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International Franchising in a Changing World

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THE EMERGENCE OF INTERNATIONAL FRANCHISE ASSOCIATIONS

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INTRODUCTION

It may not surprise regular franchise and distribution practitioners to learn that there are very few true international franchisee associations (i.e., associations comprised of franchisees of the same brand but who are located in different countries). The reasons for this are numerous.

The reality is that most brands are not international. There is no need for franchisees to form alliances with other franchisees in other countries in the same brand – because there are not any other franchisees in other countries in the same brand. Of course, as franchisors continue to seek new markets as globalization continues, and developing countries see the value in franchising as a mode of expansion of brands, we can expect that this particular hurdle will, in fact, diminish. However, the other roadblocks to true international franchisee associations are likely to continue into the foreseeable future.

Our forecast that international franchisee associations will likely not be a significant factor in the future begins with the belief that, at the outset, the basic purpose of the typical franchisee association is inconsistent with international franchising. More succinctly, the purpose of most franchisee associations is to focus on the profitability of each individual franchise unit. Because such profitability is often a function of the relationship between the franchisee and its customers in its location and the franchisee and its relationship with its franchisor (typically done in-country, either through a franchisor that is local or a master franchisor in-country), it rarely will make sense for franchisee associations to press for similar rights for individuals in different countries.

The difficulty in finding common ground with franchisees in other countries is also compounded by the fact that the laws governing franchisor/franchisee relationships are significantly different from place to place. For instance, as many know, the relationship between franchisors and franchisees in the United States and Canada is highly regulated. In the remainder of North America, while there are certainly regulations on the sale of franchises,[1] any post-sale or relationship regulations are vastly different. That makes it difficult for a franchisee association to marshal the motivation to press forward in one location, when the majority of its members may not have any dog in the fight between franchisees and the franchisor in another country.

Likewise, language differences make a tremendous difference in the ability of an international franchisee association to actually work on behalf of franchisees in different locations. For instance, it is extremely difficult for a U.S. based franchisee association, even those who have international members, to advocate for international members if those international members are in countries that do not primarily speak English. The contracts may be in different languages, and those charged with overseeing the franchises in the non-U.S. locations frequently do not speak fluent English, as it is not their primary language. This inherent difficulty is not going away, and will continue to make true international franchisee associations a rarity.

To be sure, there are some exceptions to the broad proposition that international franchisee associations do not work. Indeed, there are actually some advantages of this type of alliance if there is an understanding between the international franchisee members and the domestic members about what each member can bring to one another through such a relationship.

For instance, a true international franchisee association can share information among its members about what the franchisor is doing in different places – both good and bad. Franchisors will typically run

[1] Compare the robust disclosure required in the United States with variations (*e.g.*, Mexico, which requires some disclosure) and most countries in North America and South America that require no specific disclosure at all.

different offerings and promotions, and have different entrepreneurial attributes throughout the world. If something is working particularly well or particularly poorly in one location, the sharing of information amongst franchisees can help protect franchisees against poor decision making by the franchisor.

Similarly, to the extent that franchisees are in relative proximity to one another, it is often the case that they will be dealing with the same vendors, attending the same meetings, or otherwise using the same services as one another. Sharing resources through common meeting spaces, vendor relationships and the like, can, in fact, be worthwhile as franchisee associations look around for the potential of international alliances amongst fellow franchisees.

None of this is to suggest, of course, that the facts, circumstances and motivations giving rise to franchisee associations necessarily must transcend national boundaries for such associations to play a key role in the operation of franchise systems. Collective franchisee interaction with a franchisor in the form of a franchisee association (or similar representative body) is likely to be a feature of the franchisor-franchisee relationship in any country where 1) franchising has proven to be a viable and effective business model and 2) individual franchise systems have acquired a significant presence in the marketplace. Commercial, cultural and legislative/regulatory distinctions between countries, however, indicate that the role and prominence of such associations is hardly uniform. This paper will focus on these distinctions in the United States, Europe and Australia.

1. The United States

1.1 The Basic Structure of an International Franchisee Association in the United States

Because of the difficulties set forth above, international franchisee associations in the United States are rare. However, a few do exist, and there are probably enough that we can at least make some generalizations about the form they typically take.

(i) Domestic Associations in the U.S.

The traditional structure of most franchisee associations in the United States is quite simple – franchisees sign up as members, and elect a board of directors who control the activities of the association. Most of these associations are set up as non-profit entities at the state level (it is against the U.S. Tax code for single brand associations to have tax exempt status at the federal level), and engage their franchisor on issues that are of direct interest to their members, both from a business and a legal perspective.

Occasionally, and most typically in situations where there are very large franchisors, franchisee associations are a combination of smaller regional associations. Under this structure, the franchisees are actually members of the region, and then the regions combine to create the national association. There are no franchisee members of the national association, as the regions are the members, with franchisees being members at the regional level.

When it comes to international franchising, this latter structure lends itself to more easily incorporating international "chapters" or "regions" into the organization. While not discussed above, an additional roadblock to having international members in the traditional structure is the collection of dues, and the exchange rate associated therewith. If franchisees are members of their own region, and those regions are assigned by geography, usually within countries that will use the same monetary system, it is much easier for the region to keep track of dues payments, and collecting the proper amounts, rather than expecting someone who is unfamiliar with the denomination of a particular country to manage dues

payments by the different entities. (While this may seem minor, the reality is that most associations are not run by professional organizations, but instead by volunteer franchisees. Exchange rates are not that complicated, but enough so that it could be an impediment for some to have international members if they do not have some essentially regional administration of the association.)

(ii) The Benefits of an International Component

One of the most attractive attributes of a franchisee association, whether domestic or international, is that franchisees rightly believe there is strength in numbers. Adding an international component to an already existing domestic association can add money to the coffers, as well as *gravitas* at the bargaining table when dealing with a franchisor.

Additionally, the ability to share best practices in dealing with a particular franchisor on a particular issue is a potential advantage of having international members be part of what would otherwise be a domestic association.

(iii) Alliances Between Domestic Associations

Another possibility that has shown to work is not having international members of an association, but having several domestic associations in the same brand create cross-border alliances with one another. For instance, in one particularly large international system that one of the authors works with, the U.S. franchisee association finds itself in frequent alliance with its British, Australian, and South African counterparts. Through these alliances, much of the benefit of the sharing of best practices can occur without the difficulty in finding commonality of purpose on a day-to-day basis or dealing with the international administration of an international association. Of course, this type of alliance only works if domestic associations of the same brand exist across borders and members in both countries see the benefit of such an alliance.

1.2 Franchisee Associations vs. Franchise Advisory Councils (FACs)

It is not uncommon in the United States for franchisors to have franchise advisory councils. The members of the FACs are typically chosen by the franchisor (and occasionally by the franchisees). In all cases, the FAC is funded by the franchisor. The members then meet with the franchisor to advise the franchisor on issue they it believe the franchisees are facing and/or to give the franchisor feedback on proposals of the franchisor.

