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# Franchise Legal Services

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## Overview

Einbinder Dunn & Goniea has earned a nationwide reputation as franchise lawyers representing both franchisors and franchisees. This distinguishes us from most law firms, which generally have experience representing only one side in the franchise industry. Our knowledge of both sides of the franchise model gives us a deeper understanding of and a broader perspective on the dynamics between the two, which enables us to explain the intricacies of franchising law to our clients and apply that knowledge and experience to our clients' advantage.

Watch Michael Einbinder review the basics of [Understanding Franchise Law for Franchisors and Franchisees](#).

## Services for Franchisors

Einbinder Dunn & Goniea assists **franchisors** with matters ranging from the development of franchise business programs and the structuring of franchise business entities to maximize business flexibility and protect assets, to the preparation and registration (where required) of franchise disclosure documents (FDDs) as well as the filing of trademarks and the management of licensing and intellectual property.

## Services for Franchisees

We provide an equally broad range of services to **franchisees**: assisting single unit operators and multi-unit operators with acquiring and selling franchises and territories; reviewing FDDs; reviewing and negotiating franchise agreements, multi-unit and area development agreements, leases and other contracts; forming business entities; and in the formation and representation of **franchisee associations**.

## Franchise Dispute Resolution

Our attorneys bring these same qualities to resolving **franchise disputes** on behalf of franchisors, franchisees and franchisee associations for clients here in New York and throughout the U.S. Our firm engages in matters in state and federal courts as well as through arbitration and mediation, when appropriate.

## Other Practice Areas

Einbinder Dunn & Goniea's franchise law clients also benefit from our extensive experience in the areas of **commercial litigation, business law, real estate, trusts and estates, and fashion law**. It is particularly important to note that our experience in the area of real estate law allows our firm to provide franchisor and franchisee clients with a comprehensive approach to their legal needs.

## Services For Franchisors

Einbinder Dunn & Goniea attorneys have extensive experience in representing both start-up and established franchisors. Our firm provides a full range of services in all aspects of developing, registering, offering for sale, operating, restructuring and expanding franchisor businesses. We have represented clients who offer franchises nationally, including international franchisors, in a variety of industries, including restaurant services, fashion businesses, home maintenance and improvement, hotel and lodging, business services, technology, real estate, pet food and pet care, professional services and child care services.

For start-ups, our franchise attorneys assist in (i) determining whether franchising is the proper method to further develop a business, (ii) creating a franchise program, (iii) drafting franchise disclosure documents (FDD) and other franchise-related agreements, and (iv) preparing and filing disclosure documents for state registration where necessary.

For existing franchisors, our firm conducts a comprehensive review of the franchisor's current disclosure document and related agreements to (i) make certain that the agreements are current and state of the art both legally and technically, (ii) ensure that the franchisor has complied with all state and federal regulations and (iii) create agreements that help insulate the franchisor from problems that often arise during the franchisor-franchisee relationship.

For all franchisor clients, we provide the full range of legal services:

- Preparation and registration of FDDs
- Preparation of a detailed memorandum analyzing the franchisor's current disclosure document and agreements along with proposed modifications
- All matters relating to franchise law compliance and the development of an in-house compliance department
- Negotiating and closing franchise sales
- All matters relating to the franchisor-franchisee relationship, including dispute avoidance and resolution
- Drafting any and all agreements
- The best methods to protect and license trademarks, trade secrets and other intellectual property
- All real estate matters, including property acquisition, leases and subleases and drafting agreements with third parties
- Methods to minimize legal and business risk exposure in connection with the franchise system

- The development of the optimal corporate structure for enabling the franchisor and its affiliates to separate their various streams of revenue from one another, thereby shielding valuable assets from possible litigation
- Day-to-day business counseling

## **Franchisor Litigation & Alternative Dispute Resolution**

Our franchise attorneys have a great deal of experience representing franchisors in litigation in state and federal courts, as well as in arbitrations and mediations, throughout the U.S. On behalf of franchisor clients, our firm has successfully brought claims against franchisees to enforce non-competition and non-disclosure agreements, to protect the franchisor's trademarks, services marks, trade dress and other intellectual property, and defended franchisor clients in actions brought by franchisees relating to alleged breaches of franchise agreements and violations of disclosure laws.

## **Can your business be franchised?**

To help you determine whether you can franchise your business, we suggest that you think about the following:

### **Question #1: Do you have a proven business concept?**

Potential franchisees want to know that your franchise business concept has proven to be successful. Success can be measured in many different ways, including the profitability of your business, the number of years you have operated your business, the number of units you have operated, the size of your operation, and the strength and awareness of your brand.

