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FRANCHISING REPORT

NEW FTC RULE PUTS PARENT COMPANIES AT RISK OF HAVING TO PROVIDE FINANCIAL INFORMATION FOR ITS FRANCHISOR

AUGUST 2007

Although franchisors are not required to comply with the new FTC rule until July 1, 2008, certain planning steps should be considered now, particularly with respect to new requirements for disclosure of the financial information of the franchisor's parent company. Franchisors frequently establish separate entities to handle their franchise activities. Under the old FTC rule, in most cases, the franchisor was only required to provide its own audited financials statements. However, the new FTC rule now requires a franchisor to include audited financial statements of parent company when the parent commits to perform post-sale obligations for the franchisor or when franchisor's parent guarantees or assumes the franchisor's obligation to provide goods or services to franchisees. As a result, if a franchisor is obligated to provide goods and services and the parent assumes that responsibility, or if the franchisor arranges for the parent to provide goods and services directly to franchisees on its behalf, the parent's financials must be disclosed.

On the other hand, if a parent happens to supply goods or services to franchisees where there is no obligation on the part of the franchisor to do so, the parent is considered to be no different from any other third-party supplier and its financials need not be disclosed. Likewise, if the parent company is merely providing administrative and other back-office type services for the franchisor's internal purposes, the parent's financial statements will not have to be included in the UFOC.

The new FTC rule only addresses situations where the parent provides services. It does not mention affiliates or other related entities, so conceivably, an affiliate that provides services to the franchisor's affiliates will not have to provide financial statements. However, since the new FTC rule is so new, we cannot predict how it will be interpreted under various situations. At the present time, it is unclear what level of services a parent must commit to before it would be required to furnish it's financial statements.

PLANNING TIPS

Here are some planning tips for the franchisor who does not want to provide audited financials of its parent company:

- The parent can supply goods or services to franchisees, but it should not be obligated to do so. Ideally, franchisees should be able to obtain those goods and services from third-party sources other than the franchisor's parent.

- The parent can provide administrative and back-office services to the franchisor.

- The parent should avoid taking on substantial obligations on behalf of the franchisor, such as providing training and support services for franchisees.

- In a perfect world, it would be best for the franchisor to provide the substantial services to its franchisees. However, if is unable to do so, it would be best to have them provided by an "affiliate" (ie., brother sister company), rather than a "parent".

- Any agreements between the franchisor and it's parent should be carefully reviewed. In particular, such agreements and the UFOC should not be drafted in a way that would result in a franchisee relying on an assurance of the parent that the parent will be obligated to perform services for the franchisee.

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FRANCHISING

We provide comprehensive assistance to our emerging and established franchisor clients in all areas of franchise development and expansion including regulatory compliance and audit issues; trademark, licensing, patent and other intellectual property issues; multi-state development and regulatory compliance issues; co-branding and alternative channel of distribution issues; exclusive and non-exclusive supply, distribution, royalty and commission issues and agreements; and Uniform Franchise Offering Circular preparation, revision and registration.

We also assist single and multi-unit franchisees of national and international franchisors with due diligence issues, document review, negotiations, rights of first refusal and multi market franchise and development areas, organizational issues, financing issues, franchise litigation issues. Our Corporate Practice Group also assists our franchising and distribution clients in structuring, negotiating and documenting financing arrangements for specific projects, their businesses and operations generally, with product development, testing and registration issues and e-commerce transactions, and providing litigation and IP support to the Firm's litigation and IP groups.

As our clients' businesses mature, we address their ongoing borrowing and capital needs, as well as their business operational needs. Our clients frequently involve us in their day-to-day business activities, consulting with regard to a wide variety of legal concerns, including supply and distribution matters; equipment acquisitions; real estate leases, purchases and sales; facilities expansions; employment and executive compensation arrangements; employee benefit planning; information and technology matters; marketing and advertising issues; mergers, acquisitions and divestitures; and business valuation; just to name a few. Where appropriate, we collaborate with attorneys in other Greensfelder Practice Groups to provide particular expertise in a field.

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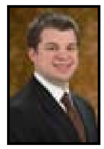

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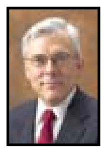

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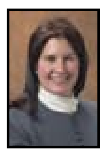

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