



# 54TH ANNUAL IFA LEGAL SYMPOSIUM



**IFA**<sup>®</sup>

INTERNATIONAL FRANCHISE ASSOCIATION



# COMBINING DIFFERENT CONCEPTS INTO ONE FDD:

## Disclosing Multiple Brands and Different Franchise Formats in the Same FDD

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# Overview

- Multi-Brand and Multi-Format Offerings – NOTHING NEW!!
- The Allure of Single Multi-Brand and Multi-Format Offerings
- Practical and Legal Implications

# Combining Multiple Franchise Formats in a Single FDD

**Storefront**



# Types of Franchising Formats That Might Be Combined

- Traditional Venues
- Non-Traditional Venues
- Food Trucks & Kiosks
- Virtual Add-Ons & Ghost Kitchens
- Other Franchise Formats



# Combining Multiple Franchise Formats: When is it Permitted?

- What does the law say?
  - The FTC Franchise Rule
  - NASAA Guidelines
- Advantages for Combining Multiple Formats in a Single FDD
- Disadvantages for Combining Multiple Formats in a Single FDD



## FDD Challenges to Combining Multiple Franchise Formats in a Single FDD

- The FTC Cover Page
- Items 5 and 6
- Item 7
- Items 8 and 11
- Item 12
- Item 17
- Item 19
- Item 20



## Contractual and Practical Challenges to Combining Multiple Franchise Formats in a Single FDD



# Combining Multiple Brands in A Single FDD



# Types of Multiple Branding

- Multiple Brands Under Common Corporate Ownership
- Co-Branding
  - Affiliate Owned Co-Branding
  - Non-affiliate Owned Co-Branding

# Factors to Consider When Combining Multiple Brands in a Single FDD

- Is it Permissible?
- What are the Similarities and Differences Between the Brands
- Are the Brands Complementary?
- Ease of Co-Managing Brands
- Customer Demand
- Can Resources be Shared?
- Preparation of the FDD

# Combining Multiple Brands in a Single FDD

- Advantages for Combining Multiple Brands in a Single FDD
- Disadvantages when Combining Multiple Brands in One FDD



## Disclosure Issues When Combining Multiple Brands in a Single FDD

- Item 1
- Item 5
- Item 6
- Item 7
- Item 8
- Item 11
- Item 12
- Item 19
- Item 20

# Contractual Issues with Combining Multiple Brands in One FDD

- One Franchise Agreement vs. Combined Franchise Agreement
- Addenda to Franchise Agreement
- Territorial Restrictions
- Transfers
- Termination

# Case Scenario

- Burger Bar Gourmet Franchise LLC offers prospective franchisees the opportunity to purchase and operate a full service dine in or fast casual gourmet burger bar under the name Burger Bar Gourmet.
- Recently Burger Bar started a Build Your Burger Food Truck Franchise.
- For the upcoming renewal year, Burger Bar is entertaining the idea of revamping Burger Bar Gourmet's FDD and has a question for its in-house counsel.

# Case Scenario Question & Considerations

- Can Gourmet Sandwich Restaurant Group include its recently acquired Build Your Burger Food Truck franchise into the Burger Bar Gourmet FDD?
  - What factors need to be taken into consideration when making this determination?
  - What are the practical (business) considerations?
  - What are the disclosure and contractual considerations/challenges?



# SAMPLE ITEM 5

## **Item 5: Initial Fees**

### **Initial Franchise Fee**

We charge an Initial Franchise Fee of \$50,000 for each Franchised Business. You must pay the Initial Franchise Fee in full when you sign the Franchise Agreement. The Initial Franchise Fee is not refundable once paid. However, if you purchase a Build Your Burger Food Truck, your Initial Franchise Fee will be \$7,500. These fees are uniform.

### **Opening Inventory**

Before you commence operation of your Franchised Business, you will be required to purchase an opening inventory of our proprietary product and related raw material products. We estimate your cost of such purchases will be approximately \$3,000 - \$5,000. These costs are not refundable.

You are not required to pay us or our affiliates any other fees or payments for goods or services before your Franchised Business or Food Truck commences operation.