While it is the case that FACs may occasionally be adequate, far more frequently FACs are constrained in providing honest feedback to the franchisor. Particularly in circumstances where the FAC is selected by the franchisor, being a member of the FAC is seen as a "reward" for those franchisees of whom the franchisor has a favorable opinion. These are franchisees that are less inclined to be critical of the franchisor, and even if they are inclined to be critical, are less inclined to share that opinion if there is fear that they will lose their seat at the table if they are too vocal in their criticism. FACs that criticize the franchisor often risk being disbanded because they rely on funding by the franchisor.

Moreover, FACs suffer from the inherent problem that even if they are not hand selected by the franchisor or are vocal critics of the franchisor, the rank and file franchisees will typically view FACs as being a "rubberstamp" of the franchisor's agenda.

Independent associations do not suffer from either of these infirmities. By being self-funded, and independent in their voice, both in support and criticism of the franchisor, independent associations typically bring more honest feedback, and, carry more "muscle" into negotiations with the franchisor, as

the franchisor's only option in removing the association's voice from the table is to simply not deal with the association at all – a strategy that rarely works.

Interestingly, given the difficulty in formation and/or administration of an international association, it may be the case that FACs comprised of international members might be better able to understand how franchisees in one part of the system can assist franchisees in the other. In that instance, a system with independent associations in different countries, consulted and informed by their FAC members, might be the best possible outcome for franchisees.

1.3 Other Methods of Franchisee Influence

Associations, whether they be domestic or international, have many levers to pull in which to influence the decision making of the franchisor.

(i) Class Actions and Mass Actions

One of the more traditional methods that associations influence the franchisor is through the use of coordinated litigation. By marshaling the resources of franchisees, and finding potentially attractive plaintiffs, franchisee associations can fund and manage class and/or mass actions against the franchisor when the franchisor fails to engage the franchisee association in meaningful negotiation.

While frequently destructive in its initial phases, often times franchisees feel no choice but to start this sort of action when franchisors ignore or fail to engage franchisees over their concerns. Associations, and their ability to collect funds from lots of interested franchisees, make using this sort action much more feasible.

(ii) The Association as Litigants

Staying with the theme of litigation as a method of influencing the franchisor for just a moment, it is also the case that the associations can act as litigants in certain cases. In the United States, franchisee associations can act as plaintiffs so long as they meet certain criteria.[2]

Using the association as a named plaintiff, rather than any individual franchisee, helps insulate individual franchisees from retribution by the franchisor, while at the same time allowing the franchisees to marshal group support for their position.

It is the case that most actions of this sort are brought to effectuate change, or to prevent unwanted change, rather than as a way to punish franchisors. Indeed, if franchisors engage their associations, they are much less likely to face any sort of litigation as an influencer.

(iii) Association Members as Corporate Board Members of the Franchisor

More recently, franchisee associations have pressed for Board seats. In fact, a large McDonald's franchisee has gained the right to put the question of a franchisee on McDonald's Board in McDonald's

[2] The United States Supreme Court, in *Warth v. Seldin*, held that an association will have standing to solely bring a claim as a representative of its members, even in the absence of injury to itself, when: (1) its members would otherwise have standing to sue in their own right; (2) the interests that the association seeks to protect are germane to the association's purpose; and (3) neither the claim asserted nor the relief requested requires individual members of the association to participate in the lawsuit. *Warth*, 422 U.S. 490 at 511 (1975).

proxy materials this year.[3] While this particular effort is not driven by the franchisees or an association, but by an investment firm who believes that good corporate governance should include a franchisee on a franchisor's Board, it does raise an interesting possibility of efforts by franchisee associations to influence the franchisor.

1.4. Laws Regarding Associations

In the United States, franchisee associations are protected in many jurisdictions, although it is important to note that no statute actually *requires* that a franchisor recognize a franchisee association.

Illustrative of the type of protection that we are talking about is a provision from the Minnesota Act, which has deemed it an "unfair and inequitable practice" for a franchisor to "restrict or inhibit, directly or indirectly, the free association among franchisees for any lawful purpose." Minn. R. 2860.44(a).

Moreover, states that guarantee the right of free association ensure that franchisors will not take retaliatory action against franchisees for forming an association or participating in its activities. For example, the Illinois Franchise Disclosure Act provides:

> Participation in trade association. It shall be an unfair franchise practice and a violation of this Act for a franchisor to in any way restrict any franchisee from joining or participating in any trade association. 815 Ill. Stat. § 705/17.

In total, the franchise statutes of the following states declare it unlawful for franchisors to prohibit the right of free association of franchisees: Arkansas, California, Hawaii, Illinois, Iowa, Michigan, Minnesota, Nebraska, New Jersey, Rhode Island and Washington.[4]

What is the take-away? If you are going to form an association, whether or not it is going to have an international component, you are well-heeled to form that association in one of these states.

1.5. Industry-wide Associations

As they have in many other parts of the world, both franchisees and franchisors have banded together in the United States in "industry" wide associations to advocate for the protection of their little slice of the franchise model. Many of those in the United States are particularly well known.[5]

1.6 The International Franchise Association (IFA)

The self-proclaimed "voice of franchising" in the United States is the IFA.

The IFA started in 1960 as a small meeting between a group of franchisors. As legend has it, the discussion between these entrepreneurs came to an abrupt halt when Dunkin' Donuts founder Bill

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[3] Leslie Patton, *McDonald's Franchisee Board Seat Eyed after Years of Discord*, Bloomberg News, March 15, 2017, https:\\www.bloomberg.com\news\articles\2017-03-15\mcdonald-s-franchisees-want-seat-on-board-after-years-of-discord.

[4] The six Canadian provinces with a franchise law each contain similar rights of association by franchisees.

[5] The same holds true in many countries outside the United States. Moreover, such organizations typically incorporate the spirit of franchisor-franchisee cooperation into their mission statements. For example, the Canadian Franchise Association (not to be confused with the Coalition of Franchise Associations discussed herein) requires member firms to abide by a Code of Ethics which, among other requirements, compels franchisors to provide a comprehensive disclosure document to all Canadian franchisees, regardless of whether the franchisee resides in a province where such disclosure is required by law. *See* https://www.cfa.ca/about-our-members/cfa-code-of-ethics/ .

Rosenberg slammed a $100 bill on the table and demanded that they needed to start an association to deal with political and legislative matters. It was then and there that the IFA was born.

Over its 57-year history, the IFA has become a strong political force for the interest of franchisors. While franchisees are allowed to be members, and many enjoy the benefits of membership, from a political point of view, the IFA has steadfastly opposed any regulations that it deems to be harmful to the interests of franchisors, sometimes to the detriment of franchisees (*e.g.*, the IFA has opposed every piece of legislation that has been introduced over the last 50 years that might protect franchisees from unscrupulous or unfair acts by franchisors).

