

iFA INTERNATIONAL
FRANCHISE
ASSOCIATION

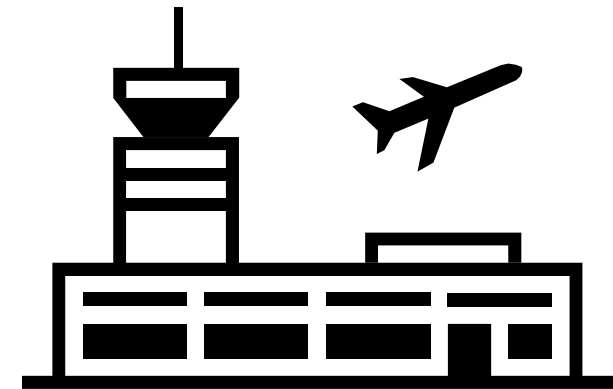
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Welcome

Evolving Models, Expanding Risks: Advanced Legal Strategies and Considerations for Non-Traditional Franchising



Overview

- Defining Non-Traditional
- Turning Prospects into Partners
- Disclosure and Registration Issues
- Franchise Agreement Considerations
- Key Take-Aways for Non-Traditional Growth

Questions for the Audience

NOT NEGOTIABLE

Non-Traditional Venues

Models encompass a large, diverse group of segments/channels:

- ▶ Transportation Hubs: airports, railroad terminals, travel plazas
- ▶ College and university campuses
- ▶ Entertainment: casinos, theaters, malls, stadiums, theme parks, hotels, athletic facilities
- ▶ Government: military bases
- ▶ Healthcare: hospitals and medical centers
- ▶ Office (B&I): office buildings, convention centers, factories

Size of the Prize

The global non-traditional marketplace is **\$300+ Billion** annually

- Primary players (primes) focus on these venues:
 - Airports: Host/Avolta, SSP, Areas, CI, Mera
 - Campus: Aramark, Sodexo, Compass Group, Self-Operated
 - Military: AAFES, NEXCOM, direct deals

They do not control 100% of the available real estate – individual opportunities exists

Development Opportunities - Why Pursue?

Non-traditional locations increase brand awareness and grow sales

- ❖ Locations become available in many segments as channels rebrand every 5-10 years
- ❖ Shift in captive environments
- ❖ Customers want recognizable brands they frequent already
- ❖ Consumer expectations in these venues has changed
- ❖ Smaller offerings have been pioneered by prior concepts
- ❖ Access to high-profile or difficult to access sites

Pros & Cons of Non-Trad Development

BENEFITS

- Great visibility
- Captive audience
- Brand awareness
- Commands higher pricing
- Higher sales volumes
(average 2-5x higher)

CHALLENGES

- Modified agreements
- Operationally complex
- Tri-Party arrangements
- Barriers to entry (RFPs)
- Limited terms

Qualifying Non-Traditional Franchisees

- Franchisors set the qualification standards to become a franchisee in the system
- They can be modified internally depending on the circumstances and business reasonableness

Exemptions and Exclusions

Does the relationship fit within the definition of a “franchise”?

Under the FTC Rule:

- Use of franchisor’s trademark
- Franchisor has authority to control method of operation
- Franchisee makes required payment

Exemptions and Exclusions

Federal Exemptions and Exclusions:

- Fractional Franchise
 - Two years experience
 - Sales from franchise relationship will not exceed 20% of franchisee's total sales during first year of operation

Exemptions and Exclusions

Federal Exemptions and Exclusions:

- Large Investment
 - Initial investment exceeds \$1,469,600
 - Prospective franchisee signs acknowledgment
 - One individual in investment group must invest threshold amount

Exemptions and Exclusions

Federal Exemptions and Exclusions:

- Sophisticated Franchisee
 - Franchisee (or parent or affiliate) has been in business at least 5 years
 - Net worth of at least \$7,348,000

Documenting Legal Risk

The exemption upon which the franchisor intends to rely will determine the scope of information the franchisor will need to obtain from the franchisee

- ❖ Due Diligence
- ❖ Documentation
- ❖ Franchise Disclosure Document
- ❖ Regulatory Friction Points

Franchise Agreement Provisions and Operating Model Requirements that May Require Modification

- ❖ Hours of Operation
- ❖ Lease/Property Requirements
- ❖ Personal Guarantee
- ❖ Territorial Protection
- ❖ Supply Chain
- ❖ Operational Involvement
- ❖ Pricing Matters
- ❖ Workforce Issues
- ❖ Vendor Restrictions
- ❖ Non-Competition
- ❖ POS System
- ❖ Termination
- ❖ Others?

Rules of Engagement

- ✓ Gain internal alignment to pursue the opportunity
- ✓ Define the core pillars (non-negotiables) of the brand
- ✓ Understand who you're negotiating with
 - Non-traditional counterparties are unique in terms of leverage, sophistication, and operational complexity
- ✓ Be prepared for flexibility
 - Pursuit of coveted non-traditional locations may require adjustments to the contract or operations, even for brands that do not typically negotiate with counterparties

Revisit Non-Negotiables



Q & A - Speakers

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