### **Question #2: Do you have a strong brand?**

Franchising is a method of expanding your business by granting to a franchisee the license to operate a franchise using your trade name, trademark and trade dress. Other than the value of the knowledge of how to operate your business, much of the value associated with purchasing a franchise is attributed to the strength of the brand. At Einbinder Dunn & Goniea, we can register your trademark and help develop the legal framework to protect and strengthen your brand.

### **Question #3: Is your business concept different from current businesses in the marketplace?**

You can differentiate your business in many ways, including offering unique products and/or services, offering products and services at reduced prices, offering higher quality products or services, targeting different markets, or implementing a distinctive marketing strategy.

### **Question #4: Can you teach others how to operate your business?**

One of the keys to franchising is teaching franchisees how to replicate the way

you operate your business. The easier it is to teach your proven business methods to a franchisee, the quicker it is for that franchisee to be up and running, and the more likely that franchisee will be able to duplicate the success of your business.

**Question #5: Does your business have regional, national and/or international appeal?**

The more marketable your franchise system is across various geographic areas, the greater the chance of success for your franchise system. Some franchise concepts do not work as well in certain geographic areas as they do in others. It is important to understand how marketable your franchise concept is and what geographic areas your franchise concept would appeal to. This market analysis would help you maximize the potential of your franchise system in those geographic areas that your franchise would operate in.

**Question #6: Do you have a strong management team in place?**

Running a franchise system involves a different skill set than operating your current business. To develop a successful franchise system, you will need, for example, personnel who can conduct the training program, employees who are knowledgeable in marketing and building brand awareness, and a sales staff to generate leads for potential franchisees as well as potential customers for the franchise system.

**Franchise Disclosure Documents (FDD) and Registration**

The law governing franchise disclosure is complex and evolving, requiring the attention of a firm with dynamic experience. Our franchise lawyers assist start-up and established franchisors nationwide in complying with federal and state franchise disclosure and registration requirements. The Federal Trade Commission's (FTC) franchise rule, as amended in 2007, requires franchisors to prepare and provide to a prospective franchisee a franchise disclosure document (FDD) within a specified period of time before completing the sale of a franchise to that prospective franchisee. Certain states require that the FDD be registered.

Our firm prepares FDDs as required by the FTC including related agreements to ensure that franchisor clients have complied with all applicable state and federal regulations, including various disclosure timing requirements. We also represents franchisors in complying with registration requirements in the 13 states (California, Hawaii, Illinois, Indiana, Maryland, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin) where such registrations are required before the FDD can be disseminated to potential franchisees and used to sell a franchise in that state. In addition, there are several other states, such as Florida, that require franchisors to file documents with that state or provide that state with notice before selling a franchise there. We also assist in such filings.

For established franchisors, our firm assists clients with ongoing registration requirements and filing of annual reports.

In the second and third parts of this four-part video presentation, co-founding Partner Michael Einbinder examines the [23 items required in a Franchise Disclosure Document](#) in great detail.

## Franchisor Claims

Broadly speaking, lawsuits by franchisors are usually brought to: (i) protect intellectual property rights; (ii) enforce system standards; (iii) enforce non-competition obligations; and/or (iv) recover money owed. The attorneys who handle these lawsuits must accomplish these goals expeditiously, so as to effectively manage their clients' resources.

At Einbinder Dunn & Goniea, we are well prepared for the task. Our trial lawyers use years of experience representing franchisors in litigation, handling claims originating in New York state and throughout the United States. Over time, we have earned a national reputation for taking our clients' businesses to the next level. This means keeping our clients' long-term goals in mind as well as their short-term goals – remaining cognizant of how the decisions we make in litigation today can help protect our clients' interests in the future.

- **Enforcement of intellectual property rights:** When a terminated franchisee continues to use a franchisor's trademarks or service marks, the franchisor must take the matter seriously. Franchisors that fail to strictly police and enforce their rights run an extremely high risk of losing these rights astoundingly fast. At Einbinder Dunn & Goniea, we can take action to enforce franchisors' intellectual property rights. Depending on the situation, we may assert unfair competition, trademark infringement and counterfeiting claims against non-compliant former franchisees.
- **Failure to abide by system standards:** By allowing franchisees to flout brand standards, franchisors risk a rash of non-compliance by other franchisees who perceive the franchisor as lax. When this occurs, the brand identity is weakened and lasting and permanent damage to the system can occur. Our law firm can help franchisors take action to protect system standards, including filing claims for breach of the franchise agreement. These claims may be necessary to compel a non-compliant franchisee to maintain uniformity and consistency of operations.
- **Enforcement of Non-Competition Provisions:** We can file for injunctive relief so that terminated franchisees are required to comply immediately with certain obligations, including post-termination de-identification obligations, which may interfere with a franchisor's intellectual property rights.
- **Financial Relief:** Frequently, when a franchisor sues a current or terminated franchisee, it is simply to collect money owed. Franchise agreements typically require franchisees to pay royalty, advertising and marketing fees. When a franchisee fails to pay these, our firm can seek judicial intervention to recover for breach of contract.

