



2023 LEGAL SYMPOSIUM

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Positioning for a Strategic Transaction: Getting Your House in Order

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Why Start Now?

- What is the brand's potential?
- What are the "If only's"?
- Ownership investment horizon
 - Planned and Promised
 - Trigger Points
 - Founder Fatigue/Loss of Focus
 - Talent Rewards
- Management capability assessment
- Value cycle



Why Now?

- Financial plan and projections
 - Will the brand generate enough free cash flow to sustain growth, with a margin of safety?
 - Is more capital needed to develop or acquire and implement new or improved technology or expand, or finance franchisees?
 - Make or buy?
- Is the brand's business model competitive in its industry?
- What would improve unit margins and drive franchisee financial performance?



To Whom?

- Sell or partner?
 - Who invests in your stage companies?
 - What are the return/time expectations?
 - Does your business model support financial investor goals?
 - Would a strategic partner be preferable?
 - Strategic partner: Become a part of a larger enterprise, with shared resources and costs
 - Supply chain benefits
 - Shared sales organization
 - Sleeping with the enemy?



Preparation

- Rigorous self examination
 - Hire consultants and investment bankers?
 - Objectivity and candor over tradition and history
 - Internal and external confidentiality
 - NDA's for all
 - Staff capability?
 - Records organization and access
 - Data Room



SWOT Analysis

- Two Charts:
 - Consumer/Customer/Competitor Market
 - Franchisee/Franchise Competitor Market
- Internal Factors:
 - Management Team
 - Finances and Financing
 - HR/Talent Evaluation
 - Technology/Tangible Resources
 - Development Pipeline/Openings
 - Growth Markets



SWOT Analysis

- External Factors
 - General Economic conditions
 - Customer Demographics/Psychographics
 - Competition and Market Positioning
 - Tax & Regulatory Factors
 - Uncontrollable business elements
 - Registration State policy and comments/Exemptions



Franchise-Specific Business Factors

- Franchise Sales Force Design
 - Outsourcing v. Insourcing v. Shared with Sister Concepts
 - Coverage growth
- Compliance Culture
 - Franchise Rule compliance – Risk of Rescission
 - Checks and Balances
 - Compensation
 - Renewals and Transfers/Holdovers
 - Waivers & Willful Ignorance
 - Revenue Audits



Franchise-Specific Business Factors

- Record Accuracy
 - Amendments & Deemed Amendments
 - Payment Plans
 - Looking the other way
 - Reporting and Data Access
- Territory Management
- Channel Management
- System Culture
- Enforcement History & Precedent



Changing the Culture

- Casual and friendly to formal and arms-length
- Steer the ship on a new course
 - Transfer – the direction of the new course
 - Advance- how long does the brand continue on the old course
- Course of dealing:

A course of dealing is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.
- Does UCC §2-204 apply between merchants or parties?
- Is the contract terminable at will after reasonable notice?



Changing the Culture

- Improve payment history/frequency
- Shorten Days Receivables
- Is the franchise agreement modified by conduct and ratification?
- Is there a franchise by implicit agreement?
- Enforcing Jurisdiction/venue/jury trial waivers
- Choice of law



Diligence Checks

- List of diligence materials to prepare in advance
- Check assignment clauses and territorial protection
- Understanding negotiated changes
- Rights under form of franchise agreement



Diligence Checks

- Internal controls/checks and balances
- Franchisee defaults
- Quality of Earnings Reports
 - Retain outside expert
 - Mechanical inspection of business model
 - Focus on threats to cash flow and EBITDA
 - The future v. audit's historical focus
 - Supports valuation



Legal Compliance

- FDD Receipts
- Franchise Recruitment Advertising
- Litigation History
- Examiner Comments or Never Registered in Review State?
- Item 19 – written substantiation available or lost to history?



Conclusion

- Rigorous Self Examination Required
- Process Won't Be Instantaneous
 - Start before necessary
 - Practice before the Big Game
 - Like an IPO, may take years to position for max potential
- Process isn't cheap
- Confidentiality critical to success
- Trusted advisors to guide



Thank You

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