

FRANCHISING

Tim Pickwell, Franchise & Distribution Law

For some, taking over the globe does not necessarily mean world domination. Instead, it means marking their business on every corner of the world; take McDonalds, for example, you will struggle to visit a part of the world that has not at least one of the franchise's restaurants pitched up. But what are the legal requirements and how do we go about it? We speak with Tim Pickwell, who has been in the franchising industry for over 30 years, and touches on the obstacles franchisors may face.

Can you list three important things business people should consider or be aware about before they decide to franchise their business or concept?

To successfully franchise a concept or brand, an owner must first understand why their own business is successful and why it can be replicated, then must be committed to having their franchisees succeed, and finally, must leave their original business behind and focus on the growth of the franchise system. So, in essence: understand your own business, commit to your franchisees and transition from being a small business owner, to a franchising executive.

What legal obstacles do businesses often face when expanding as a franchise in the United States?

Franchising is regulated at the national level by the Federal Trade Commission which mandates the use of a detailed Franchise Disclosure Document. FDD's can range from 150 to 400 pages, and it is expensive to compile the information and

prepare the initial FDD. Then there are 14 key states which require that you actually register and revise the FDD and submit it for annual review. Having an

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FDD which accurately discloses the business opportunity, while satisfying Federal law and State Examiners is critical. Except for high-level executives in publicly traded companies, few business people are used to the type of disclosure and scrutiny required in franchising.

What financial obstacles do new Franchisors often face? Successful deployment of capital is critical. I have seen well-capitalised start-up franchisors blow through \$500,000 in two or three years, and undercapitalised franchisors run out of cash

before they get off the runway. My most successful clients grow organically at first, work out some kinks on costs and site selection, use consulting talent

judiciously on an as needed basis, and then bring on staff and ramp up their marketing and growth only when their training and systems can support it.

What area of law poses the most challenges for franchising?

Franchising in the medical area is especially challenging because of healthcare privacy laws on the one hand, which make it difficult for a franchisee to share data or information with a franchisor, and state law restrictions on professionals, such as doctors

or dentists forming partnership with non-professionals, along with restrictions on sharing fees - such as royalties - with non-professionals.

You spent the first 12 years of your career in-house handling international expansion for CENTURY 21 and then JACK IN THE BOX restaurants. What challenges came your way when you supervised international franchising for JACK IN THE BOX?

Well, with CENTURY 21, the challenges were legal. With JACK IN THE BOX, the challenges were operational. The quick service restaurant (QSR) segment in the United States is highly evolved, with suppliers who manufacture food products to detailed tolerances, in order to cook perfectly with the right equipment in good time. At JACK IN THE BOX in the US we had the cost of a slice of tomato figured out to four decimal points and the tomatoes were so consistent they looked like they came out of a factory. Overseas, especially in Southeast Asia in the mid-1990's, the supply chain could

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not support our franchisees. In some instances, they were not yet purchasing in enough volume to get the interest of the large manufacturers. One supplier told a franchisee, "It would cost me more to shut down our line and change to your molds and recipes than you are paying me." When McDonald's expands internationally, it takes its entire supply chain with it, they build local farms and factories, and everyone loses money for several years until they reach critical mass. JACK IN THE BOX did not have the capital or time to replicate that model.

How do international franchise regulations differ from the United States?

Well, when I started, they

differed by being non-existent. We worried about basic contract law and enforceability of key provisions overseas. But, our franchise regulations seem to have infected many parts of the world. Many Canadian provinces now have a pre-sale disclosure requirement, as does Australia, Mexico and a number of other countries. If anything, the international arena is becoming more similar to the US, with fewer differences, although you still need to proceed with a case-by-case, country-by-country analysis.

How have you seen franchising change over your 30-year legal career?

The biggest change is sales. It used to be face-to-face, door-knocking salesmen, or,

large trade shows. Advertising for franchise sales was in a newspaper. Now we see the internet, and the rise of "portals" being dedicated to lead generation and franchise sales. Now, those are being eclipsed at a rapid rate by SEO, Facebook and other more targeted means.

What changes would you like to see in franchise laws?

Franchise laws have not caught up to the internet. Unregistered franchisors are not typically targeting a state which may require registration in advance. Now, it's a citizen of that registration state searching on the internet for a business and initiating contact with the franchisor. After an exchange of e-mails and a phone call, that franchisor may have inadvertently violated the state's pre-offer registration requirement. I'd like to see that change. Franchisors should be able to explore a market, assess interest, and then decide to register without penalty. **LM**



About Tim Pickwell

Mr. Pickwell's unique in-house background enables him to provide practical, business-oriented solutions to franchisors and franchisees. His expertise includes intellectual property licensing and trademark matters, international franchising, retail lease drafting and negotiations, franchise registration and compliance, litigation advice, and general corporate and business matters. Clientele include established franchisors, large restaurant companies, multi-unit franchisee organizations, as well as single-site retailers, and start-up franchisors. Mr. Pickwell is a member of the California Bar, and a Certified Specialist in Franchise and Distribution Law. He is admitted to the Federal District Courts for the Northern, Central and Southern Districts of California.

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