## Acquiring Franchise Systems

Our franchise lawyers represent sophisticated business clients in the acquisition of existing franchise systems, as they step into the role of franchisor and determine how to turn around a struggling system or take an operating system to the next level. We advise on evaluating assets and liabilities, determining what to acquire and other aspects of crucial due diligence. We structure the agreements that permit our clients to successfully control and direct these systems.

## **Services For Franchisees**

At Einbinder Dunn & Goniea, we counsel franchisee clients in transactional matters as well as dispute resolution. Our firm has an extensive history representing both franchisors as well as franchisees, allowing us to foresee issues and offer more all-encompassing solutions that bring both short- and long-term benefits.

Our firm assists franchisee clients in all matters relating to:

- Purchase of the franchise from the franchisor (or an existing franchisee), including advice on proper due diligence.
- Acquisition and development of multi-unit or area development and master franchise opportunities.
- Business formation, beginning with the creation and structuring of the franchisee entity, and including the drafting of shareholder or partnership agreements and the LLC operating agreement as appropriate.
- Review and analysis of franchise disclosure documents (FDD) and franchise agreements.
- Negotiations with franchisors (including the negotiation of renewals of existing franchise agreements).
- Formation and advisory services to franchisee associations.
- Real estate, including the review and negotiation of purchase agreements and leases and resolution of environmental and building code issues.
- Third-party agreements, including independent contractor, supplier, employment, confidentiality and non-compete agreements.

## **Franchisee Litigation & Alternative Dispute Resolution**

At Einbinder Dunn & Goniea, we represent franchisees nationwide in disputes with franchisors in state and federal courts as well as in arbitration and mediation. On behalf of these clients, our firm has brought affirmative claims concerning such matters as franchisor earnings misrepresentations, misappropriation of advertising and rebate funds, and breaches of franchise agreements. Our firm regularly represents franchisee clients in disputes relating to non-compete agreements, confidentiality of trade secrets, continued use of proprietary marks and other post-termination matters. We also defend franchisee clients against claims of violating systems standards, failure to remodel/refurbish and trademark infringement/unfair competition. In addition, our firm has, when appropriate, counterclaimed on behalf of franchisee clients alleging illegal discrimination and inequitable treatment of franchisees.

## **Multi-Unit Franchisees and Area Developers**

Multi-unit and area development deals result in more franchise units, higher stakes and less margin for error. Our firm's extensive experience representing both franchisors and franchisees uniquely positions us to assist entrepreneurs in developing and growing their businesses through multi-unit and area development acquisitions.

For multi-unit franchisees and area developer clients, our firm provides valuable advice on every aspect of their businesses, including the complex acquisition of multi-unit and area development rights. We assist in negotiating the franchise agreement, development agreement, options and other related agreements, with particular attention to critical aspects such as development schedules, payment arrangements, non-compete provisions and territorial exclusivity. We also provide counsel in the following areas for our multi-unit

and area developer clients:

- Acquisition of multi-unit or development rights for new or existing franchised systems and acquisition of new and existing franchise units of new or established franchise systems;
- Performance and analysis of proper due diligence, including the review of business performance, licensing and tax compliance matters;
- Negotiation with franchisors concerning new franchise agreements and development agreements, amendments to existing agreements or the renewal of existing agreements;
- Negotiation, document review and due diligence in connection with complex financing of multi-unit development, including secured lending and leasehold mortgages;
- Dispute resolution, including litigation in state and federal courts and representing clients in arbitration and mediation;
- Review of franchise disclosure documents;
- Examination and negotiation of commercial leases and advising clients on all aspects of real estate matters, including the resolution of environmental and building code issues;
- Negotiation, drafting and/or review of third-party agreements, including independent contractor agreements, supply agreements and employee confidentiality and non-compete agreements;
- Negotiation, drafting or review of corporate governance agreements, including operating, partnership and shareholder agreements for developing and established entities;
- Analysis, negotiation and resolution of non-competition issues arising from multi-brand ownership; and
- Individualized estate planning solutions for principals of multi-unit franchisees and area developers, including the use of trusts and the development of business succession and family wealth transfer plans.

