



Fees, Glorious Fees: What Do FTC and State Regulator Guidance Really Mean and What Is the Potential Impact for Franchise Systems?

David W. Koch
Plave Koch PLC
Falls Church, VA

Nicole L. Micklich
Urso Liguori Micklich
Westerly, RI

Dale E. Cantone
Asst. Attorney General
Baltimore, MD

iFA INTERNATIONAL
FRANCHISE
ASSOCIATION

**2025 LEGAL
SYMPOSIUM**

||| MAY 4-6 | WASHINGTON, DC

Our Agenda

- Background – FTC, States, private sector
- Enforcement record on fee disclosures
- The road ahead
- Practical examples for discussion

Background - FTC

- Franchise Rule Review (2019)
- Request for Information (2023)
- Staff Guidance and Issue Spotlight (2024)
- Junk Fees Rule (2025)

Background - States

- State Franchise Laws
 - State Enforcement Actions
- Little FTC Acts
- Unfair and Deceptive Trade Practices Acts

Background – Private Sector

- Fraudulent Inducement of Concealment
- Negligent Misrepresentation
- Breach of Contract
- Rescission

Enforcement of fee disclosures

- Frequent enforcement actions when franchisors sell unregistered franchises; fail to provide FDDs
- Many enforcement actions where franchisors make false or misleading FPRs
- Enforcement actions when franchisors make improper Item 2 or Item 3 disclosure

Enforcement of fee disclosures – cont'd

- Enforcement actions for improper **Item 6** disclosures
 - **Zero**

Enforcement of fee disclosures – cont'd

- Enforcement actions for improper **Item 7** disclosures
 - **One**
 - CA
 - “Understating aspects of the estimated initial investment and costs provided in Item 7 of the FDDs”

The Road Ahead on fee disclosures



Item 6

Item 6 : Other Fees. *Disclose, in the following tabular form, all other fees that the franchisee must pay to the franchisor or its affiliates, or that the franchisor or its affiliates impose or collect in whole or in part for a third party. State the title “OTHER FEES” in capital letters using bold type. Include any formula used to compute the fees.*^[3]

[3] If fees may increase, disclose the formula that determines the increase or the maximum amount of the increase. For example, a percentage of gross sales is acceptable if the franchisor defines the term “gross sales.”

Item 6 fee disclosure issues

- What kinds of fees and payments must be included
- Changes in fees
- New fees

Washington

Because the operations manual is typically only provided after the franchise agreement is executed, the imposition of fees in the operations manual that were not disclosed in the FDD prior to the execution of the franchise agreement, or any payment to the franchisor or an affiliate in connection with the proposed franchise sale, violates both state and federal law.

- Washington State Department of Financial Institutions, *Franchise Act Interpretive Statement – FIS – 09* (Nov. 1, 2023), <https://dfi.wa.gov/franchise-act-interpretive-statement-fis-09>.

California

May a franchisor impose fees through its operations manual or otherwise that were not disclosed in the Franchise Disclosure Document?

No. CA and federal law both require the franchisor to disclose all fees, including prospective fees, to a prospective franchisee in the Franchise Disclosure Document (“FDD”) before the franchise agreement is signed or the receipt of any payment by the franchisor or any of its affiliates in connection with the proposed franchise sale. The Operations Manual is typically provided to the franchisee after the franchise agreement is signed. Failure to disclose a fee or payment required by the franchisor before the franchise agreement is signed constitutes an unlawful omission of fact under California Corporations Code Section 31201.

California Department of Financial Protection & Innovation, *Franchises – Frequently Asked Questions and Answers*, <https://dfpi.ca.gov/regulated-industries/franchises/franchises-frequently-asked-questions-and-answers/> (last visited April 6, 2025).

Relationship statutes

Washington Franchise Investment Practices Act prohibits franchisors from selling products or services to franchisees “for more than a fair and reasonable price.” WASH. REV. CODE § 19.100.180(2)(d).