While there are certainly franchisees who are members of the IFA, there are no known franchisee associations that are also members of the IFA.

1.7 The Coalition of Franchisee Associations (CFA)

The CFA is an organization that brings together independent franchisee associations for the purpose of political activity, most notably lobbying Congress and state legislators for interests unique to franchisees, particularly as it relates to their rights as franchisees in relationship to their franchisors. As the CFA states, its mission is to "leverage the collective strengths of franchisee associations for the benefit of the franchisee community." To date, the CFA has nearly 20 franchisee association members, and takes credit for successfully getting amendments to the California Franchise Act passed within the last couple of years.

1.8 The American Association of Franchisees and Dealers (AAFD)

The AAFD is an association of franchisee groups that form "chapters" under one umbrella. These chapters are, in essence, brand specific franchisee associations, who, by virtue of their status pay some amount of money to the AAFD in exchange for the AAFD providing the administrative services of promoting and operating the franchisee association.

The AAFD was formed in 1992, with the idea that franchisors could be coerced into treating their franchisees well through the use of market power. The AAFD has been a strong advocate of "fair franchising" and has used its "fair franchising seal" as an enticement to franchisors to do the right thing through the use of fair and equitable franchise practices and fair and equitable franchise contracts. The AAFD currently lists 31 active chapters representing 31 different brands and several more "forming chapters."

1.9 United States and Canada – Birds of a Feather

It is a safe assumption that the most frequent types of "international franchisee associations" happen in North America, as associations will often include both U.S. and Canadian member franchisees. Because of the tremendous growth of brands back and forth across the U.S. and Canadian border, the commonality of language, and the increasing similarity of laws (as Canadian provinces continue to adopt franchisee relationship protection statutes), it is not surprising that international franchisee associations, to the extent that means across the U.S./Canadian border, are becoming more and more frequent. This too, however, can have its drawbacks for someone interested in representing international associations.

First, and perhaps most obvious, lawyers licensed in one country are rarely, if ever, licensed in the other. Under such circumstances, it is difficult to truly represent franchisees in both places, other than to potentially provide business-type information about what is happening in a particular place. Lawyers who attempt to give legal advice to franchisees in other countries do so at their own peril.

Of course, frequently, franchise agreements themselves designate the governing law of a franchisee in Canada to be that of a state in the U.S. where the franchisor may be located, and vice-versa (it is not uncommon for Canadian franchisors to apply the law of their local province to franchisees located in the United States). In those circumstances, local lawyers would certainly be able to advise the franchisees on the effect of the laws in their particular jurisdiction. In those instances, the potential of international franchisee associations goes up significantly.

The authors believe this same sort of "cross-border" association is likely to occur in places where the laws are similar and the language is not a barrier. However, there are very few of those types of places that would currently lend themselves to significant growth of international franchisee associations, other than the U.S. and Canada.

1.10 Future of International Associations of U.S. Branded Franchisors

The most likely way that international franchisee associations are to grow will be as domestic brands expand internationally, but designate the law of the franchisor's home as the governing law between the parties, and most likely, as the venue of dispute resolution for any disputes that arise between the parties. From our vantage point, given the expansion of brands around the globe, this is likely to be one of the fastest growing areas of international franchisee associations.

While the representation of franchisee associations in another country would be particularly difficult given what we have set out above (culture, language, applicable law), those hurdles become significantly smaller, and indeed, in many cases non-existent, when a franchisor who is based in one country insists that its agreements be written in its own language, and that the laws of its home jurisdiction apply. Frequently, dispute resolution will also have to be in the situs of the franchisor.

When all three of these circumstances exist, the opportunity for lawyers in the franchisor's home state to represent franchisees from around the world increases greatly – and, therefore, also increases the viability of a franchisee association to work together to influence and challenge the franchisor when necessary. Certainly in the United States, the most "common" type of "international association" falls into this category – domestic associations that now have international members because those international members are subject to the same contract, or the application of the same law, as the domestic franchisees.

When franchisors are reluctant to embrace the local law of the jurisdiction in which the franchisee sits, they will frequently designate that the laws of their own jurisdiction apply. That necessarily means that when franchisees have legal issues with the franchisor, they are going to be required to consult lawyers in the jurisdiction of the franchisor. For example, one of the authors recently had an instance in which Latin American franchisees who were part of a U.S. based brand had signed an agreement that called for the application of Texas law. An issue arose about the franchisor's ability to charge future lost royalties when a franchisee closed prior to the end of the term of their agreement. Because the franchisee was a member of a Latin American affiliate of the U.S. franchisee association, they were able to consult the U.S. based lawyer who represented the franchisee association. That lawyer was able to provide them with substantive advice about Texas law, and how a dispute over the issue of future lost royalties would likely be resolved.

As this example demonstrates, because the contract between the franchisee and the franchisor was required to be in English, and because the franchisor had insisted on the application of U.S. law, the U.S. based franchisee association's lawyer was able to assist these international franchisees in determining

how to proceed. That is exactly the type of alliance that can occur between international franchisees when the right circumstances exist.

2. Europe

Both franchisee associations and FACs have been in existence in Europe for some time – with FACs frequently being used by US systems. Having said that, neither franchisee associations nor FACs are, according to a short and somewhat crude survey undertaken for the purposes of this paper, particularly common in Europe – please see the survey findings at the end of this part of the paper – and indeed there are no signs that they are substantially increasing in popularity.

Overview

In this section we review ways in which franchisees collectively can associate and/or their views can be represented.

2.1 Industry-wide Associations

Generally, throughout Europe, there are no franchisee groupings which seek to include the interests of franchisees from all systems in that jurisdiction. The only exception to this is in Holland where a powerful franchisee grouping led to changes in Dutch law and the production of a voluntary code of practice aimed principally at protecting the interests of franchisees. That same grouping procured the involvement of a Dutch member of the European Parliament which persuaded the European Parliament to instruct an academic to undertake a review of franchising in Europe with the intent of introducing European franchise regulation with the principal purpose of protecting franchisees. It appears that this initiative is unlikely to bear fruit although, undoubtedly, within the Netherlands itself, the franchisee grouping has had considerable success.

2.2 International Franchise Associations

As with the U.S. and Canada many franchisors operating in neighbouring jurisdictions through direct franchising rather than through the intermediary of master franchisees or other similar arrangements - such as, the United Kingdom and the Republic of Ireland, Germany and Austria, France and Belgium, Belgium and Holland, etc. - invite franchisees from both jurisdictions to participate in whatever franchise structures have been created in the home jurisdiction. Other than in the situation of neighbouring jurisdictions using similar laws and language, international franchise associations are not currently known in Europe.

