

IFA LEGAL SYMPOSIUM

MAY 4-6, 2021 | VIRTUAL



franchise.org/events/2021-legal-symposium



WHO SHOULD ATTEND:

- All attorneys interested in franchise law
- In-house counsel
- Franchise CEOs
- Franchise development and sales executives
- Franchise legal and compliance officers
- Paralegals
- Franchise administrators
- Franchisees interested in learning more about the legal and business aspects of franchising
- All others concerned with franchising's legal, regulatory and business issues

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Sponsorship Opportunities:

Contact Lynette James at ljames@franchise.org.



PROGRAM HIGHLIGHTS

Welcome & General Session

Welcome: **Leonard MacPhee**, Shareholder, Polsinelli

Trail Blazers Perspective: historical perspective on today's challenges and opportunities

The franchise industry and the practice of franchise law have seen many changes, challenges, and opportunities and persevered, thrived, and adjusted to address the same over the decades. Hear from a panel of experts who were trail blazers and influencers in making the franchise bar, practice, and industry what it is today; poised well for the next challenges and opportunities. This panel will delve into the history, context, and examples of how the franchise bar, franchise industry and IFA have adapted and changed over time and will tackle current issues spanning from social issues, and diversity and inclusion, to the franchise model, franchise relationships, international expansion, technology and other disruptors, and system changes to address external forces—including COVID, labor markets and innovation.

Moderators: **Keri McWilliams**, Partner, Nixon Peabody; **Gerald Wells**, General Counsel & COO, Rita's Franchise Company

Speakers: **David Kaufmann**, Senior Partner, Kaufmann Gildin & Robbins LLP; **Joyce Mazero**, Shareholder, Polsinelli

Lunch Together: Roundtable Topics

Our roundtables provide a unique opportunity for you to sit down with your peers and share tips, challenges, solutions and best practices on a wide range of franchise law and business topics.

General Session: Judicial Update

Join us for the always popular Judicial Update where our speakers will identify key franchise legal trends that are impacting the franchise community and examine what the most important cases mean for the future of franchising's legal and business operations. Topics of discussion include:

- **Misclassification:** Recent filings and decisions, as well as state and federal regulatory actions.
Speaker: Jon Solish, Partner, Bryan Cave Leighton Paisner LLP
- **Joint Employer:** Recent filings and decisions, as well as state and federal regulatory actions
Speaker: Dawn Diaz, General Counsel of Franchising, Sun Holdings, Inc.
- **Anti-Poaching & FPR's from a State Regulatory activity perspective:** State regulators have been active in several areas that impact franchising, including anti-poaching and item 19 FPRs. This topic will cover recent activity and address the "rules" imposed by regulators without necessarily following the required process for agency rule making.
Speaker: Jan Gilbert, Shareholder & Attorney, Polsinelli
- **Termination/Bankruptcy:** Recent filings and decisions as well as trends resulting from COVID-19
Speaker: Elizabeth Weldon, Partner, Snell & Wilmer, LLP

- **Force Majeure/Insurance:** Recent filings and decisions as well as trends resulting from COVID-19
Speaker: Christina Fugate, CFE, Partner, Ice Miller LLP

Closing General Session with IFA Government Relations Update

IFA's Government Relations & Public Policy team will join us to provide an up-to-the-minute account of legislative and regulatory issues affecting franchising on both the federal and state levels.

Breakout Sessions

An A to Z Update on the Arbitration of International Franchise Disputes – What's New!

Arbitration is often required by contracts as a means of dispute resolution, on the basis that it is perceived as being a cheaper, faster, and often better route to a resolution than litigation. That is especially true in the context of international agreements where the parties are in different countries. But complications do arise, and if not considered and managed, they can defeat the perceived advantages of arbitration. So, this workshop will consider best practices and "what's new" in preparing for and dealing with contractual provisions (such as governing law and venue clauses, arbitration provisions), as well as the conduct of an international arbitration, such as panel selection, venue disputes, e-discovery, confidentiality, and enforcement.