Indiana Code prohibits franchisors from requiring franchisees to purchase goods or supplies that are not necessary to the operation of the franchised business and requires the franchisor to provide franchisees with notice of increases to the prices of required products. IND. CODE § 23-2-2.7-2(1)(i) and (7).

Examples of fee disclosures

Generally

- A. Item 6, Note 1. The amounts listed above may vary due to changes in market conditions, our cost of providing services, and future policy changes.**
- B. Item 6, Note 1. We reserve the right to change at any time the amount of the fees we charge, provided that the royalty rate can only be changed at the time the franchise is renewed.**

Examples of fee disclosures

Generally

- A. Item 6, Note 1. All fees listed above are the current fees and may be changed in the manuals in our discretion, provided that any increase to a specific fee may not exceed an amount equal to 100% of the fee during the current term of the Franchise Agreement.**
- B. Item 6, Note 1. Consumer Price Index Fee Increase. Fees, costs, charges, contributions and dollar amounts (“Fees and Costs”) in the Franchise Agreement may be increased periodically by Us based on the CPI (defined below) but in no event more than once per calendar year. These increases are limited to the greater of the amounts permitted under the Franchise Agreement or the CPI increase.**

Examples of fee disclosures

Technology fees

- A. Technology Fee-- Currently between \$300 and \$350 per month. The amount of this fee varies with required technology and our desired level of support. We may modify this fee once each calendar year.**
- B. Technology Fee. Currently, \$300 per month. We may charge an additional technology fee for additional technology-related products and services that we develop or obtain for you, which we shall specify in the Operations Manual.**

Examples of fee disclosures

Technology fees #2

- A. Technology Fee: Currently \$250 per month, which we may increase by 10% per year.**
- B. Technology Fee. We reserve the right to increase the technology fee once per year during the term of the Franchise Agreement upon 30 days' written notice to you to correspond with the increase in the Consumer Price Index during the preceding Agreement year, with no such increase to exceed 4.5%.**

Examples of fee disclosures

Technology fees #3

- A. POS System Fees.** The amount listed above represents the estimated cost for one POS System. Additional hardware and services may be added as the program evolves and/or the technology needs of the brand expand, which may result in additional costs.
- B. Software Fee --** Currently, \$600 per month for your first franchise and \$75 per month for each other location where you operate. We may change the required software and the software fee from time to time.

Examples of fee disclosures

Other fees

- A. Advertising Fund: Currently \$100 per month.**
- B. Operational Training Fees. Currently \$0 to \$5,000 per year but could increase if our costs increase.**
- C. Audit Costs. Our actual costs incurred in conducting audit (depends on extent of your non-compliance but should not exceed \$2,500).**
- D. Ongoing Technical Training. Our affiliate's then current training fees (currently \$0 to \$10,000 per person but could increase if our affiliate's costs increase).**

Examples of fee disclosures

Call center

Call Center Fee	Currently, \$2.05 per call and \$29 per call that results in a booked customer.	Payable at the same time and in the same manner as the Royalty Fee	We are the only approved supplier for this service. We can modify the Call Center Fee on 30 days' notice, up to a maximum of 10% of Gross Revenue.
------------------------	--	---	---

Examples of fee disclosures

Lead generation

Lead Generation Services	Then-current fee, currently estimated at \$250/month	On demand	We, an affiliate or a third party we designate may provide a lead generation center to assist in inbound or outbound lead generation and appointment setting. If required by us, you must participate in the lead generation center and you agree to pay your pro-rata share of the fees imposed by the provider.
---------------------------------	---	------------------	--

Examples of fee disclosures

Franchisee purchases

Filters	Currently \$150 to \$185 per case of 60 filters	Monthly	You must purchase a minimum quantity of filters from us each month. Filter prices are subject to change.
----------------	--	----------------	---

Examples of fee disclosures

Franchisee purchases #2

Merchandise for Resale	Not less than \$1,000 every 3 months. Plus shipping, taxes, and duties (if any).	As Incurred	You must carry up-to-date brand merchandise for resale, such as apparel and accessories like travel mugs, T-shirts, shorts, and caps. You will purchase these items from our affiliate.
-------------------------------	---	--------------------	--