2.3 National Franchise Associations

There is an increasing trend within Europe for national franchise associations (as well as the European Franchise Federation ("EFF")) to reflect or to purport to reflect the views and interests of franchisees as well as franchisors. More details about this development are set out in section 4 of this paper.

2.4 Purchasing Cooperatives

It is relatively unusual for franchisees to establish their own purchasing grouping because in most European franchise agreements the franchisor requires franchisees to purchase from the franchisor or from nominated suppliers and it is the franchisor's role to obtain discounts and other supplier benefits which are then passed on to franchisees. Franchisors are not legally required to pass on these benefits although it is considered to be best practice for that to happen. Indeed, the British Franchise Association

("BFA") has recently issued a technical bulletin which requires all its franchisor members to insert into their franchise agreements a clear statement of whether or not supplier benefits are passed on to franchisees. The BFA makes it clear that it is not a breach of its code of ethics for franchisors to retain such benefits but there has to be complete transparency.

2.5 The Association as Litigants

Litigation in the United Kingdom, but much less so in other European jurisdictions which, with the exception of the Republic of Ireland, have a civil law system and not a common law system, is extremely expensive being based on lengthy oral presentations in trials. It is by no means uncommon for misrepresentation claims brought by franchisees against franchisors to be dealt with in the High Court in trials lasting five days or more. The expense of these trials is very considerable and could range from £200,000 to £750,000 for each party. Further, English law entitles the winning party in litigation to the payment of a contribution – normally 60-70% - to its legal costs. This does mean that a franchisee contemplating litigation may have to budget for costs if he loses more than £1 million. Few franchisees are in that position and franchise lawyers have not been slow to recognise that, simply on cost grounds, franchisees are, in practice, unable to litigate disputes. As a result, franchise lawyers representing franchisees have encouraged the formation of groupings to fund dispute resolution. This is an increasing trend in franchising in the U.K. There have been a number of successful groupings where franchisees have achieved out of court settlements. Much less successful have been groupings that have been formed for the purposes of litigation. These groupings have been inherently unstable. There are, it is suggested, a number of reasons why they have proved unsuccessful. They are:

- Very often they are created by one or two franchisees with particularly strong views and the determination and drive to create the association which is simply not shared by other franchisees.

- The views of franchisees are not always the same even if the original issue creating the dispute is shared. Some franchisees may want to be compensated, others may wish to leave, yet others may wish to do nothing to damage the brand and, therefore, the value of their business.

- Legal advice is rarely cheap and franchisees, as do most parties to litigation, often have a lack of understanding of the cost of litigation and the time required to prepare a case. In UK litigation it is now a requirement that a very detailed and fully researched letter before claim is prepared by the claimant to any dispute. The previous practice whereby litigation could be threatened and started without having fully researched the position is no longer available. This does "front load" legal costs.

- Class actions are not available in the UK. It is possible for franchisees with identical claims to seek a group litigation order whereby one claim is treated as determinative of all claims within the group litigation order. Obtaining these orders are complex and, as far as the authors of this paper know, no franchisee groupings have obtained such an order in relation to franchisee litigation.

2.6 Franchisees on Franchisor Boards

There are, it is believed, no franchisors in the U.K. with franchisees on their board. The reason for this arises from the clear conflict of interest and the challenge of information obtained by a franchisee as a member of the board having to remain confidential by virtue of the director's fiduciary duties.

2.7 Laws Regarding Associations

There are no laws in the U.K. or Europe which would prevent franchisees from forming associations although there are competition law implications of any grouping which discusses prices at which products or services are offered to customers. As a matter of the U.K.s Competition Act and the European Union's Article 101 of the Treaty on the Functioning of the European Union, no such price discussions should take place.

2.8 Structure

The form of franchisee associations varies and includes:

- limited companies where each franchisee has a share in the franchisee company with a right to be, or to appoint, a director.

- informal groupings subject to written rules or incorporated for a specific purpose. Such groupings are a creature of contract and regulated by the contract between the franchisees.

2.9 Franchisee Associations vs. FACs

There may be a number of reasons for the moderate use of franchisee associations and FACs and in Europe. These could include:

(i) Geography

Unlike the U.S., Canada or Australia, European countries are relatively small which enables much easier and possibly more frequent communication between a franchisor and franchisees or between franchisees which may reduce the need for a formal structure to be created to facilitate such communication. The great majority of European franchisors communicate directly with franchisees whether through regional meetings, an annual conference, the use of regional business managers whose role is not only to advise franchisees but to report back franchisees' views, direct communication between the senior franchisor management team and franchisees or any combination of the above. In that way, many franchisors believe they have direct channels of communication with their franchisees and that communication is both ways without the need to create a formal structure.

(ii) Lack of a Franchisee Bar

Unlike in the U.S., where there is a clear delineation between franchisor law firms and franchisee law firms, that has not historically been the case in Europe. The lack, relatively speaking, of franchise specific laws has meant that with the possible exception of the United Kingdom very few lawyers specialise in franchising to the exclusion of all other areas of legal advice, and, as a result, lawyers with knowledge of franchising tend to represent both franchisors and franchisees. The lack of an experienced franchisee bar has, perhaps, resulted in a less pro-active response by franchisees to ensuring that their interests are protected because franchisees generally only seek advice from lawyers when there is a dispute.

A recent interesting example of the failure of franchisees in Europe to establish significant and powerful franchisee associations can be seen in relation to McDonald's. Within the last few months, McDonald's has been accused of forcing franchisees in France, Germany and Italy to charge more in their franchise outlets than McDonald's has been charging in its own company owned outlets. Anti-trust complaints have been filed. However, those complaints were not brought by the franchisees themselves or their franchise associations, but were brought by consumer bodies and associations representing the interests of small businesses as a whole. This is all the more surprising since McDonald's is currently seeking investor approval to having franchisees on its board, so there is a clear commitment to franchisee involvement although perhaps that does not extend to the encouragement of franchisees collaborating together through franchise associations.

(iii) Network Size

Unlike in the US franchise networks in Europe tend to be significantly smaller, which may reduce the need for franchisees to seek to establish a formal way of communicating both amongst themselves and with the franchisor.

(iv) Entrepreneurial Culture

It is possible that a more entrepreneurial culture may lead franchisors to be less "supportive" of franchisees than in Europe where there is much less of an entrepreneurial culture and where, as a result, franchisees look for more hands on support with resolving performance issues from their franchisors who, indeed, view the failure of any franchisee as a matter of concern. As a rough rule of thumb a failure rate for franchisees in any franchise system in Europe of above 10% is a matter for scrutiny.

