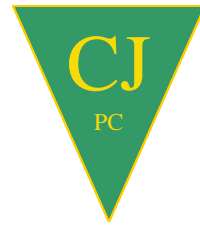


Coleman Jackson, P.C.

A Professional Legal Services Corporation

Attorney And Counselor At Law



Fax: (469) 574-7808

740 East Campbell Road, Suite 900
Richardson, Texas 75081

Phone: (972) 680-5118

E:cj@cjacksonlaw.com

Legal Aspects of Franchising: **What I Need to Know Before Signing on the Dotted Line**

- I. Franchise Agreement- This is a legal contract that is intended to structure and document the relationship between the franchisor and the franchisee.
- II. Disclosure laws have been enacted to ensure that a prospective franchisee is provided essential information about a franchise business, the franchise contract, the relationship of the parties, and the prior business experience of the franchisor. Effective July 1, 2008, Disclosure Requirements And Prohibitions Concerning Franchising (FTC Rule) establishes the mandatory disclosure obligations imposed on all Franchisors selling franchise opportunities to be operated within the United States. [Prior to this date, for the most part, franchisors elected to comply with the UFOC Guidelines administered by the North American Securities Administrators Association, Inc. (NASAA).]
- III. Franchise Disclosure Document Requirements under the FTC Rule- Franchisor must supply prospective Franchisee with a copy of the franchisor's current disclosure document at least 14 calendar days before the prospective franchisee signs a binding agreement with, or make any payment to, the franchisor with the proposed franchise sale.
- IV. FTC Rule- Mandatory Disclosures- The Disclosure Document:
 1. The Franchisor and any Parents, Predecessors, and Affiliates
 2. Business Experience
 3. Litigation
 4. Bankruptcy
 5. Initial Fees (fees due and payable prior to opening the franchisee business)
 6. Other Fees, e.g. lease, construction, etc.

"Legal Aspects of Franchising:
What I Need to Know Before Signing on the Dotted Line"

Presented By: Coleman Jackson, Attorney & Counselor At Law
IFA 2008 Dallas Franchise Opportunities For Women & Minorities
Seminar/

Coleman Jackson, P.C. / 740 E. Campbell Rd, Ste 900, Richardson, TX 75081 Page 1
Tele: (972) 680-5118/ EM: cj@cjacksonlaw.com

7. Estimated Initial Investment
8. Restrictions on Sources of Products and Services
9. Franchisee's Obligations
10. Financing
11. Franchisor's Assistance, Advertising, Computer Systems, and Training
12. Territory

13. Trademarks
14. Patents, Copyrights, and Proprietary Information
15. Obligations to Participate in the Actual Operation of the Franchise Business
16. Restrictions on what the Franchisee may sell
17. Renewal, Termination, Transfer, and Dispute Resolution
18. Public Figures
19. Financial Performance Representations
20. Outlets and Franchisee Information
21. Financial Statements
22. Contracts
23. Receipts
24. Franchise Agreement (must be attached to the FTC Disclosure Document)
25. Franchise Relationship (Mandatory Disclosures)-
 - a. Length of the franchise term
 - b. Renewal or extension of the term
 - c. Requirements for franchisee to renew or extend
 - d. Termination by franchisee
 - e. Termination by franchisor without cause
 - f. Termination by franchisor with cause
 - g. "Cause" defined- curable defaults
 - h. "Cause" defined- non curable defaults
 - i. Franchisee's obligations on termination/non-renewal
 - j. Assignment of contract by franchisor
 - k. "Transfer" by franchisee- defined
 - l. Franchisor approval of transfer by franchisee
 - m. Conditions for franchisor approval of transfer
 - n. Franchisor's right of first refusal to acquire franchisee's business
 - o. Franchisor's option to purchase franchisee's business
 - p. Death or disability of franchisee
 - q. Non-competition covenants during the term of the franchise
 - r. Non-competition covenants after the franchise is terminated or expires

"Legal Aspects of Franchising:
What I Need to Know Before Signing on the Dotted Line"

Presented By: Coleman Jackson, Attorney & Counselor At Law
IFA 2008 Dallas Franchise Opportunities For Women & Minorities
Seminar/

Coleman Jackson, P.C. / 740 E. Campbell Rd, Ste 900, Richardson, TX 75081 Page 2
Tele: (972) 680-5118/ EM: cj@cjsonlaw.com