Moderator: Mary Kate Wagner, Deputy Counsel, New York office of the ICC International Court of Arbitration

Speakers: Victoria Hobbs, Partner, Bird & Bird; Craig Tractenberg, Partner, Co-Chair Franchising and International Arbitration, Fox Rothschild LLP

FPRs/item 19 in COVID

The session will examine rules and best practices for including FPRs in your Franchise Disclosure Document during the Covid-19 global pandemic and as we reopen the economy following the pandemic. The presenters will examine:

1. Obligations under the FTC Franchise Rule and guidance from NASAA concerning the use of FPRs during these uncertain times;
2. Amendment obligations;
3. The use of supplemental FPRS outside of the FDD
4. State regulatory activity (comments and enforcement actions) concerning FPRs; and
5. Examples of industry FPRs to address in post-covid-19 FDDs.

Moderator: Justin Klein, Partner, Marks & Klein, LLP

Speakers: Breton Permesly, Shareholder, Greenberg Traurig, LLP; Nathan Quigley, Attorney, Washington Attorney General's Office; Sandy Wall, Counsel, DLA Piper LLP

Franchising and Private Equity

With the adoption of the 2017 NASAA Franchise Commentary on Financial Performance Private equity is more and more dominant in the franchise arena, controlling not only major franchisors but sizable franchisees as well. What attracts private equity interest? How are private equity transactions typically structured? And what are the benefits of private equity involvement? These and other key issues will be examined by a panel of experts at this program.

Moderator: TBA

Speakers: TBA

Global Expansion in a Stay at Home World: How Franchise Systems Expand Internationally Today

A worldwide pandemic, trade wars, and other global political issues, have complicated international expansion and management of international franchise systems. The session will explore the impact of these issues on the planning and execution of international franchise expansion, supporting systems abroad, supply chain issues and enforcement of agreements.

Topics that this session will explore include:

- Effective management of international franchise systems from an operations, support and relationship perspective in the short and long term.
- How international franchise systems managed the requirement to pivot and change health and safety operations due to COVID-19 and its aftermath.
- Effective methods employed by franchise systems to ensure confidence in supply chains in different countries.
- The impact of issues such as COVID-19 and geo-political issues on franchisors and international franchisees.
- The impact of these global issues on franchise systems and their international expansion goals.

Moderator: **Larry Weinberg, CFE**, Partner, Cassels Brock & Blackwell LLP

Speakers: **Maral Kilejian**, Partner, Haynes and Boone, LLP; **Craig Prusher**, EVP and Chief Legal Officer, Church's Chicken

Legal and Moral Considerations When Including Social Justice Issues In Brand Positioning and Control

Some businesses, including franchised businesses, have embraced social justice issues in their brand positioning, perhaps more this year than previously. This can be done in advertising, marketing or included in or on the product. Some of these statements or presentations have been considered by part of the public to be overly political or controversial in nature. This could be something as simple as BLM in a restaurant window or the world "Vote" on a branded article of clothing. Or it could be a company or perceived representative of the company making a statement in the context of running a business about countless other issues: political candidates, gun control, or a local issue. What are the legal issues associated with these statements and positions and how do moral and political principles affect them?

The questions that arise depend in part on who is taking or requiring the action. The issues impact on contractual rights, the protection of intellectual property as well as preserving basic rights such as freedom of speech:

- What are the ramifications of such a statement being made by the franchisee without consulting the franchisor? This could include damage control by the franchisor to negative public or media response, as well as actions that the franchisor may consider to control or limit the activity.
- Conversely, what are the ramifications of this position or statement being conveyed (required, recommended, suggested) by the franchisor as a necessary part of the franchisee's activity? These considerations include contractual arguments by franchisees that such statements cannot or should not be required and broader arguments that such a requirement negatively impacts on other rights, including constitutional freedoms.