2.10 Industry-wide and National Associations

(i) The British Franchise Association (BFA)

In or around 2005, the BFA, influenced by its then President, who had previously been the press advisor to Margaret Thatcher, started a radical overhaul of its membership to include franchisees. The BFA was concerned about its lack of influence with government because the BFA was seen as simply representing a relatively small number of franchisors. As a result, by including franchisees in membership it would be able to present itself as representing the entire franchise industry. Franchisees are now more active in the BFA and, indeed, a number of positions are reserved for franchisees on the board of directors of the BFA. For those representing franchisees, they may question the motivation for involving franchisees in the activities of the BFA and whether it reflects a true desire on behalf of franchisor members to take on the views of franchisees. Further, it has not been easy encouraging franchisees to participate. At the risk of making a considerable over simplification, franchisees are much less concerned with the health of franchising a concept and much more concerned about the performance of their own franchise business.

(ii) The European Franchise Federation (EFF)

At the European level, the European Franchise Federation has recently amended its Code of Ethics and these amendments reflect a much more franchisee inclusive approach. The changes include:

The second paragraph of the preamble highlights that the previous wording, which simply referred to "fair behaviour," is not enough to deal with the franchisor/franchisee relationship and ensure good faith (both ways).

The EFF proclaims that it represents "the franchise industry as a whole which in a multi stakeholder approach, means the interests of franchisors and franchisees towards public authorities, civil society and consumers."

Additional obligations on franchisors have been inserted which signal a more balanced and less franchisor favourable approach to the Code. Franchisors are now required to:

- provide the individual franchisee with initial training and continuing commercial and/or technical assistance during the entire life of the agreement;

- grant the right to use the know-how transferred and/or made available to the franchisee, which know-how it is the franchisor's responsibility to maintain and develop;

- transfer and/or make available the know-how to the franchisee through adequate means of information and training and shall monitor and control the proper use of that know-how; and

- encourage feedback of information from franchisees in order to maintain and develop the know-how transferred and/or made available to them.

Whether the increasing involvement of franchisees in national/supra-national franchise associations will reduce yet further the use of franchisee associations or FACs is yet to be seen.

3. Australia

In Australia, franchisee associations exist in many forms and for many purposes.

There are network-based associations that are national or regional based. There are also some network-based franchisee associations that represent the interests of franchisees both in and outside Australia.

There are also franchisee associations that purport to represent the interests of franchisees (only) throughout Australia.

In addition, the peak body in the franchise sector in Australia, the Franchising Council of Australia (FCA), allows franchisee membership (in addition to franchisor and supplier membership), provides services to franchisees and recognizes their achievements in the sector, but whether it represents the interests of franchisees in their relationships with franchisors is an issue for debate. This paper will not otherwise focus on the activities of the FCA, but will rather focus on franchisee associations that only represent the interests of franchisees.

The form of franchisee associations varies significantly and includes:

- Corporate entities incorporated under the *Corporations Act 2001 (Cth)*;
- Associations incorporated under State based legislation such as the *Associations Incorporation Reform Act 2012 (Vic)*;
- Unincorporated associations governed by a constitution agreed to by members; and
- Informal associations arising from specific common complaints or issues within a franchise network.

The purposes of franchise associations vary significantly as well. Some are set up purely for dealing with suppliers, others are set up for collaboration with the franchisor, and, more commonly, some are set up for claim and litigation purposes.

In this part of the paper, we will discuss the nature and prevalence of franchisee associations operating in Australia and some of the current pressing issues facing franchisees where franchisee associations are becoming involved.

3.1 Laws Regarding Associations and Collective Bargaining

There are laws in Australia that prohibit franchisors from engaging in conduct that would restrict or impair a franchisee or prospective franchisee's freedom to form an association or a franchisee or prospective franchisee's ability to associate with other franchisees or prospective franchisees for a lawful purpose.[6] Violation of this law attracts a civil penalty up to a maximum of AUD$54,000.

It also interesting to note that the Australian competition regulator, the Australian Competition and Consumer Commission (ACCC), considers that collective bargaining may, in some cases, amount to illegal anti-competitive conduct under *Competition and Consumer Act 2010 (Cth)* (CCA)[7]. Collective bargaining is an arrangement under which two or more competitors in an industry (which could be franchisees within a network) come together to negotiate terms and conditions (which can include price) with a supplier (which could be the franchisor) or a customer. A group of businesses may sometimes appoint a representative, such as an industry association, to act on its behalf in the negotiations.

The ACCC nevertheless concedes that in some circumstances, allowing collective arrangements may be in the public interest. Its website states:

> For example, smaller businesses can face challenges when negotiating with larger businesses and the outcomes from these negotiations may not be the most efficient or optimal. By getting together, small businesses may have a better opportunity to have input into negotiations than if they stay on their own. The CCA therefore allows protection from legal action to be granted to parties to engage in anti-competitive conduct, including collective bargaining, when there are public benefits that would outweigh the detriments to competition.

Businesses can obtain an exemption from the competition provisions of the Act for collective arrangements through formal processes known as authorisations and notifications.

In practice, these laws are ignored by franchisees wishing to associate to collectively bargain with franchisors and they are not sought to be enforced by franchisors (probably because, in most cases, an exemption through the authorisation or notification process would be obtained), nor has there been any known action taken by the ACCC against franchisee association that may seek to engage in collective bargaining.

3.2 National Franchise Associations

[6] Clause 33 of the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014* (Franchising Code of Conduct).

[7] Section 45 of the CCA is a general prohibition against contracts, arrangements and understandings that restrict dealings or affect competition.

At the moment, there is no known active body within Australia that represents the interests of franchisees as a whole.

There exists in Australia a body called the Franchisee Association of Australia Incorporated (FAAI). The FAAI was driven by its President, The Hon David Beddall, who was a member of Federal Parliament for 16 years and served as Minister for Small Business in Labor governments in the 1990s. According to published material the FAAI is a not for profit body representing the interest of franchisees principally in the area of policy development and law reform.

In 2009 and 2010, the FAAI campaigned heavily for the enactment of State based franchising legislation due to perceived weaknesses in the then federal *Franchising Code of Conduct*. Its focus was on "fair franchising," rejecting the notion that franchising is a pure business-to-business relationship instead propounding that franchising was closer to a master/servant relationship.

The FAAI made submissions to State government in support of enacting laws requiring:

- Vetting of franchise agreements by Australia's corporations regulator (ASIC);
- The creating of a Franchising Ombudsman to deal with complaints;
- The introduction of a legislative obligation for parties to act in good faith;
- A revision of existing unconscionable conduct laws to make it easier to establish unconscionable conduct;
- Greater sanctions for violations of franchising laws;
- Minimum terms of franchise agreements; and
- Widening of unfair contract term laws covering franchise agreements.

The submissions made by FAAI did not go unnoticed and, since they were made, some of the things it was seeking found their way into the 2014 version of *Franchising Code of Conduct* (for example, the duty to act in good faith and pecuniary penalties for violations of some provisions of *Franchising Code of Conduct*).

