



Guiding You Through the Legal Maze.™

SUCCESSFUL FRANCHISEE ASSOCIATIONS

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I. Legal Issues in Forming and Operating an Independent Franchisee Association

A. Franchisees' Right to Organize

1. U.S. and State Constitutions - right to freely assemble
right to free speech

2. Ten states have specific laws making it unlawful for a franchisor to prohibit or restrict a franchisee from joining an independent franchisee association.

Arkansas	Michigan
California	Minnesota
Hawaii	Nebraska
Illinois	New Jersey
Iowa	Washington

3. Anti-discrimination laws can be triggered if the franchisor discriminates against a franchisee association member or the franchisee association itself, for example, Hawaii, Illinois, Indiana and Washington.

4. Violation of the implied covenant of good faith and fair dealing.

(a) In *Dunafon v. Taco Bell Corp.*, CCH Bus. Fran. Guide ¶ 10,919 (W.D. Mo. 1996), a franchisor's refusal to grant to a franchisee another franchise because of the franchisee's leadership in an independent franchisee association violated the implied covenant of good faith and fair dealing.

(b) Arkansas and Washington statutes

5. Fair Franchising Standards:

(a) STANDARD 2.4 RIGHT OF ASSOCIATION. A franchisor should recognize and avoid interference with a franchisee's right to freely associate and participate in an independent franchisee association.

(b) STANDARD 2.6 RIGHT TO ASSOCIATE WITH OTHER ASSOCIATIONS. A franchisee association may enroll in a larger association which may encompass other associations.

B. Entity Formation--Minimizing Personal Liability

1. Unincorporated Association

2. Trademark Specific Chapter of AAFD

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3. For Profit Corporation
4. Non-Profit Corporation
5. Limited Liability Company
6. Name of franchisee association

(a) In *International Association of Independent Subway Franchisees v. Doctor's Associates, Inc.*, the franchisee association sued the franchisor for a declaratory judgment that the association could use Subway's trade name and colors as part of its corporate name. After mediation, the case was settled with the franchisor agreeing to allow the franchisees to use the "Subway" trade name as part of its name and the association agreed not to use the same colors and to add a disclaimer that the franchisor does not endorse or approve of the franchisee association.

(b) Fair Use Doctrine

(c) Fair Franchising Standards:

STANDARD 2.5 RIGHT TO USE FRANCHISOR'S TRADE NAME. The franchisee association may use the franchisor's trade name in the title of the association.

(d) Levrac

C. Functions of an Independent Franchisee Association

1. Facilitate communications among members
2. Provide cooperative services
 - (a) Purchasing (best to have separate cooperative)
 - (b) Advertising
 - (c) Insurance
 - (d) Accounting
 - (e) Legal (AAFD's LegaLine)
 - (f) Financing

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3. Dealings with the Franchisor
 - (a) Operational Issues
 - (1) Guidelines and Standards
 - (2) Purchasing--Sources of Supply
 - (3) Products and Specifications
 - (4) Advertising and Promotion
 - (5) Research and Development--new product testing and introduction
 - (b) Contractual Issues
 - (1) Collective negotiation of renewal franchise agreements
 - (2) Fair Franchising Standards:

STANDARD 2.7 RIGHT TO COLLECTIVELY BARGAIN.
Upon the request of either party, both a franchisor and a franchisee association will agree to jointly negotiate solutions to problems, opportunities and agreements between the parties.
 - (c) System-Wide Dispute Resolution
 - (1) Mediation
 - (i) Contractual Provision--no group or class mediation
 - (ii) National Franchise Mediation Program
 - (III) AAFD Initiative
 - (2) Arbitration
 - (i) Contractual Provision
 - (ii) No Group or Class Arbitration
 - (iii) AAFD Initiative
 - (iv) Fair Franchising Standards 14.2

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(3) Litigation

(i) Class action by members

(ii) Group action by members

(iii) Action by Association (Standing Issue)

4. Unlawful Activities

(a) Price Fixing

(b) Group Boycotts

(c) Concerted Refusal to Deal

(d) Certain political activities

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