Speakers: **Carriann Sillman, Esq.**, Vice President, Legal, Realogy Group LLC; **Mackenzie Dimitri**, Associate Attorney, Einbinder & Dunn LLP

Managing Risks in Contracts and Relationships due to COVID-19

COVID-19 has presented new and substantial issues in managing risks, relationships, and contract performance. It has forced franchisors and franchisees to scrutinize indemnification provisions, insurance procurement requirements, and several other contractual provisions of their franchise agreements, leases, and supply chain contracts. This session will provide an overview of relevant indemnification terms and insurance coverages that franchisors and franchisees should consider in managing risks associated with Covid-19, as well as best practices that can be used to ensure such risks are anticipated and properly addressed. This session will also provide insight into the impact of COVID-19 on contractual concepts, such as force majeure clauses and royalty fees, to help guide future drafting and enforcement of franchise contracts.

Moderator: **Richard Brown**, Partner, Saxe Doernberger & Vita

Speakers: **Xiaoyin Cao**, Attorney, Carmen D. Caruso Law Firm; **Ben Jones**, General Counsel, Sola Franchise, LLC

Navigating Distressed Franchisee Issues: Understanding Franchisee Bankruptcies and Exploring Alternatives

Given the impact of the COVID-19 pandemic, distressed franchisee issues (unfortunately) are more relevant than ever. This session reviews the basics of the bankruptcy code and explores key topics every franchise lawyer should know when faced with the possibility of a franchisee bankruptcy – including warning signs, the bankruptcy process, and protection of franchisor interests. We will also explore alternatives to bankruptcy and how to help avert franchisee bankruptcies and closures.

Moderator: **C.J. Harayda**, Partner, Faegre Drinker Biddle & Reath LLP

Speakers: **Glenn Moses**, Shareholder, Genovese Joblove & Battista, P.A.; **Sarah Yatchak**, Vice President, Legal & General Counsel Great Clips, Inc.

Post-COVID Re-opening and Operating Issues

A discussion of hot topics surrounding the re-opening and operating of a franchised business post-COVID, including changes in brand standards to address employee and customer safety concerns, providing products and services in a socially-distanced manner, responding to ever-evolving laws and regulations, obtaining financing, repaying PPP loans, and addressing obligations to third parties, such as landlords and suppliers. We will also discuss how franchisors assisted franchisees through the first year of COVID, including through royalty and ad fund relief, assisting with negotiations with third parties, and/or pausing the enforcement of certain standards, and how to get back to business “as usual” in the new normal.

Moderator: **Amy T. Andrews**, Esq., Senior Corporate Counsel, Focus Brands

Speakers: **Elizabeth Rose**, Partner, Caiola & Rose, LLC; **Robert Rose**, Counsel, Dale Carnegie & Associates, Inc.

Real Estate Issues in the Age of COVID

The pandemic has created challenges and opportunities in real estate. This session will address: assessing lease terms including force majeure, negotiating with landlords on rent abatement and amendments to lease terms, opportunities in new markets, transitioning to smaller footprints and assisting franchisees in analyzing new sites and adjusting new site selection criteria, exercising rights under collateral assignments, franchisor purchasing of real estate and alternative real estate control structures, bankruptcy, closures and other termination considerations, including claims by franchisees against franchisors.

Moderator: TBA

Speakers: **Steve Dunn, CFE**, SVP & Chief Global Development Officer, Denny's; **Chris Mason**, Executive Managing Director, Newmark Knight Frank; **Chad Warpula**, Partner Troutman Pepper Hamilton Sanders LLP

Regulatory Update

A panel of distinguished regulators and practitioners discuss current and future issues in franchise regulation including post-COVID FPRs, ASC 606 Practical Expedient, the use of acknowledgement/compliance questionnaires, the pros and cons of working with franchise brokers, developments in franchise filing procedures including NASAA's EFD and ADA compliance, and more.

Moderator: **Dawn Johnson**, Partner, Greensfelder, Hemker, & Gale, P.C.

Speakers: **Theresa Leets**, Assistant Chief Counsel, California Department of Business Oversight; **Dale Cantone**, Assistant Attorney General, Maryland Attorney General's Office; **Cheryl Mullin**, President, Mullin Rybicki, P.C

Reviewing the FTC Rule: Are Significant Changes in the Making?