Whilst still existing in name, the FAAI appears to have been inactive since the 2014 version of *Franchising Code of Conduct* commenced operation on 1 January 2015. Perhaps it feels its work is done. The writer is unsure of how the FAAI receives funding and whether it is again considering making submissions in relation to some of the current issues in franchising referred to below.

The Australian Automotive Dealer Association Limited (AADA) is an example of a national franchisee association limited to a particular industry. It represents the interests of motor vehicle dealers engaged in the retail sale of new cars in Australia and its objects are to encourage, promote, protect and advance the interests of such dealers, to advocate for the interests of employers who are motor vehicle dealers and to lobby governments in relation to legislation or other measures affecting such dealers.

3.3 Franchisee Associations vs. FACs

FACs are quite common in Australia, particularly in mature retail franchise networks. However, there is no recent data as to their prevalence. As outlined below, some associations operate beyond Australian borders and are connected to like associations within a franchise network throughout the world.

The most recent data is that published in the report "Franchising Australia 2012" published by Griffith University's Asia-Pacific Centre for Franchising Excellence. This report noted that in 2012. there were 1180 business format franchisors in Australia. The authors conducted a survey and received 126 responses to questions regarding FACs. The report stated:

> There is growing support the relational advantages of Franchise Advisory Councils (FACs) with almost 48 percent of franchise systems utilising a FAC within their franchise network. Dissimilar to 2010 national survey, franchisors utilising FACs in their systems had a range of franchising experience. Almost 30 percent of franchise systems adopting a FAC had been engaged in franchising for less than five years. However it is evident that as franchise systems grow or become geographically dispersed, the need for franchisor-franchisee collaboration is viewed as more important. Not surprisingly, those systems which had a FAC also adopted a Franchising Code of Conduct compliance program (70 percent) emphasising importance of integrating structure, systems and processes to strengthen both the brand and the franchisor-franchisee relationship. Industries where FACs were most dominant were retail trade (23 percent), accommodation and food services (18 percent) and administration and support services (12 percent).

Subsequent enquiries made by one of the authors to other lawyers within the sector suggest FACs continue to become more common and more active. Dealer Councils within the motor vehicle trade are quite common and active in pursuing the interests of their members.

FACs are sometimes formed at the insistence of the franchisor (as a means of communication and feedback) but are more often formed because of some emerging issue. The major issues generally addressed by FACs are:

- System changes requested by the franchisor;
- Marketing and advertising (including the allocation of spending from a marketing fund);
- Purchasing arrangements for franchisees;
- Education (including business mentoring and labor law support);

A good example of a very effective FAC is the Independent Purchasing Company of Asia-Pacific (IPCA). IPCA is an independent SUBWAY® franchisee owned and operated purchasing company with the goal to implement purchasing and distribution programs that help build a competitive environment for SUBWAY® franchisees. IPCA has no connection, legally or otherwise, with the SUBWAY® franchisor. Although wholly independent, IPCA does work closely with the franchisor to ensure that all products and suppliers meet the strict criteria required by the SUBWAY® brand.

IPCA is connected into other purchasing companies around the globe under the umbrella "Unaterra". The leadership team of Unaterra is made up of the CEOs from all the independent purchasing companies around the world - IPCA in Asia Pacific, IPC in North America, EIPC in Europe, MEIPC in the Middle East and LAIPC in Latin America.

According to IPCA's website, within Unaterra, category management teams are formed to work on specific global purchasing and project strategies, which could be anything from streamlining specifications for ingredients and leveraging the scale of purchasing products as a global buying

group, all the way through to developing effective technology solutions such as the My SUBWAY® Career recruitment portal.

3.4 The Association as Litigants

The majority of disputes in franchising in Australia are resolved without resort to litigation, primarily due to the success of mediation. Many disputes relate to issues specific to a particular franchisee and the usual course for that franchisee is to deal one on one with the franchisor.

However franchisees often believe there is strength in numbers. Where there is an issue within a franchise network that affects the whole or a group of franchisees, they will often band together to exchange views and formally or informally associate to raise issues and make claims against the franchisor.

Often, the issue of concern might only affect a small group of franchisees and not the network as a whole and the affected franchisees might pool resources and engage one lawyer to represent them in respect of their common concerns. Here the association is probably limited to joint funding the lawyer's fees. A recent example that one of the authors was involved in concerned a group of five franchisees that operated their businesses in remote far north Queensland. They were diligently paying their 3 percent of sales revenue into the franchisor's marketing fund, but were concerned that a large portion of that fund was spent on television advertising that was only transmitted in the large cities of Australia – they saw themselves as funding the marketing of the brand in those large cities. The franchise agreement permitted this to occur. They joined forces to make a claim against the franchisor. A joint mediation was held and the matter was resolved.

Representative proceedings (class actions) are becoming more prevalent in Australia. In the franchising sector, threats of commencing such proceedings are often made, but are rarely carried through.

The laws in Australia allow a person to commence a representative proceeding if:

- 7 or more persons have claims against the same person; and
- the claims of all those persons are in respect of, or arise out of, the same, similar or related circumstances; and
- the claims of all those persons give rise to a substantial common issue of law or fact.[8]

The representative proceeding processes in the Federal Court of Australia and some State Supreme Courts require group members (or "the class") to be defined and, once defined, orders are made requiring opt out notices to be sent to all potential members of group. An opt out notice essentially tells the recipient about the nature of the proceeding and the consequences of remaining with the group or opting out. Those potential members of a group who do not opt out are bound by the outcome of the case.

In this sense an association is formed by default. Although instructions and funding for the representative proceeding will normally be given by the lead plaintiff, association is nevertheless formed. This occurred in a recent case brought on behalf of Australian Pizza Hut franchisees Yum! Restaurants Australia Pty Limited (Yum)[9] arising from a decision by Yum to reduce the ranges of Pizza Hut pizzas from four to two and reduce the prices in the available ranges to two price points:

[8] Section 33C of the *Federal Court of Australia Act 1976 (Cth*), section 33C of the *Supreme Court Act 1986 (Vic).*
[9] *Diab Pty Ltd v YUM! Restaurants Australia Pty Ltd* [2016] FCA 43

$4.95 for "Classics" pizzas (from $9.95) and $8.50 for "Favourites" pizzas, formerly called "Legends" pizzas (from $11.95). In this proceeding, opt-out notices were sent to all potential group members as a result of which only 11 of the franchisees opted out. It followed that approximately 190 of 200 of the Franchisees were group members for the purposes of the proceeding. Ultimately Yum prevailed, no doubt a devastating result for the franchisee group, but it is noted that the matter is on appeal, the hearing of which is due to occur in May 2017.

3.5 Emerging Issues

(i) Class Actions and Mass Actions

More and more law firms are chasing representative proceeding work. Litigation funding is now an accepted part of the Australian legal system, despite earlier challenges[10].

