



# 54TH ANNUAL IFA LEGAL SYMPOSIUM



**IFA**<sup>®</sup>

INTERNATIONAL FRANCHISE ASSOCIATION



# Basics Track: Franchise Litigation

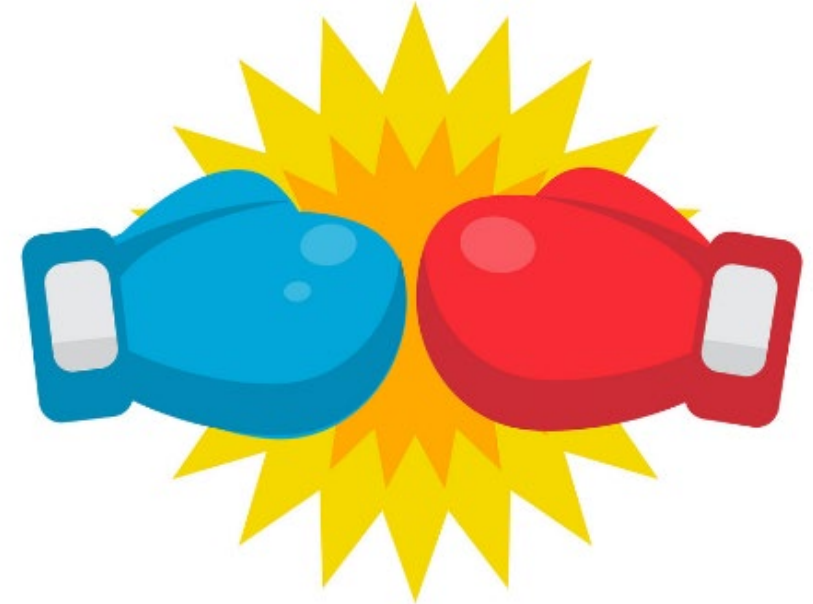
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# Procedural Battles

- Which Court Should You Litigate In?
  - Federal and State Franchise Laws
  - State vs. Federal Court
  - Personal Jurisdiction
  - Subject Matter Jurisdiction



# Pre-Suit Considerations

What to do before you end up in litigation or arbitration?



# Arbitration vs. Litigation

## Arbitration

- Time
- Informality
- Limited Discovery
- Confidentiality
- Finality

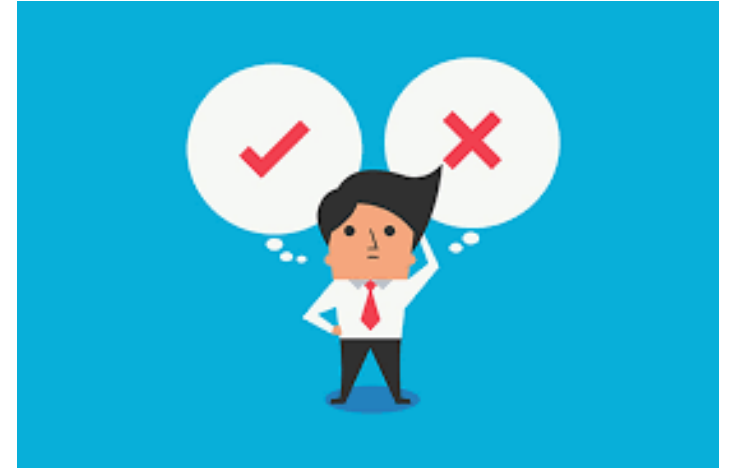


## Litigation

- Typically preferred by Franchisees
- Discovery as an advantage
- Precedent
- Ability to appeal

# Other Concerns

- Ongoing relationship of parties
- Potential system wide impact of franchise litigation
- Lack of adverse relationships between the parties





# Pre-suit Resolution

- Mediation
- Work-out agreements
- Forbearance
- Probation agreements

# Arbitration

- Enforcement issues
- Non-signatory challenges
- TROs and preliminary injunctions
- Post-arbitration award enforcement issues





# Franchisee Claims

- Pre-relationship claims
- Claims arising during the term of the franchise relationship
- Claims arising from the end of the franchise relationship



# Franchisor Defenses to Franchisee Claims



- Procedural
- Removal—State or Federal Court?
- Transfer/Dismissal Venue Selection Clause
- State Franchise Law
- What law applies?
- Merger/Integration
- Economic Loss Rule
- Factual

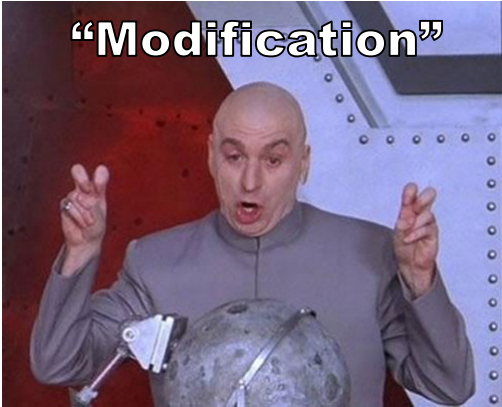


# Franchisor Claims

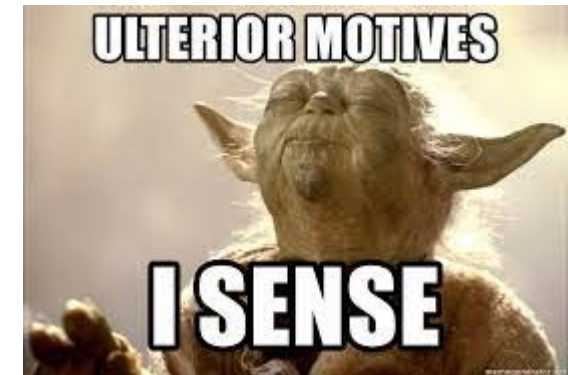


- Non-compliance with system standards
- Monetary claims
- Abandonment
- Non-compete
- Other claims

# Franchisee Defenses to Franchisor Claims



- Failure to comply with franchise agreement or state law's termination requirements
- Materiality
- Modification and course of dealing
- Waiver
- Ulterior motive or improper purpose



# Remedies

- Contract/money damages
- Rescission and restitution
- Specific performance
- Declaratory relief
- Attorney's fees



# Thank You

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See you at the next IFA!

