure. They will also have an experienced support team, extensive resources and an established network of industry professionals to help develop all the key components of the franchise system.

The System

Building and managing a successful franchise company requires detailed insight to all aspects of the industry, its historical landscape, current trend lines, and each of the many components required to operate the business. Critical components include corporate and unit level operations, branding/marketing, franchise sales, real estate procurement, construction, training and support, tech-
ology, accounting and finance – and while several of these components are iniquitous to any business, franchising changes the game.

A successful franchise system can be very profitable for both the company and its franchisees. The keys to its success reside within the commitment by the company to invest the time and resources necessary to build and manage the system and to support its franchisees, who, in turn, must willingly adopt the culture and effectively execute its obligations to the company – and the system as a whole.

Larry Schwartz is Director & Senior Consultant for the Armanino Franchise Services Group. For questions about this article or for more infor-
mation as to how the Armanino Franchise Services Group can help provide the right team and the right tools, contact Schwartz directly at (310) 478-4148 x5759 or via larry.schwartz@armaninoLLP.com.
We’ve just joined forces with Armanino—the largest independent accounting and business consulting firm based in California. The same team is in place to provide franchisors with strategies to grow your franchise system, secure franchisee financing, conduct FDD audits, supply standardized reporting and other specialized services. And beyond that, we’ll have much more to offer especially in the areas of media and PR consulting. As Armanino, we’ll be just like the RBZ you’ve known, but with even more resources. Learn more by visiting armaninollp.com.

We’ve changed our name. Not our values.
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Can a Franchisor Avoid Becoming the Joint Employer of its Franchisee’s Employees?

BY LULU CHIU, SUSAN GRUENEBERG, JOSHUA SCHNEIDERMAN and ELIZABETH WELDON

The hottest issue in franchising today has united franchisors and franchisees in a battle to defend franchising itself against a movement to unionize workers and a perceived imbalance in the workplace. It is an effort to make franchisors responsible for their franchisees’ employees by making the franchisors joint employers of those employees.

The basic theory behind this threat stems from the demise of large companies that formerly employed workers from cradle to grave, providing them with salaries, benefits and pensions. In an effort to develop a more efficient economic model (and more profit for investors), many of these companies began outsourcing elements of their operations, and focusing instead on their so-called core competencies. Dr. David Well, the current head of the Department of Labor’s (DOL) Wage and Hour Division, refers to this structural change as “fissuring.” The fissured workplace has developed as a result of a number of methods of doing business, including franchising, according to this analysis.

How to fix the problem? In the opinion of some, the solution is to make franchisors responsible for wage and hour violation complaints of their franchisees’ employees. Studies have shown that franchisors’ who own operations have fewer labor law violations than those of franchisees. If the franchisor is responsible, that translates into fewer violations, right? Coincidentally, it also makes collective bargaining and unionization an easier process. The National Labor Relations Board (NLRB) has targeted McDonald’s, allowing complaints to proceed against both the franchisee and the franchisor. The Occupational Safety and Health Administration (OSHA) is exploring making franchisors liable for workplace safety. And, of course, the DOL is behind the new standard for joint employment as well.

The problem is, if the franchisor is responsible, why would it ever risk placing control of operations and employees in the hands of a third party, a franchisee? If this question is successful, fewer companies will franchise and fewer individuals will have the opportunity to own their own businesses as franchisees. An extremely successful method of product and service distribution will wither on the vine.

While this battle plays out, what can franchisors do to protect themselves against becoming joint employers? Here are a few suggestions:

Focus on the “Operations Manual”

Protecting brand standards is good; exerting control over franchisees’ operations is bad. A franchisor should consider renaming its operations manual and calling it a brand standards manual.

Franchise Agreements will often define an operations manual broadly to encompass all information related to the franchise including “manuals, handbooks, policies, guidelines containing information related to the franchise system and other writings containing the franchisor’s standards, methods and procedures.” Many franchise agreements even incorporate the manual by reference in the agreement itself. The problem is that these franchisors likely did not intend to incorporate sample employee handbooks or employment forms into their agreement since that might be later used to bolster claims of joint employment. Franchisors should instead consider limiting the definition of manual to a single document that protects the brand and excludes employment related information.

Define the Franchisor/Franchisee Relationship

Most current forms of franchise agreements will include a provision stating that the franchisee is an independent contractor and that no fiduciary relationship exists between the franchisor and franchisee. That may no longer be enough to protect franchisors.

Franchisors should consider stating that the franchisor has no direct or indirect control over or responsibility for hiring, firing, disciplining or training the franchisee’s employees.

Educate Field Personnel

Employees and representatives of a franchisor who regularly interact with franchisees (referred to as “field personnel”) are frequently not clued in to legal developments in franchising. Franchisors should routinely educate their field personnel to understand what a joint employer is and what vicarious liability means. Training should include what to say and not to say to franchisees and franchisees’ employees to reduce the risk to the franchisor. For example, field personnel should not directly communicate about the business with non-management employees, but should instead communicate to defend the business with the owner or general manager of a franchised business. Field personnel also need to know that they must not play a role in hiring, firing, setting wages or work hours, or in disciplinary decisions of the franchisee’s employees.