The Pizza Hut case above was an example of a franchisor reacting to competitive pressures and forcing its will on the franchisees. Franchisors are also wanting to evolve their systems and often the changes they wish to implement are not supported by franchisees, which in turn may give rise to the formation of franchisee associations dedicated to a specific purpose. It is expected that more and more such specific-purpose franchisee associations will be formed with proper constitutions and boards of directors.

(ii) Challenges to Franchise Model Viability

Franchise model viability seems to be an emerging issue.

Last year, a number of 7-Eleven franchisees were exposed exploiting vulnerable workers on student visas by basically threatening to report them to immigration authorities for violating their visa conditions if they reported the fact that they were paid substantially less than what they were entitled to under law. The excuse of the franchisees (which gained traction from the media) was that the 7-Eleven model (under which 7-Eleven took a high proportion of sales revenue, but met many of the business's expenses) made it impossible for franchisees to make a profit.

Against allegations that the 7-Eleven franchisor in Australia knew about, or turned a blind eye to, such conduct and media pressure concerning the 7-Eleven model, the franchisor implemented changes to that model. More than one franchisee association was formed to negotiate the changes to the model.

Subsequent similar conduct was alleged to have occurred within the Domino's network and within some other franchised networks.[11].

In February 2017, approximately 70 Caltex franchisees and their employees and family members marched through Sydney's central business district chanting and brandishing placards denouncing Caltex management and accusing Caltex of running a franchise model that is unprofitable. This followed Caltex

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[10] In 2006, the High Court of Australia, in *Campbell's Cash and Carry Pty Ltd v Fostiff Pty Ltd* [2006] HCA 41, upheld the validity of commercial litigation funding. As a result of a decision of the Federal Court of Australia in *Brookfield Multiplex Ltd v International Litigation Funding Partners Pte Ltd* [2009] FCAFC 147 to the effect that a commercially funded class action was a "managed investment scheme" regulated by the Corporations Act, the Australian Government legislated to exempt professional litigation funders from the managed investment scheme and financial services provisions of the Corporations Act.

[11] See, for example, *Fair Work Ombudsman v Yogurberry World Square Pty Ltd* [2016] FCA 1290. The *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017* is likely to be passed by the Australian Parliament in the coming months. This law will make franchisors liable for franchisee contraventions of Australia's labor laws, unless the franchisor can prove it took reasonable steps to prevent the contravention.

announcing in November 2016 that it would crack down on wage fraud by auditing the entire store network and terminating the franchise agreement of any franchisee found to be engaging in wage fraud. Franchisees were reported as saying they would fight back against the wage audits as being oppressive (because Caltex was allegedly demanding that franchisees meet the hefty cost of the audit and to provide personal documents) and a large group of them have appointed a single lawyer to represent them in the fight.

(iii) Unfair Contract Laws

In November 2016, laws which gave Courts the power to declare terms of standard form consumer contracts were extended to cover small business contracts.[12] These laws will, in most cases, apply to franchise agreements. Franchise agreements often contain terms that are considered unfair. Unfair terms are those which have the following 3 characteristics:

- the term would cause a significant imbalance in the parties' rights and obligations arising under the contract;
- the term is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
- the term would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

Although these laws are new and only apply to contracts made, extended, renewed or varied since November 2016, there is an expectation that groups of franchisees might band together to bring proceedings seeking to have declared void terms in their franchise agreements that they may consider to be unfair.

A test case or representative proceeding may be run by a single franchisee (but funded by a group), which, if successful, would impact all franchise agreements containing the impugned term or terms.

CONCLUSION

The disparate international landscape for franchisee associations certainly reflects the unique commercial, cultural and regulatory influences that have shaped the evolution of the franchise model in a given market. However, such distinct influences cannot mask the imperative that is intrinsic to any successful franchise system, regardless of jurisdiction: collective franchisee interaction with the franchisor that is constructive, based on mutual respect, and focused on shared objectives. Whether truly trans-national or limited in geographic scope to their home country, franchisee associations are likely to continue to play a key role in this regard for the foreseeable future.

[12] Part 2.3 of *Australian Consumer Law* being Schedule 2 to the *Competition Consumer Act 2010 (Cth)*

EXHIBIT 1
FRANCHISEE ASSOCIATIONS IN EUROPE

Definitions
Franchisee advisory councils established by the franchisor ("FAC")
Franchisee associations established by franchisees ("FA")

	Spain	**Czech Republic**	**Italy**	**Ukraine**	**Portugal**	**Austria**	**Russia**	**Denmark**
Are FACs common in your country?	Yes	Yes	No	Yes	No	Yes	No	No
Are FAs common in your country?	No	No	No	Yes	Yes	No	No	No
Are FACs increasing in popularity?	No	No	No	No	N/A	Yes	No	Yes
Are FAs increasing in popularity?	No	No	No	No	Yes	No	No	No
Are FACs generally established by foreign franchisors rather than local franchisors?	Yes	No	No	No	N/A	Yes	No	No
Which of the following duties are delegated to FACs and FAs (and please indicate if "yes" whether your answer relates to a FA or a FAC):-		No response	No response	No response	No response		No response	
- Marketing decisions;	FAC (including the management and other decisions regarding the marketing fund, mainly contributions and expenses)					FAC		FAC
- Changes to the brand;	No					No		No
- Introduction of new products/services;	FAC					No		FAC
- Other (please list).	FA but also FAC. Matters related to							

	the supply chain, including change of suppliers, prices, rebates and other conditions.					Marketing budged (FAC)		
Have there been any court decisions relating to FACs or FAs?	No	No	No	No	No	No	No	No
Would you advise a franchisor to have a FAC?	Yes	Yes	No	No	No	Yes	Yes	Yes
Would you advise a franchisor to encourage an FA?	No	Yes	No	No	No	No	No	No
Are FAs principally established to put pressure on/sue the Franchisor?	No	No	No	No	No	Yes	No	Yes

	Greece	**Switzerland**	**Germany**	**Sweden**	**Norway**	**Belgium**	**The Netherlands**	**UK**
Are FACs common in your country?	No	No	No	No	Yes	Yes	Yes	No
Are FAs common in your country?	No	No	Yes	Yes	No	No	Yes	No
Are FACs increasing in popularity?	No	Yes	No	No	Yes	Yes	-	No
Are FAs increasing in popularity?	No	No	No	Yes	No	No	Yes	Yes
Are FACs generally established by foreign franchisors rather than local franchisors?	No	-	No	No	No	-	No	Yes
Which of the following duties are delegated to FACs and FAs (and please indicate if "yes" whether your answer relates to a FA or a FAC):- - Marketing decisions; - Changes to the brand; - Introduction of new products/services; - Other (please list).	 FAC No FAC	 No No No	 FAC FAC FAC	 FAC No FAC	 FAC FAC	 FAC usually only an advisory role. FAC usually only an advisory role.	 All of these topics (and more) can be part of an FA or FAC mandate but only advisory.	 FAC No FAC Supply chain - FA
Have there been any court decisions relating to FACs or FAs?	No	No	No	No	No	No	Yes (Ahold / Pollemans)	No
Would you advise a franchisor to have a FAC?	Yes	Only on a consultancy basis	Yes	Yes	No	Yes	-	Perhaps
Would you advise a franchisor to encourage an FA?	No	Only on a consultancy basis	No	Yes	No	No	It depends on franchisee association.	No
Are FAs principally established to put pressure on/sue the Franchisor?	Yes	-	Yes	No	No	-	No	Yes

RONALD K. GARDNER, JR.