On November 10, 2020, the FTC conducted a workshop to discuss potential changes to the Franchise Rule. Many changes are under consideration that may significantly impact the franchisor-franchisee relationship. Our panel, all of who participated in the FTC Workshop, will cover many of those proposed changes including: mandating franchise performance representations; creating a private right of action; the disclosure of franchisor brokers; requiring a summary of the FDD; banning the use of franchise compliance questionnaires; banning integration clauses in franchise agreements; and requiring franchisors to make their FDDs available online.

Moderator: **Suzanne Beall, CFE**, Vice President, Government Relations & Public Policy, IFA

Speakers: **Howard Bundy**, Partner, Bundy & Morrill, Inc., P.S.; **Susan Grueneberg**, Member, Cozen O'Connor; **Christine Todaro**, Attorney, Federal Trade Commission

Supply Chain Disruption in the COVID-19 Era – Planning for Today and Tomorrow

Most franchise systems rely on a network of upstream and downstream supply arrangements, some of which are set out in contracts with varying degrees of rigor. Traditional supply chains continue to be disrupted by dramatic and unpredictable changes in consumer demand and behaviors driven by the COVID-19 pandemic, labour shortages, export restrictions and other protectionist policies introduced by various countries. This workshop will address the broad range of legal and business issues that franchisors and franchisees should consider when assessing and responding to the ongoing impact of the pandemic on their supply chain, as well as when developing a longer range strategy for sourcing supplies and delivering goods and services to end user customers, including:

- how to address allocation of cost and liability for failed contracts;
- assessing the force majeure clause in your current agreements and improving these clauses going forward;
- how to replace or reestablish supply; and
- how to deal with contracts that no longer align with the current facts and actual practices.

Moderator: **Andraya Frith**, Partner, Franchise & Distribution, Osler, Hoskin & Harcourt LLP

Speakers: **Daniel Janssen**, Partner, Quarles & Brady LLP; TBA

System-wide Change in the Time of Covid

Many franchisors were forced “pivot” their business models on account of the pandemic, which has affected profitability, unit performance and franchisee relations in a way no one could have anticipated. Panelist will discuss how their respective systems addressed both the operational and economic challenges in responding to COVID protocols, both good and bad, and will share the lessons they learned over the past 12 months, as well as the outlook of rebounding in 2021.

Moderator: **David Allsman, CFE**, Partner, FisherZucker

Speakers: **Janaki Parmar**, VP and Senior Counsel, Marriott International; **Kyle Smith**, CEO, Nothing Bundt Cakes

System-wide Diversity and Inclusion

A series of recent lawsuits has forced franchisors to confront the question: is there structural discrimination in our franchise system? But good systems know that before reaching that question, they must first answer: do we value and, in fact, implement diverse and inclusive practices? This session takes aim at both questions. First, we explore what standard-bearer brands are doing to ensure diversity and inclusion within the franchise system and how they are encouraging franchisees’ efforts to do the same. Second, we discuss how brands can investigate potential discriminatory practices (for example, in site selection, royalty waivers, extensions, audits, and so on), and we analyze the legal and factual bases for the recent discrimination claims with an eye toward prevention.

Moderator/Speaker: **Aaron-Michael Sapp**, Partner, Cheng Cohen LLC

Speakers: **Melanie Bootes**, Counsel, KFC Corporation; TBA

Ghost Kitchens, Virtual Restaurants, and the Intersection with Franchising

This session will examine the rapid rise in ghost kitchens, virtual restaurants, and other alternative forms of delivery-centric models and their role in and impact on franchises offering food and beverages, including, in particular, restaurant businesses. What are ghost kitchens and virtual restaurants (and variations of those models), how do they operate, and what are the merits and pitfalls for franchise systems introducing them are just a few of the initial questions this workshop will pose. Using those introductory concepts as a foundation, the panel of in-house and external speakers will examine how these new food preparation models may necessitate changes in franchise agreements and impact management of franchise relationships and disclosure obligations, as well as negotiating and forming relationships with these unique operators, regulatory considerations and other issues.

