How a Franchisor Can Use Outside Counsel To Save Legal Fees!

By: Carl Khalil And Sada Sheldon

We live in a world where law firms commonly have billable hourly quotas that their attorneys must meet, and substantial hourly rates as well. Yet, franchisors have a goal seemingly inconsistent with this framework: to minimize outside counsel fees. Can these seemingly opposite purposes be reconciled? Yes, and the way to do so is for franchisors to ask outside counsel to assist them in those areas that can competently be handled by the client after being set up by outside counsel. Here are some of those areas.

• Ask counsel for the templates to do the Michigan and Utah annual filings.

Perhaps it makes good sense for outside counsel to file the annual Michigan and Utah Notices the first time a franchisor intends to offer or sell franchises in those states. But after the first filing, a wise franchise client can simply ask outside counsel for the templates, verify that the form has not changed on the state website in later years, and prepare and file the Notices in-house

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• Provide a compliance checklist and 5-year disclosure form.

A compliance check on franchise sales paperwork is needed to ensure, among other things, that the 14-day holding period was met under the FTC Rule before any monies are taken or a binding agreement is entered into. Likewise, the compliance designee needs to check the state of residency of the prospect and the state where the territory is located to make sure that any needed state addenda from either location are appended to the back of the franchise agreement. These are tasks well-suited to a checklist and some training, so outside counsel can offer guidance, but then let the franchisor save attorney fees by performing the function in-house.

Likewise, Item 20 of the FTC Rule now requires that the 5-year history of an outlet previously owned by the franchisor be provided. The disclosure must include a list of previous owners, their contact information, and the reasons for previous changes of ownership. Outside counsel can simply provide a template and some training and then let the client handle the work.

• The franchisor can learn to file the quarterly Maryland sales report.

Maryland requires that franchisors file a quarterly sales report in which the franchisor lists the franchises sold and provides certain details about each transaction (purchase date, sales price, and territory). Again, this is another task where outside counsel can provide the form and let the client handle the preparation and filing of the report on their own.

• Small franchisors can be counseled in the isolated sales exemptions.

Indiana allows a franchisor to sell one franchise in a 24-month period without filing to register the franchise offering with the state.

Minnesota allows a franchisor to sell one franchise, excluding an area franchise, in a 12-month period without filing to register, provided that the franchisor has not advertised the franchise for sale to the general public and meets certain other conditions.

New York allows a sale to a franchisee if the offer is not made to more than two persons, provided that certain conditions are met.

The state of **Washington** has a particularly interesting isolated sales exemption, helpful for franchisors selling only in the state. If a franchisor does not have any franchises outside of Washington, has granted or grants no more than three franchises to be situated within Washington, does not publish an advertisement or engage in general solicitation for franchise sales, and the buyer is represented by legal counsel or a CPA, a franchisor does not have to register with the state to make those three sales.

• Put a seasoned franchisor under exemption.

Once a franchisor has reached a certain age, size, and level of financial strength, it may either file for a Seasoned Franchisor exemption in certain states (California, Illinois, North Dakota, Rhode Island, South Dakota, Virginia, and Washington--where the initial investment is above $100,000). In other states (Illinois (as to certain franchisors), Indiana, Maryland, and New York), the franchisor can qualify for a self-executing exemption altogether. For those states, no filing is needed at all.

• The franchisor can assist in FDD preparation.

There are many ways a franchisor can assist outside counsel to prepare the FDD amendment and renewal filings. Here are two simple ways. First, biographical information on officers, directors, those who manage the franchise, and years of experience with the franchisor and in the field of those who teach the initial franchise training, must be disclosed in Items 2 and 11. Here, counsel can provide forms so that in-house personnel can gather updated biographical information and edit the disclosures appropriately.

Likewise, Item 3 requires disclosure of new litigation. If the franchisor has in-house counsel who can appropriately review complaints, counterclaims, and other claims, the franchisor itself can draft the write-ups of litigation and furnish them to outside counsel, saving the time and cost it takes outside counsel to review sometimes voluminous claims and prepare appropriate summaries.

Conclusion

Outside counsel can best serve franchise clients by counseling them on ways to save legal cost. And franchisors should not hesitate to speak up and ask for ways to save attorney fees.

Whether it is the completion of a simple form, a little training, or a checklist, both the franchise client and outside counsel can work together to ensure that franchise companies minimize needless costs and maximize profits.

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