Ronald K. Gardner is the Managing Partner of the firm of Dady & Gardner, P.A., and limits his practice to the representation of franchisees, franchisee associations, dealers and distributors, focusing most frequently on his clients' disputes with their franchisors, manufacturers and suppliers. Ron, along with the rest of his colleagues at Dady & Gardner, P.A., prides himself on the fact that the firm has an international reputation for effectively and efficiently helping their franchisee, association, dealer and distributor clients to resolve their disputes through negotiation, mediation, and when necessary, litigation and arbitration. More specifically, Ron has helped clients in dozens of industries, including fast food, personal services, automobile, trucking, construction equipment and agricultural implements.

Ron is a member of the American, Minnesota, Hennepin County and Rice County Bar Associations. He is an active member of the ABA Forum on Franchising, is a Past Chair of the Forum (and the ONLY "franchisee lawyer" to EVER be elected as the Chair), and is a past Membership and Program Officer, as well as a past Division Director of the Forum on Franchising's Litigation and Alternative Dispute Resolution Division. Ron was the co-chair of the 2005 Forum on Franchising convention. He is also a member of the North American Securities Administrator Association Franchise Project Group—a select group of franchise lawyers who help promulgate franchise regulations and train state franchise regulators in the nuances of franchise law.

Ron is a frequent speaker at various gatherings on franchise and distribution-related topics, such as the ABA's Annual Forum on Franchising, the National Convention of the American Association of Franchisees and Dealers, the International Franchise Association, the International Distribution Institute and International Bar Association. He also speaks regularly to various franchise and industry groups about their rights. Ron is formerly one of the primary authors of the widely cited treatise "Franchising: Realities and Remedies," published by Law Journal Seminars Press and distributed nationally, as well as being a co-author of the "Annual Franchise and Distribution Law Developments 2002" volume published by the American Bar Association.

Ron has represented businesses of all sizes, including multi-unit franchisees, as well as single owner operations. He represents numerous franchisee associations, including the associations of several of the largest franchise systems in the world. He has handled disputes ranging from unlawful terminations to encroachment to cases regarding franchisor's failure to comply with registration and disclosure requirements of the FTC and state governments. He has represented or counseled clients in all 50 states, and over a dozen foreign countries. Ron has also been named one of the Best Lawyers in America for last eight years (including being named Minnesota's "Lawyer of the Year" for 2015), Top 100 as one of Minnesota's "Super Lawyers," and as one of Franchise Times "100 Legal Eagles" every year since the list started, being inducted into the Franchise Legal Eagle Hall of Fame in 2014. The past eleven years (2007-2017) Ron has been selected by Chambers USA independent research firm as one of the top 3 franchisee lawyers in America---and is the only one under 60. In 2010 and 2011, Ron was listed, along with his partner, Michael Dady, as the only "Tier 1" Franchisee lawyers in the United States, and Dady and Gardner are 2 of only 3 Tier 1 Franchisee lawyers listed since 2012. In 2013, Chambers hailed Ron as "*the premier franchisee lawyer in America"* and in 2016, Franchise Times said "*Ron is probably the best franchisee representative in the country when it comes to business-oriented results for all parties involved."*

Ron graduated magna cum laude in 1991 from Mankato State University, and is a 1994 cum laude with honors graduate of the Hamline University School of Law, and was honored to be the 2010 Hamline Law Alumnus of the Year. Among his other activities, Ron has been an adjunct professor at Hamline University School of Law, as well as being the former Chairman of the Board of Trustees of

Prairie Creek Community School. He and his wife Becky are also the proud parents of Devyn and Zach, and grandparents of Ryan and Owen. And when Ron is not practicing, or spending time with his family, you can likely find him on a trout stream somewhere.

PHILIP COLMAN

Philip Colman, from Australia, is a partner in Melbourne based law firm, MST Lawyers. He is a member and, former head of, MST's franchising practice group, which acts for franchisors, master franchisees and franchisees within a large number of local and internationally based franchise systems. Mr Colman's practice currently focuses on dispute resolution, litigation and regulatory investigations involving franchisors, franchisees and master franchisees and he has had significant experience in drafting franchise agreements, disclosure documents and transactional documents and giving strategic advice to franchisors. Since 1993 Mr Colman has been formally recognised by the Law Institute of Victoria as a specialist in commercial litigation. In addition, Mr Colman is a nationally accredited mediator and a member of the legal committee of the Franchise Council of Australia. Mr Colman is the author of numerous local and international legal publications relating to developing issues in franchising in Australia and the laws affecting participants in the franchising sector, particularly under Australian competition law.

JOHN H. PRATT

John obtained his law degree from Oxford University and afterwards successfully completed a doctorate course in comparative law at the Universite d'Aix-Marseille. He is the senior partner of Hamilton Pratt. He is the immediate past Legal Advisor to the British Franchise Association and a past Chair of the International Bar Association's International Franchise Committee and Director of the American Bar Association's International Franchising Division. He is currently Chair of Euro Franchise Lawyers. He has written "Franchising: Law & Practice", "The Franchisor's Handbook" and contributed chapters to a number of franchise publications. He is the joint editor of an upcoming publication on franchising in Europe.

DONALD P. WRAY, JR.

Donald Wray is International Counsel for Little Caesar Enterprises, Inc. in Detroit, Michigan, USA. He is responsible for all international legal affairs for its Little Caesars Pizza restaurants, including transactional, regulatory, intellectual property, supply chain and compliance matters. Prior to joining Little Caesars, he worked for H&R Block Financial Advisors from 1999 to 2009, most recently as Associate General Counsel, where he developed and implemented the firm's OFAC and AML compliance programs. From 1996 to 1999, he worked for Olde Discount Corporation, most recently as Assistant Vice President and Corporate Counsel. He is a member of the American Bar Association Forum on Franchising's International Division Steering Committee, and also serves as the International Bar Association International Franchising Committee's Corporate Counsel Liaison Officer. Mr. Wray has a B.A. from Vanderbilt University and a J.D. from St. Louis University School of Law.