# Sample Item 7

| ESTIMATED INITIAL INVESTMENT FOR<br>DEVELOPMENT OF ONE DINE-IN BURGER BAR GOURMENT RESTAURANT (Note 1) |                               |   |  |  |
|--|-------------------------------|---|--|--|
| (1)<br>Type of expenditure   | (2)<br>Amount                 | (3)<br>Method of payment                        | (4)<br>When due  | (5)<br>To whom payment is to be made       |
| Initial Franchise Fee (Note 2)   | \$50,000                      | Lump Sum  | At signing of Franchise Agreement                            | Franchisor                                 |
| Training expenses  | \$2,500 - \$6,500             | As airlines, hotels, Seafood Bars, etc. require | As airlines, hotels, Seafood Bars, etc. require              | Airlines, hotels, Seafood Bars, etc.       |
| Real estate  | See Note 3                    |   |  |  |
| Construction and Leasehold Improvements (including construction and architectural permits)             | \$120,000 - \$250,000         | As supplier requires                            | As supplier or landlord requires                             | Supplier or landlord                       |
| Furniture, Fixtures and Equipment  | \$50,000 - \$130,000          | As supplier requires                            | As supplier or landlord requires                             | Supplier or landlord                       |
| Computer and Point of Sale System  | \$10,500 - \$30,000           | As supplier requires                            | As supplier requires   | Supplier                                   |
| Inventory to begin operating   | \$55,000 - \$70,000           | As supplier requires                            | As supplier requires   | Supplier                                   |
| Security deposits and utility deposits and other prepaid expenses                                      | \$12,000 - \$20,000           | As agency requires                              | As agency requires   | Agency                                     |
| Professional Fees  | \$3,000 - \$10,000            | As you agree with accountant/ attorney          | As you agree with accountant/ attorney                       | Accountant/ Attorney                       |
| Business licenses (including, beer and wine licenses)  | \$3,500 - \$5,000             | As required                                     | As incurred  | Government Agencies                        |
| Uniforms   | \$1,300 - \$2,400             | As supplier requires                            | As supplier requires   | Supplier                                   |
| Signs  | \$7,500 - \$9,600             | As supplier requires                            | As supplier requires   | Supplier                                   |
| Insurance  | \$3,500 - \$5,000             | As agent requires                               | Before opening   | Insurance Agent                            |
| Grand Opening Advertising  | \$20,500 - \$30,000           | As suppliers require                            | As suppliers require   | Suppliers                                  |
| Additional funds (initial period – 3 months) (Note 4)  | \$75,000 - \$150,500          | As expenses occur                               | Payroll weekly, other purchases according to agreed-on terms | Employees, suppliers of goods and services |
| <b>TOTAL (Note 5 and 6) (excluding real property)</b>  | <b>\$414,300 to \$769,000</b> |   |  |  |

| ESTIMATED INITIAL INVESTMENT FOR<br>DEVELOPMENT OF ONE BURGER BAR GOURMENT FOOD TRUCK (Note 1) |                               |   |  |  |
|--|-------------------------------|---|--|--|
| (1)<br>Type of expenditure   | (2)<br>Amount                 | (3)<br>Method of payment                        | (4)<br>When due  | (5)<br>To whom payment is to be made       |
| Initial Franchise Fee (Note 2)   | \$7,500                       | Lump Sum  | At signing of Franchise Agreement                            | Us   |
| Training expenses  | \$2,500 - \$4,500             | As airlines, hotels, Seafood Bars, etc. require | As airlines, hotels, Seafood Bars, etc. require              | Airlines, hotels, Seafood Bars, etc.       |
| Food Truck Improvements and Equipment  | \$0 - \$50,000                | As supplier requires                            | As supplier or landlord requires                             | Supplier or landlord                       |
| Computer and Point of Sale System  | \$1,500 - \$2,000             | As supplier requires                            | As supplier requires   | Supplier                                   |
| Inventory to begin operating   | \$20,000 - \$30,000           | As supplier requires                            | As supplier requires   | Supplier                                   |
| Food Truck   | \$75,000 - \$175,000          | As agency requires                              | As agency requires   | Agency                                     |
| Professional Fees  | \$3,000 - \$5,000             | As you agree with accountant/ attorney          | As you agree with accountant/ attorney                       | Accountant/ Attorney                       |
| Business licenses  | \$1,500 - \$2,000             | As required                                     | As incurred  | Government Agencies                        |
| Uniforms   | \$200 - \$350                 | As supplier requires                            | As supplier requires   | Supplier                                   |
| Signs and Food Truck Wrap  | \$2,500 - \$4,500             | As supplier requires                            | As supplier requires   | Supplier                                   |
| Insurance  | \$1,000 - \$2,000             | As agent requires                               | Before opening   | Insurance Agent                            |
| Grand Opening Advertising  | \$2,500 - \$5,000             | As suppliers require                            | As suppliers require   | Suppliers                                  |
| Additional funds (initial period – 3 months) (Note 4)  | \$10,000 - \$25,000           | As expenses occur                               | Payroll weekly, other purchases according to agreed-on terms | Employees, suppliers of goods and services |
| <b>TOTAL (Note 5 and 6)</b>  | <b>\$127,200 to \$312,850</b> |   |  |  |