- s. Modification of the agreement
 - t. Integration/merger clause
 - u. Dispute resolution by arbitration or mediation
 - v. Choice of forum (where legal action must filed, i.e., which State)
 - w. Choice of law (what State's law applies to disputes interpreting the franchise agreement and/or franchise relationship)
- V. Exemptions from FTC Rule's Disclosure Requirements-
- a. Payments of less than \$500
 - b. Fractional franchise
 - c. Leased Departments
 - d. Petroleum Marketing Practices Act, 15 U.S. C. 2801 applies to the franchise relationship
 - e. \$1,000,000 Initial Franchise Investment or Franchisee has been in business for at least 5 years and has a net worth of \$5 million
 - f. One or more purchasers of at least 50% interest within 60 days of franchise sale had been an officer, general partner or individual with management responsibility within two years of the franchise sale.
 - g. No written documents that describes any material term or aspect of the relationship or arrangement, i.e. a handshake.
 - h. General Partnership Agreements
- VI. DUE DILIGENCE IS A MUST: What You Must Know Before Signing on the Dotted Line--
- 1. A wise prospective franchisee will not enter into any franchise agreement without consulting a lawyer
 - 2. Who Are You: your background, education, experiences, financial resources, goals and long term plans
 - 3. What Do You Know About the Franchise Business: "The Franchise Miranda Warning"
 - 4. What Is Your Game Plan (Due Diligence Strategy)
 - a. Review the Franchise Contract
 - b. Deconstruct the FTC Rule Disclosure Circular
 - c. Visit with Other Franchisees
 - d. Contact the Better Business Bureau (Does the brand enjoy a good reputation and favorable "business experience rating)
 - e. Review SEC filings
 - f. Comparable shopping
 - g. Dun & Bradstreet credit report on the franchisor

"Legal Aspects of Franchising:
What I Need to Know Before Signing on the Dotted Line"

Presented By: Coleman Jackson, Attorney & Counselor At Law
IFA 2008 Dallas Franchise Opportunities For Women & Minorities
Seminar/

Coleman Jackson, P.C. / 740 E. Campbell Rd, Ste 900, Richardson, TX 75081 Page 3
Tele: (972) 680-5118/ EM: cj@cjsonlaw.com

- h. American Franchisee Association, Chicago, Illinois (312) 431-0545
- i. International Franchise Association, Washington, D.C. (202) 628 - 8000/ www.franchise.org
- j. Explore Negotiability of the Franchise Agreement
- k. Explore Alternatives to franchising

VII. LITIGATION, ARBITRATION AND MEDIATION- Rocking the Boat

- 1. First you must know that the case law has not been very kind to franchisees – probable reason is that generally the franchise agreement is drafted by the franchisor’s lawyers and is tilted in favor of the franchisor and courts are disposed to enforce contracts as they are written
- 2. FTC Rule is merely a disclosure rule and does not provide a private right of action
- 3. 19 States have statutes regulating the franchise relationship (these statutes vary from state to state.) After July 1, 2008, state statutes will be preempted to the extent they provide less protection than the FTC Rule. The state statutes can provide more protection to the franchisee than the FTC Rule, but they cannot provide less protection. The FTC Rule does not outright preempt any state law.
- 4. Franchise Business Opportunity Act, and the Texas Deceptive Trade Practices Act applies to the sale of franchises in Texas
- 5. Common Law Protections
 - a. Common law fraud
 - b. Breach of Contract
- 6. Arbitration and Mediation may help preserve the business relationship while resolving disputes. Note: Franchise Relationships are typically intended to be long-term relationships and litigation tend to destroy business relationships
- 7. System Wide Discontent Actions
 - a. Franchisee Associations
 - b. Named Plaintiffs

VIII: With Proper Due Diligence Prior To Signing On the Dotted Line Franchising Can Be an Excellent Way to Go Into Business for Yourself But Not By Yourself!

“Legal Aspects of Franchising:
What I Need to Know Before Signing on the Dotted Line”

Presented By: Coleman Jackson, Attorney & Counselor At Law
IFA 2008 Dallas Franchise Opportunities For Women & Minorities
Seminar/

Coleman Jackson, P.C. / 740 E. Campbell Rd, Ste 900, Richardson, TX 75081 Page 4
Tele: (972) 680-5118/ EM: cj@cjsonlaw.com