Moderator: **Gaylen Knack, CFE**, Attorney, Lathrop GPM LLP

Speakers: **Ashley Graffeo**, Legal Counsel - Franchise, The Wendy’s Company; **Noah Leszcz**, Associate, Cassels Brock & Blackwell LLP; **Rishi Nigam**, Senior Executive, Franklin Junction

To Terminate or Not to Terminate, That is the Question: Enforcing System Standards in a Post-Covid World

The pandemic has put stress on all types of business systems and franchising is no exception. How should franchisors and franchisees work together (or not) to manage this stress? This session will discuss the challenges facing franchisors and franchisees when evaluating system standards issues in the COVID era and the various solutions systems have employed to work through those challenges.

Moderator: **Frank Sciremammano**, Attorney, Lathrop GPM LLP

Speakers: **Brian Forgas**, Senior Counsel of Development, Hilton Worldwide; **Erin Martin**, Vice President, General Counsel, Little Caesar Enterprises

Zooming to Victory in Remote Franchise Litigation

This program will provide insights and perspectives regarding the legal, practical, and ethical issues in conducting virtual depositions, arbitrations, and hearings. The presentation will focus on the various considerations in presenting evidence, taking testimony, and avoiding technical pitfalls with popular video conference platforms.

Moderator: **Peter Loh**, Partner, Foley & Lardner

Speakers: **Alejandro Brito**, Partner, Zarco, Einhorn, Salkowski, and Brito; **Art Pressman**, Arthur L. Pressman Dispute Resolution Services, LLC; **Sherin Sakr**, General Counsel, WellBiz Brands, Inc

Basics Track

Our Basics Track is designed to provide those who are new to franchising, or those simply in need of a refresher course, a solid foundation in the principles of franchise law. A different topic will be offered during each breakout session time slot.

Basic Track: Franchise Litigation

If a franchise relationship is like a marriage, then divorce is also part of the analogy. Litigation arises when the parties are unable resolve their disagreements by themselves. This session will cover the lifecycle of a franchise action from start to finish. The panel will discuss important procedural considerations, typical claims and defenses, and practical strategies for optimizing your likelihood of success whether in settlement or trial. The topics will include:

- Forum selection and choice of law
- ADR: arbitration and mediation
- Discovery issues
- Motion practice
- Common claims, defenses, and remedies
- Trial themes and strategies
- Settlement considerations
- Legal and practical impact of COVID-19

Speakers: **Stephanie J. Blumstein**, Senior Associate, Einbinder & Dunn LLP; **Maisa Frank**, Partner, Lathrop GPM LLP

Basic Track: Handling Defaults and Terminations

Often considered an administrative process, the management of handling defaults and terminations is anything but. Strategy, relationships and process management are core components of these critical workflows. This session will cover the fundamentals of these workflows and provide practical guidance to reduce risk in a franchise system and to protect the brand.

Moderator: **Jennifer Gross**, Attorney, Cooper & Riesterer, PLC

Speakers: **Scott Kuykendall**, Assistant General Counsel, Neighborly; **David Worthen**, Partner, Plave Koch PLC

Basic Track: International

This International Franchising Basics Track intensive program bridges the annual IFA Legal Symposium and annual IBA/IFA Joint Conference on International Franchising that immediately follows. This co-production leverages the vast international franchising resources that will be in attendance. We invite you to learn the fundamentals from an incredibly knowledgeable group of lawyers and other advisors from the U.S. and around the world as you

prepare to stay for the IBA/IFA Joint Conference scheduled for the next day.

- Assessing a franchisor's readiness for international expansion;
- Selecting the countries for development;
- Deciding on the deal structure;
- Choosing the right franchise partner;
- Key business terms to address;
- Understanding local law and franchise registration / disclosure obligations and trademark requirements.

Moderator: **Kendal Tyre**, Partner, Nixon Peabody

Speakers: **Adam Aberra**, General Counsel, FIVE GUYS® Enterprises, LLC; **Stephanie Zosak**, Associate, DLA Piper LLP (US)

Basics Track: Mergers & Acquisitions

- Overview of the deal process
- Preparing to sell to optimize purchase price
- Valuation metrics
- Buyer's due diligence considerations
- Identifying red flags – Joint Employer/vicarious liabilities, sales violations, supplier issues, data privacy, expansion concerns
- Negotiating key terms of the purchase agreement
- Disclosure considerations – FTC, SEC, franchisees, employees, etc.
- Post-closing integration
- Deal considerations in the COVID era