Examples of fee disclosures

Voluntary programs

Special marketing, management, and operational assistance performed at your request	Reasonable fee plus expenses	20 days after billing	Payable only if you request assistance beyond what we customarily furnish to franchisees. We will obtain your agreement on the fee before you commit to the additional assistance.
--	-------------------------------------	------------------------------	---

Examples of fee disclosures

Voluntary programs #2

Additional Trainees	Then-current fee, currently \$250 per person	As incurred	Training for two (2) persons is included in your initial franchise fee; additional person(s) will be charged accordingly.
----------------------------	---	--------------------	--

Examples of fee disclosures

Fees imposed or collected on behalf of a third party

**GPS Tracking
Software**

\$35 per vehicle

Monthly

You must use a designated tracking system for your service vehicles. This fee is payable directly to the vendor.

Examples of fee disclosures

Liquidated damages

Liquidated Damages	Your average monthly Royalty Fees and Brand Fund contributions in the year preceding termination, multiplied by 24 or the number of months remaining in the Agreement term, whichever is less.	Upon request	You must pay this amount to compensate us for our lost future royalties and Brand Fund contributions if we terminate the Franchise Agreement as a result of your default or if you abandon the Franchised Business.
---------------------------	---	---------------------	--

Examples of fee disclosures

Indemnification

Indemnification	Our actual losses and expenses	As incurred	You must reimburse us if we incur any expense, including attorney fees and other costs, or are held liable for claims arising out of your franchise operations.
------------------------	---------------------------------------	--------------------	--

Examples of fee disclosures

Future fees

Other fees	None currently	As incurred	We have a contractual right to institute other fees with respect to new or revised products, services, facilities, technology, marketing methods, training programs, data security, and operations, including fees to support portals, websites, mobile applications, digital transactions, Internet-connected equipment, social media, and other communications channels.

Examples of fee disclosures

Future fees #2

Technology Fee	The then-current fee (we do not currently charge for this)	Same as Royalty Fee	We reserve the right to charge you a monthly fee for custom or proprietary software that we develop ourselves or through third party partnerships. This fee is set not to exceed \$400/month, or 0.5% of monthly revenue, whichever is greater.
-----------------------	---	----------------------------	--

Examples of fee disclosures

Future fees #3

Call Center Fee	None currently.	Monthly.	We have the right to require you to use a Call Center. If we invoke this right, we will provide you with 30 days' written notice of the required Call Center services and who will be providing the services. See Note 7 for further information.
------------------------	------------------------	-----------------	--

Examples of fee disclosures

Future fees #3

Call Center Fee	None currently.	Monthly.	We have the right to require you to use a Call Center. If we invoke this right, we will provide you with 30 days' written notice of the required Call Center services and who will be providing the services. See Note 7 for further information.
-----------------	-----------------	----------	---

(7) If we designate a third party vendor to provide the Call Center services, the designated vendor will determine the fees and charges for use of the service. If we or an affiliate provides the Call Center services, we will determine the fees and charges before we begin service. The amount has not been determined as of the date of this disclosure document. However, we anticipate our charge would be in the range of \$2.20 to \$3.30 per minute (at 2025 rates, before adjustment for inflation) or an equivalent monthly fee or percentage of Gross Revenue (not to exceed 8% of Gross Revenue).

Fee, Glorious Fees

New Issue!

As of the date of this Disclosure Document, the U.S. government has imposed tariffs on goods imported from various countries, including China. Although the tariffs are subject to change, tariffs on imports from other countries may directly impact your estimated initial investment and your costs, including the cost of your required build-out, furniture, equipment, merchandise, and other products you need to operate your franchise, including the cost of equipment, inventory, products and other items that you are required to purchase from us or our affiliates.

Fee, Glorious Fees

Comments or Questions?