# Notes to Sample Item 7 Table

1. General. This Item 7 provides the estimated initial investment for a Dine-In Burger Bar Gourmet Restaurant and a Burger Bar Gourmet Food Truck. If you open a Fast Casual Burger Bar Gourmet Restaurant, your costs will be less in various categories. For example, your initial franchise fee will be \$35,000 instead of \$50,000. Because your Fast Casual Restaurant will have a smaller footprint than a Dine-In Restaurant, your Real estate, Construction and Leasehold, Furniture, Fixtures and Equipment, Opening Inventory, and other real estate-related costs will likely be less.
2. Initial Franchise Fee. See Item 5.
3. Real Property. We cannot estimate your expenses for real estate. The typical Dine-In Restaurant is approximately 2,500 to 4,000 square feet. The typical Fast Casual Restaurant is approximately 1,000 to 2,000 square feet. We anticipate that most franchisees that open a Franchised Restaurant will lease their space, not acquire the real estate. Rental costs per square foot for commercial retail space vary considerably by geographic market (population density, demographic conditions, desirability and demand for space influence actual rent); physical size and conditions; type of retail space; the location's placement in a larger complex; prevailing market and economic conditions; and prior use of the space. You should investigate real estate costs in the market area where you desire to open a Franchised Restaurant and add those costs to the low/high initial investment range that we disclose in this Item 7.
4. Additional Funds. These expenses do not include payroll costs. These figures are estimates and we cannot guarantee that you will not have additional expenses starting the business. Your costs will depend on factors such as: how much you follow our methods and procedures; your management skill, experience and business acumen; local economic conditions; the local market for our product; the prevailing wage rate; competition; and the sales level reached during the initial period.
5. Except as indicated, we do not offer direct or indirect financing to franchisees for any items.
6. We have relied on the experience of our affiliate to compile these estimates. You should review these figures carefully with a business advisor before making any decision to purchase the franchise.

# Sample Item 19

## ITEM 19: FINANCIAL PERFORMANCE REPRESENTATIONS.

The FTC's Franchise Rule permits a Franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information and the information is included in the disclosure document. Financial performance information that differs from the information included in Item 19 may be given only if: (1) a Franchisor provides the actual records of an existing outlet you are considering buying; or (2) a Franchisor supplements the information provided in Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

The table below presents data we obtained from our franchised locations, for both our full service dine in and fast casual Burger Bar Gourmet restaurants, based on historical gross revenue for our franchised locations for the period January 1, 2021 through December 31, 2021. We gathered the data from our franchisees' POS systems.

| Average Annual Gross Revenue | High      | Low       | Median    |
|------------------------------|-----------|-----------|-----------|
| \$400,000                    | \$700,000 | \$100,000 | \$350,000 |

# Sample Item 19 - Continued

Some franchisees have sold these amounts. Your individual results may differ. There is no assurance that you will sell as much.

We had 250 franchisees in 2021. The above representation is from 225 franchisees who were open and operating for the entire period of January 1, 2021 through December 31, 2021. Out of the 225 franchisees, 30% exceed the stated average annual gross revenue figure above.

In addition, we estimate that the most probable gross revenue for your first twelve months of operation of a Build Your Burger food truck franchise is \$250,000.

This income figure is only an estimate of what we think you can earn. There is no assurance that you'll do as well. If you rely upon these figures, you must accept the risk of not doing as well.

This projected income figure is derived from our management's experience with other food truck concepts.

Because ghost kitchen revenues can vary so much and will be unique to each franchisee who operates one, we cannot project how much you will make if you purchase a ghost kitchen.

Written substantiation for the financial performance representation will be made available to the prospective franchisee upon reasonable request.

# Case Scenario - Part Two

- Besides being the parent of Burger Bar Gourmet, Gourmet Sandwich Restaurant Group LLC is also the parent of Bayou Seafood Sandwich Bar which offers prospective franchisees the right to operate fast casual and delivery/takeout gourmet seafood sandwich bars under the name Bayou Seafood Sandwich Bar.
- The renewal year is vastly approaching and the business team has a question for in-house counsel.

# Case Scenario Question & Considerations

- Can Gourmet Sandwich Restaurant Group offer its Bayou Seafood Sandwich brand in the Burger Bar Gourmet FDD?
  - What factors need to be taken into consideration when making this determination?
  - What are the practical (business) considerations?
  - What are the disclosure and contractual considerations/challenges?