Moderator: **Carl Hurwitz**, VP & Assistant General Counsel, Marriott International

Speakers: **Michael R. Daigle**, CFE, Partner, Cheng Cohen LLC; **Lucie Guyot**, Counsel, Faegre Baker Daniels LLP

Basic Track: Registration & Disclosure

This session provides an introduction to the federal and state franchise registration and disclosure laws that franchisors must comply with in offering and selling franchises in the United States. The following topics will be covered:

- What are the federal and state laws that regulate the offer and sale of franchises?
- What information must be included in the Franchise Disclosure Document (FDD)?
- What are the timing and delivery requirements for the FDD?
- Which states require registration of the FDD and what is the registration process?
- What exemptions exist for registration and disclosure under federal and state law?
- What are the requirements for amending and renewing the FDD?

Speakers: **Christine Johnson**, General Counsel, Le Duff America; **Kyle Lennox**, Associate, Greenberg Traurig, LLP

Basics Track: Trademarks & IP

Trademarks, copyrights, trade secrets and other IP are the keystone of franchising. This session will discuss the various types of intellectual property; the role they play in franchising; the treatment they receive in the FDD and Franchise Agreement; how they are registered and protected, and how they are enforced against trademark infringers and franchisees who default.

Moderator/Speaker: **Marisa Faunce**, Partner, Plave Koch PLC

Speakers: **Susan Meyers**, Partner, Greensfelder, Hemker & Gale, P.C.; **Kathryn Thomas**, VP & Managing Counsel, Dunkin' Brands, Inc.

BONUS FEATURES

Each year our task force strives to enhance the Legal Symposium experience to deliver real-world solutions and top-of-the-line value to all who attend. Take a look below at some of the highlights we think you'll enjoy at our 53rd Annual Legal Symposium.

BASIC TRACK

Our Basic Track is designed to provide those who are new to franchising, or those simply in need of a refresher course, a solid foundation in the principles of franchise law. A different topic will be offered during each breakout session time slot.

ETHICS COURSE

We are offering one class that will be eligible for ethics credits: Zooming to Victory in Remote Franchise Litigation. See listing on previous pages for full details.

IBA/IFA JOINT CONFERENCE

Do you want to learn more about the current issues facing the international franchise law community? Participate in the 36th Annual IBA/IFA Joint Conference, May 18-19, 2021. Partnering with the International Bar Association's Franchising Committee each year ensures we offer a comprehensive program focused on the latest international franchise law issues. Interactive sessions include a "News from Around the World" update during which expert international franchise law professionals provide a roundup of developments in franchising from some of the world's hottest jurisdictions. By attending the IBA/IFA Joint Conference you will also earn additional CLE and CFE credits. There is a separate fee to participate in this program. More information including how to register will soon be posted on franchise.org/events/2021-ibaifa-joint-conference.

SOCIAL & NETWORKING EVENTS

In addition to premier educational content, one of the most important benefits of participating in the IFA Annual Legal Symposium is the opportunity to build relationships with franchise attorneys and business executives. Several networking events are offered during the program. Take advantage of your time away from the office by joining your colleagues at the following social events where the only thing on the agenda is building your portfolio of contacts in the franchise industry.

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SYMPOSIUM PRE-REGISTRATION

Pre-registration for the Legal Symposium will open in late February.

REGISTRATION FEES

IFA Member: \$375

Non-Member: \$575

WHAT DOES YOUR REGISTRATION FEE INCLUDE?

- Entry into all educational sessions;
- Extensive course materials;
- Networking events
- Symposium registration "opt-in" lists that will be distributed to all attendees and sponsors, and include their names, companies, titles, phone numbers and email addresses.

CLE CREDITS

Your attendance at IFA's Legal Symposium qualifies you for Continuing Legal Education Credits (CLEs) in many states. Details on how to earn credits will be posted on franchise.org/events/2021-legal-symposium.



ICFE CREDITS

You will earn credits toward the completion of the Certified Franchise Executive (CFE) accreditation by attending the IFA's 2021 Annual Legal Symposium.