

QUICK TAKE

- A franchise purchase should be based solely on written representation.
- Adding specific clauses to an agreement can offer protection.



FRANCHISORS
LOOK CLOSELY

HOW TO AVOID FRANCHISE FRAUD CLAIMS

Want to make sure a frustrated, failing franchisee won't come back to bite you? Carefully crafted agreements and a well-planned sales process can help protect you against future claims of misrepresentation.

Whether based on state franchise law, deceptive trade practice acts, or the Federal Trade Commission's disclosure rules, claims of franchise fraud share one basic ingredient: an allegation of false representation or omission.

Misrepresentation can take two forms—intentional or negligent.

To claim intentional misrepresentation, franchisees must prove that a franchisor made a material false representation of a past or present fact, in reckless disregard for its falsity and with the intention to deceive—and the franchisee reasonably relied upon it.

Negligent misrepresentation is said to occur when a franchisor, under duty or relationship with a franchisee to give correct information, instead provided a false representation that it should have recognized was incorrect, knowing that the franchisee would reasonably rely upon and act on that information.

In either case, to succeed as grounds for a fraud claim, the misrepresentation must cause factual injury, damage, or loss.

But, as with most troubles in life, prevention is the best cure. And that means paying attention to all the details at the front end, when franchise agreements and franchise disclosure documents are prepared.

Here are some helpful ideas:

INCLUDE MERGER AND INTEGRATION CLAUSES

These provide that the franchise contract contains the entire agreement between franchisor and franchisee and excludes all prior understandings and representations. Courts are split on whether or not the presence of a merger and integration clause alone will defeat a franchise fraud claim. Generally, something more than a boilerplate integration clause is required.

FOR BETTER PROTECTION, ADD A NO-RELIANCE CLAUSE

No-representation or no-reliance clauses state that the parties have not relied upon any oral statements made before entering into the written agreement.

Continued on back page



We're Expanding North of the Border



Miller Canfield's Canadian practice is growing, thanks to a recent merger with Toronto firm Gaertner Tobin LLP.

Partnering with the firm—whose primary practice areas include business law, commercial and retail leasing, real estate, immigration, labor, and litigation—enhances the scope of legal services to our Canadian and U.S. clients, and those throughout the world.

A perfect fit, the merger makes it easier to provide integrated legal services, address a broad range of complex issues, and tap the impressive experience of the 10 lawyers joining Miller Canfield, including principals Arie Gaertner and Dennis Tobin. The Toronto office number is 416.599.7700.



Arie Gaertner



Dennis Tobin

MILLER CANFIELD

150 West Jefferson, Suite 2500
Detroit, Michigan 48226-4415

RETURN SERVICE REQUESTED

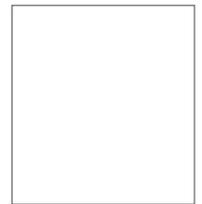
Franchisors look closely – continued from page 7

Explicit disclaimers—such as an express statement that the franchisor or its agent made no representations other than contained in the written agreements and the franchise disclosure documents—will make future fraud claims by a franchisee unreasonable. It's important that information relating to sales, costs, income, or profit include a prominent notice that actual results will vary from franchise to franchise.

TO SUMMARIZE

Make sure your franchise disclosure document is well-researched, up-to-date, truthful, and thorough. Check to see if merger, integration and no-reliance clauses are included in your franchise agreement. Consider requiring your franchisee to acknowledge that the franchise was purchased based upon only written, well-documented representations. Then call us. We'd like to help you be reasonably confident that you won't invite claims for fraudulent misrepresentation.

Editor's Note: *P. Rivka Schochet has been recognized as a Certified Franchise Executive by the Institute of Certified Franchise Executives. She serves as chair of the International Franchise Association Women's Franchise Network of Southeast Michigan.*



MICHIGAN

Detroit
313.963.6420

Ann Arbor
734.663.2445

Grand Rapids
616.454.8656

Kalamazoo
269.381.7030

Lansing
517.487.2070

Saginaw
989.791.4646

Troy
248.879.2000

ILLINOIS

Chicago
312.460.4200

FLORIDA

Naples
231.596.1975

NEW YORK

New York
212.704.4400

ONTARIO

Toronto
416.599.7700

Windsor
519.977.1555

POLAND

Gdynia
+48.58.782.0050

Warsaw
+48.22.447.4300

Wroclaw
+48.71.337.6700

CHINA

Shanghai
+86.21.6103.7000

MEXICO

Monterrey
+52.81.8335.0011



QUESTIONS,
COMMENTS AND
TO SIGN UP FOR
E-HOT POINTS:

silkworth@millercanfield.com

millercanfield.com