

U.S. Franchising

Ryan, Swanson & Cleveland, PLLC has enjoyed one of the largest and most experienced franchise and distribution law practices in the Northwest for several decades. Our firm has represented franchises through every phase of the franchise process (from initial concept to fully developed systems), including trademark licenses, area development strategies, purchase and sale agreements, international expansion, franchisee councils and cooperatives, and co-branding agreements. We have filed for franchise registrations and exemptions throughout the U.S. (and foreign countries) for both new and established concepts, on both a state-by-state basis and a multiple-state Coordinated Review basis. We can meet your franchising and licensing needs without any learning curve.

FREE REVIEW OFFER

- These free reviews can help you know if we are a good fit for your company and how your company can grow and protect itself.
- We will provide you with a franchise feasibility study (regarding structure, franchise fees, royalties, intellectual property protection, capitalization, etc.) to see if you meet the desired criteria for franchise success.
- If you are an established franchise, we will review your offering circular and agreements and can guarantee we will make recommendations for improvements and protections.

BACKGROUND

1. What is a franchise?

You are a franchise if:

- a. System. You grant another the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system;
- b. Trademark. They operate the business with your trademark; and
- c. Fee. They pay you a fee.

The state courts have given broad application to these definitions and where there is a trademark being utilized and some type of a system or look, you generally are a franchise no matter how you characterize your organization.

2. Does franchising make sense for your business? Should you franchise?

Franchising is an excellent method for the distribution of products and services for a business which:

- a. Is capital intensive or management intensive (you need to raise money to expand or you need managers for expansion);
- b. Has profit margins sufficient to support an additional entity, the franchisee; and
- c. Can provide valuable services the franchisee cannot obtain independently (collective buying power, proven expertise or brand recognition).

In short, franchising is really used as a financing device and a method for obtaining expansion management talent. It is not a “get-rich-quick” scheme. If your company has sufficient capital and trained managers, you can achieve higher margins through company-operated stores versus franchise royalties.

3. You have decided to franchise, now what are the U.S. franchise registration requirements?

- U.S. Federal Trade Commission (“FTC”) Requirements. The FTC requires all franchisors, even if exempt from state registration, to comply with federal pre-sale disclosure requirements, thus necessitating the preparation and delivery of a Franchise Disclosure Document in a mandated format including the franchise agreement and various audited financials. Accounting costs for these financials often exceed the legal fees for the documents, but we can help you minimize these audit costs through proven strategies. There is no U.S. federal registration requirement. The federally-mandated disclosure documents



Lawyers since 1897

Ryan, Swanson & Cleveland, PLLC
1201 Third Avenue, Suite 3400
Seattle, WA 98101-3034

www.ryanswansonlaw.com

need to be presented to a prospective franchisee and a receipt signed long before any agreements are signed.

- **State Requirements.** In addition to FTC compliance, many states also require special disclosure formats, compliance with relationship laws, and state registration (or exemption filings). Penalties for non-compliance include rescission, damages and criminal liability. Registration is often an involved process and may include the establishment of an escrow account for initial franchise fees until the franchisor has performed its pre-opening duties. Our firm has extensive experience in these registrations and in how best to obtain quick and uncomplicated approval. We have filed nationwide on many occasions and know most of the examiners.
- **Business Opportunity Requirements.** Even if you are or are not a franchise as defined by statute, the trap for the unwary is that you may still have to register as a “business opportunity.” Almost all franchise-like entities also qualify as business opportunities and many states require a separate registration or exemption for qualifying entities.

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Please contact Kevin J. Collette at 206.654.2252 for more information on franchising or on arranging a free review of your system. We perform our franchising work on either an hourly or fixed-fee basis.

4. How can we help you?

Representing franchisors involves a variety of legal questions such as employment law, protection of intellectual property, corporate and tax strategies, real estate leasing, immigration, anti-trust law, advertising law, and lending. Our firm’s experience and breadth will provide you an advantage in dealing with the variety of legal issues. Our firm is a member of the American Bar Association Forum on Franchising and the Supplier Forum of the International Franchise Association. One of our attorneys, Kevin J. Collette, is one of only a few attorneys who have received the Certified Franchise Executive designation, and our attorneys have spoken on franchising and licensing topics at numerous seminars. We are also members of an international association of attorneys and have affiliates or associates throughout the world.