Revise Inspection Procedures

Franchise inspections of franchisees’ businesses are a key component to quality control in most franchise systems. Inspections help preserve brand standards and ensure compliance. Inspection agents need to be educated on how to communicate issues to the franchisee, how to document their findings and how to properly follow up to ensure corrective action has been taken. Franchisors might also consider hiring third parties to conduct inspections to distance the franchisor from the process and to ensure that inspections are conducted in a systematic fashion.

Lulu Chiu is an Associate at Snell & Wilmer in Los Angeles. She can be reached at (213) 929-2548, lchiu@swlaw.com.

Susan Grueneberg is a Partner at Snell & Wilmer in Los Angeles. She can be reached at (213) 929-2543, sgrueneberg@swlaw.com.

Joshua Schneiderman is a Partner at Snell & Wilmer in Los Angeles. He can be reached at (213) 929-2545, jschneiderman@swlaw.com.

Elizabeth Weldon is a Partner at Snell & Wilmer in Orange County. She can be reached at (714) 427-7461, eweldon@swlaw.com.

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Snell & Wilmer’s franchise group provides comprehensive legal services to franchisors, subfranchisors and master developers in a variety of industries including food and beverage, hospitality, transportation, energy, home services, health care, sports and fitness, real estate, entertainment and commercial cleaning.

The firm’s attorneys advise clients through every stage of the franchising process, from structuring the franchise program and regulatory compliance to franchise relations and dispute resolution. Snell & Wilmer helps U.S. concepts expand both domestically and internationally, and assists non-U.S. concepts enter the U.S. market.

As a full-service business law firm with over 400 attorneys practicing in more than five dozen areas of law, Snell & Wilmer provides clients with access to attorney skills and knowledge specific to their particular businesses and industries.

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The AAFD Announces Five New Franchisee Chapters

Five Small Business Social Media Tips to Attract Customers

How Small Business Owners Can Assess Their Banking Relationships

The American Association of Franchisees and Dealers (AAFD) announced this year the formation of several new franchise associations as chapters of the AAFD. Each chapter willXE the voices of all its members to establish an environment of collaboration between franchisees and franchisors. The five new chapters represent franchisees from: ARGpoint Labs, Coastal Angler and The Angler Magazine, SERVPRO, Wireless Zone, and Zippy Shell.

Each new chapter has formed a steering committee and is actively defining its goals and recruiting members. Once each chapter reaches its recruitment goal, it will become an “active” chapter within the AAFD.

“We are incredibly excited to welcome all five of these chapters under the AAFD’s tent of Total Quality Franchising,” said Robert Purvin, Chairman of the AAFD. “Many of these organizations are household names and represent hundreds of franchises across the country and the world. As these chapters grow, their voices will reverberate with the help of the AAFD, I believe these chapters will be able to create real and meaningful change within their franchise system to establish a more collaborative and fair culture.”

ARGpoint Labs is a national leader in providing drug testing and clinical lab testing for screening and employment purposes. It is a fast growing franchisor that covers 21 states. ARGpoint franchisees have developed the ARGpoint Owner’s Alliance and are actively recruiting members. Coastal Angler Magazine offers franchisees the ability to publish their own local issue of Coastal Angler Magazine and The Angler. The organization was founded in 1996 and operates approximately 60 units.

SERVPRO is a huge franchisor, supporting over 1,650 units across the country. Its franchisees provide home and business restoration services and offer the best in emergency and natural disasters. Wireless Zone in partnership with Verizon Wireless sells cell phones and other technology products and operates approximately 400 franchise units. Zippy Shell is a moving and storage solution and provides customers with shells that they pack. Zippy Shell can then move the shell to the owner’s new location or store it. In 2014, Zippy Shell became the fastest-growing storage and moving company in the United States.

The announcement of these five new chapters comes on top of an announcement of six previous new chapters by the AAFD in November of last year: BrightStar Care, AmeriSpec Home Inspection Services, Benjamin Franklin Plumbing, Mr. Sparky, One Hour Air Conditioning & Heating, and Window World. Since that announcement, Benjamin Franklin Plumbing and AmeriSpec Home Inspection Services have become active chapters.

The AAFD acts as a catalyst in the franchisee chapter formation process by providing coaching, offering a vehicle for franchisees and aspiring franchisees to build a leadership structure, and providing tools to support an effective franchise association. The AAFD further helps chapters build effective leadership, define goals and objectives, build a compelling membership purpose, and open a constructive dialogue with their franchisor management teams.

The AAFD is the oldest, largest, and most respected direct member franchise trade association in the United States. The nonprofit organization has formed exclusive chapters for over 80 franchise systems and seeks to foster its vision of Total Quality Franchising—a collaborative franchise culture that respects the legitimate business interests of franchisors and franchisees.

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