## **Franchise Acquisition and Renewals (including FDD and Lease Review)**

If you are considering buying a franchise or are considering renewing your franchise, you should have a well-experienced franchise lawyer review the Franchise Disclosure Documents (FDD), negotiate the franchise agreement, assess the business, review and negotiate the lease, and provide day-to-day practical advice on how to most effectively launch or continue your business. Our cumulative experience and particular skill sets brought to the table by our team of attorneys is singularly suited for analyzing franchised business opportunities. We have advised countless individuals and businesses acquiring franchised business opportunities in industries ranging from restaurants to professional cleaning; from high-end fashion to pet food. In addition, we have worked with numerous franchisors, creating their FDDs and advising them on how to set up their systems. This gives us an important perspective when advising clients looking to buy a franchise.

Our firm's extensive experience in commercial leasing also enables us to provide advice and services regarding the location of clients' franchised locations that most franchise attorneys cannot. With our vast franchise and leasing experience, we can help franchise clients negotiate the best possible lease terms while still satisfying the requirements of the franchisor.

We also assist existing franchisees considering renewing their franchised

business upon expiration. For these clients, it is important to review the franchise agreement prior to expiration because franchisees often have only a limited period within which to exercise their right to renew. In addition, we help these clients understand the differences between their existing franchise agreement and the agreement required upon renewal. Often, clients are not aware that the renewal agreement is not the same as the current agreement. We can also assist with negotiating the renewal agreement to help clients keep the benefit of their original bargain.

### **Acquiring Existing Franchised Businesses**

Acquiring an existing franchise can have benefits beyond starting a new franchise. These business owners can obtain existing customers and customer information, knowledgeable employees and a location already developed. This can provide a true turn-key operation. Our firm works with these business owners in their negotiations and agreements with the seller as well as those with the franchisor. Our experience in commercial leasing means we can represent clients in all aspects of the acquisition

### **Franchisee Claims**

There are various – and often creative – claims filed between franchisors and franchisees, and a great deal is often at stake. Accordingly, franchisees benefit from working with an experienced legal team from the moment they know that litigation might be possible. By taking early action, the negative effects of litigation can often be mitigated.

At the New York law offices of Einbinder Dunn & Goniea, we have extensive experience representing franchisees in litigation. Our experienced trial lawyers handle many different claims filed by franchisees against franchisors, including:

- **Financial Performance Representation Claims:** Franchisors may, under certain circumstances, disclose to franchisees information from which the potential sales, costs, income or profit of a franchise may be ascertained, but that information must be accurate and it must be contained in the Franchise Disclosure Document. Earnings claims can be either an actual statement or a projection of earnings. When the information is not properly disclosed or when the information is intentionally misleading, we may be able to assist franchisees in taking legal action to recover their investment.
- **Misleading initial investment costs:** Franchisors are also legally required to disclose the costs to start up a franchise in the franchise offering prospectus, including the costs of real property, equipment, inventory and additional funds. Failure to disclose this information accurately can mean significant losses for franchisees. Accordingly, they can take legal action. Depending on the situation, our firm may be able to assert a claim on behalf of a franchisee.
- **Termination/non-renewal:** Franchisees typically invest substantial amounts of time and money in acquiring, developing and operating their franchises. Case law and in some states franchise “relationship laws” may offer protection from arbitrary franchise termination or non-renewal. If a franchisor terminates the relationship without good cause, it may be



possible to take legal action and we can provide effective representation in such a case.

- **Competition by franchisor/encroachment:** When a franchisor takes actions that violate the franchise agreement, such as selling franchise locations to competing franchisees who are located in close proximity to each other, it may be possible for the franchisees to take legal action. We may be able to file a claim for breach of the franchise agreement if there is a provision in the agreement that is intended to prevent encroachment. If there is no such clause, we may allege breach of the covenant of good faith and fair dealing implied in the franchise agreement.
- **Failure to train or support:** Franchisees expect to be trained in the particular business of the franchise and to be supported by the franchisor in their efforts to sell the franchise products/services. When franchisors fail to follow through on their promises, we may be able to pursue litigation on behalf of the franchisee.
- **Modification of the system:** When franchisors unilaterally modify the franchise business system, it can wreak havoc on a franchisee's operations. If a franchisor significantly changes the business, the unexpected expenses imposed on franchisees may be deemed breaches of the implied covenant of good faith and fair dealing. Our firm can assist in asserting a claim on this basis.
- **System standards:** Franchisors have the right to require franchisees to toe the line, but when a franchisor is inflexible, demanding strict compliance with system standards without any lenience, the franchisee who faces threats of default or termination for minor infractions or inadvertent errors might sue. If your franchisor takes this step, we can assist you.
- **Advertising fund misuse:** Franchisors typically require franchisees to contribute to a common advertising fund, which is supposed to be used for the common good of the franchisees. However, this is not always the case. When a franchisor fails to use the money for the proper purposes, franchisees may bring claims of breach of contract, depending on the situation. Our firm has substantial experience in representing franchisees in these types of matters.
- **Transfer/assignment:** Case law and some state statutes limit the right of the franchisor to control transfers of franchises or the assets of franchised businesses. When a franchisor blocks a transfer or assignment, it may be possible to commence an action against the franchisor, seeking preliminary and/or permanent injunctive relief, damages and attorneys' fees. Our firm has represented franchisees in these types of matters.