# Sample Item 7

| BURGER BAR GOURMET                                     |                               |  |   |                               |
|--|-------------------------------|--|---|-------------------------------|
| Type of Expenditure                                    | Amount                        | Method of payment                      | When due                                | To whom payment is to be made |
| Initial Franchise Fee                                  | \$50,000                      | Lump sum; non-refundable               | When you sign the Franchise Agreement.  | Us                            |
| Travel/Living Expenses for Initial Training            | \$2,500 - \$3,500             | As Incurred                            | During training                         | Travel and Lodging Vendors    |
| Furniture, Fixtures and Equipment (including computer) | \$35,000 - \$200,000          | Lump sum or financed by outside vendor | Before opening                          | Approved Suppliers or Vendors |
| Grand Opening Advertising - 1st 3 months               | \$30,000 - \$45,000           | Variable                               | Before opening                          | Advertisers                   |
| Inventory and Supplies                                 | \$10,000 - \$25,000           | Lump sum; usually non-refundable       | Before opening                          | Approved suppliers            |
| Interior/Exterior Signs                                | \$3,500 - \$10,000            | Lump sum; non-refundable               | Before opening                          | Approved suppliers            |
| Business Insurance                                     | \$1,500 - \$3,500             | Lump sum                               | Before opening                          | Governmental agencies         |
| Rent/Rental Security Deposits                          | \$12,000 - \$28,000           | Lump sum                               | As agreed with Lessor                   | Lessor                        |
| Construction and Leashold Improvements                 | \$45,000 - \$230,000          | Lump sum                               | As agreed with Lessor                   | Lessor or Third Parties       |
| Licenses & Permits                                     | \$5,500 - \$12,000            | Lump sum                               | As required by insurance company policy | Insurance company             |
| Legal/Accounting                                       | \$3,500 - \$10,000            | Lump sum                               | As incurred                             | Attorneys/Accountants         |
| Additional Funds – 1st 3 months                        | \$35,000 - \$75,000           | As incurred                            | As incurred                             | See below                     |
| <b>TOTALS</b>  | <b>\$233,500 to \$692,000</b> |  |   |                               |

| BAYOU SEAFOOD SANDWICH BAR                             |                               |  |   |                               |
|--|-------------------------------|--|---|-------------------------------|
| Type of Expenditure                                    | Amount                        | Method of payment                      | When due                                | To whom payment is to be made |
| Initial Franchise Fee                                  | \$55,000                      | Lump sum; non-refundable               | When you sign the Franchise Agreement.  | Us                            |
| Travel/Living Expenses for Initial Training            | \$2,500 - \$3,500             | As Incurred                            | During training                         | Travel and Lodging Vendors    |
| Furniture, Fixtures and Equipment (including computer) | \$25,000 - \$150,000          | Lump sum or financed by outside vendor | Before opening                          | Approved Suppliers or Vendors |
| Grand Opening Advertising - 1st 3 months               | \$30,000 - \$45,000           | Variable                               | Before opening                          | Advertisers                   |
| Inventory and Supplies                                 | \$10,000 - \$35,000           | Lump sum; usually non-refundable       | Before opening                          | Approved suppliers            |
| Interior/Exterior Signs                                | \$3,500 - \$10,000            | Lump sum; non-refundable               | Before opening                          | Approved suppliers            |
| Business Insurance                                     | \$2,500 - \$3,500             | Lump sum                               | Before opening                          | Governmental agencies         |
| Rent/Rental Security Deposits                          | \$12,000 - \$28,000           | Lump sum                               | As agreed with Lessor                   | Lessor                        |
| Construction and Leashold Improvements                 | \$40,000 - \$200,000          | Lump sum                               | As agreed with Lessor                   | Lessor or Third Parties       |
| Licenses & Permits                                     | \$5,500 - \$12,000            | Lump sum                               | As required by insurance company policy | Insurance company             |
| Legal/Accounting                                       | \$3,500 - \$10,000            | Lump sum                               | As incurred                             | Attorneys/Accountants         |
| Additional Funds – 1st 3 months                        | \$35,000 - \$75,000           | As incurred                            | As incurred                             | See below                     |
| <b>TOTALS</b>  | <b>\$224,500 to \$627,000</b> |  |   |                               |



# Notes to Sample Item 7 Table

1. General. This Item 7 provides the estimated initial investment for a Burger Bar Gourmet Restaurant and a Bayou Seafood Sandwich Bar Restaurant. The estimated initial investment for a co-branded a Burger Bar Gourmet and Bayou Seafood Sandwich Restaurant will differ. Some of the categories of expenses will be less (such as, the estimated initial rent and security deposit, Construction and Leasehold, Furniture, Fixtures and Equipment, Grand Opening Advertising, etc).
2. Initial Franchise Fee. See Item 5.
3. Additional Funds. These expenses do not include payroll costs. These figures are estimates and we cannot guarantee that you will not have additional expenses starting the business. Your costs will depend on factors such as: how much you follow our methods and procedures; your management skill, experience and business acumen; local economic conditions; the local market for our product; the prevailing wage rate; competition; and the sales level reached during the initial period. If you are operating a co-branded Restaurant, you should combine the additional funds for each restaurant concept to determine that amount that of additional funds you will need for a co-branded Restaurant.
4. Except as indicated, we do not offer direct or indirect financing to franchisees for any items.
5. We have relied on the experience of our affiliate to compile these estimates. You should review these figures carefully with a business advisor before making any decision to purchase the franchise.