## Franchise Dispute Resolution

As a firm with extensive experience in both litigation and franchise law, we are especially well-qualified to represent franchise clients in federal and state court and in arbitrations and mediations. Our firm advocates for clients in federal and state courts nationwide and in various alternative dispute resolution (ADR) forums across the U.S., including the AAA, JAMS, FranArb and the London Court of International Arbitration. Our franchise attorneys have served and are available to serve as neutral arbitrators and mediators as well.

Our firm advises and advocates for clients in litigation, arbitrations and mediations involving various aspects of franchisor-franchisee relationships, including:

- Franchise breach of contract claims;
- Renewal agreement disputes;
- Non-Competition agreement disputes;
- Franchise encroachment claims;
- Advertising and marketing fund disputes;
- Site selection and support disputes;
- Fraud claims; and
- Trademark and trade dress cases.

## **Franchise Real Estate**

Our firm's versatility is particularly evident in the crucial overlap between the franchise and real estate practice areas. Advising franchisor and franchisees inevitably evolves into a discussion about real estate, because the location of any business is crucial to its success. We are as knowledgeable as any firm in the country in franchise matters, but you would also be hard pressed to find a transactional real estate lawyer or real estate litigator more experienced than our name partners.

This established real estate practice, not present in the vast majority of franchise law firms, is highly valuable to our franchise clients, as we bring years of practical experience to bear upon the following matters:

- Commercial and retail leasing, including lease drafting and negotiations, lease renewals and assignments, subleases and lease audits;
- Purchases or sales of real property, including negotiations and drafting or review of both buy-sell agreements and closing documents;
- Construction, including applications, building code compliance, land use permits, municipal zoning approvals and resolution of environmental issues, as well as development, general contractor, subcontractor and other third-party contracts;
- Real estate financing or refinancing transactions and negotiations;
- Real estate tax matters; and
- Dispute resolution in state and federal courts, as well as arbitration and mediation.

## **International Franchising**

At Einbinder Dunn & Goniea, our experienced approach in matters of international franchising has been developed through decades of practice serving franchisors and franchisees alike and through collaboration with attorneys and clients from around the globe. This, in turn, has given our firm a depth of knowledge and perspective on international franchising not found at most franchise law firms – one that has enabled our franchise attorneys to take next steps based upon a broader understanding of franchise systems.

Our firm offers guidance and a full range of quality, cost-effective legal services to start-up and established foreign franchisors seeking to sell franchise opportunities and establish operations in the United States. Our firm also provides comprehensive advisory services to U.S.-based franchisors seeking to sell franchises in Canada and other foreign countries. Further, we also serve

U.S. franchisees of foreign-based franchisors.

Some of the many different aspects of international franchising that we offer assistance with include:

- Development of a U.S. Franchise system based upon a foreign franchise concept;
- Sale and purchase of international franchises in the U.S. and advice on proper due diligence;
- Assist clients in complying with international laws relating to franchising outside of the U.S.;
- Real estate matters, including property acquisition, lease and sublease preparation and drafting agreements with third parties;
- Negotiation, drafting and review of third-party agreements, including contracts with independent contractors, supply agreements, and employment confidentiality and non-compete agreements;
- Development of the optimal corporate structure for enabling the franchisor and its affiliates to separate their various streams of revenue from one another, thereby shielding valuable assets from possible litigation;
- Litigation in state and federal courts;
- Resolution of disputes in arbitration and mediation; and
- Day-to-day business counseling.

Our partners are dedicated to carefully and thoroughly addressing the individual concerns of every client. [Contact us](#) to discuss with one of our top franchise lawyers today.