



FRA((N))EWS

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Insights Into The Legal Aspects Of Franchising

“Franchising, a popular and a fast growing concept, has made a remarkable place amongst the masses. Its presence, now-a-days, is so strongly felt that if an individual needs to start a business venture, his mind cannot escape considering Franchising as one of the high performance based “options”. Despite the benefits and advantages it offers, it is hard to believe that there is no specific legislation or rules applicable to franchising as yet. Indian Law does not define franchising and hence the arrangement is governed primarily by the “Law of Contract”. Following are some Statutes, Rules & Regulations that are indispensable to the existence of a franchise agreement and setting up of a franchise business.”



1. Law of Contract: According to the Indian Contract Act, 1872 every franchising relationship is a contractual relationship and thus enforceable by law. Although every contract need not be in writing, it is always advisable to have a formal and written Franchise Agreement to precisely lay down the rights and obligations of the franchisor and franchisee. This would help resolve any future deadlocks and disputes.

In this issue, we would bring you the following details:

	Page
Insights Into The Legal Aspects Of Franchising	01-03
From the Chairman'S Desk	04
Obligations Of A Franchisor & A Franchisee To Follow In A Franchise Agreement	05-06
Fran Buzz	07-08
Hot Opportunity of the Month	09
An exclusive interview with J.S.Bhalla, CEO & MD of Cocoberry	10-11
About IFA	12

INSIGHTS INTO THE LEGAL ASPECTS OF FRANCHISING

2. Intellectual Property Rights Law: Since all the franchise agreements involve some form of transfer of intellectual property, it is imperative to have an understanding of the issues related to the laws protecting the Intellectual Property Rights. For example, the franchisee should make sure that he, with its actions or inactions, does not dilute the brand and goodwill associated with the trademark. Similarly, the franchisee must not divulge any confidential information regarding the trade secrets & know-how during or even post termination of the franchise agreement. Post term use of trademarks and misuse of the rights are also few important issues that should be kept in mind.

3. Consumer Protection: Complaints and legal action from consumers is a potential issue that both the parties in a franchise agreement must keep in mind. For example, under the Consumer protection Act, 1986, a consumer can hold the franchisor or the franchisee liable for any defective goods/service supplied by the franchisee. This Act is of vital significance for an F & B franchise business. It may also be possible for a franchisee to act in the capacity of a consumer and sue the franchisor on the above mentioned grounds. Thus, provisions to minimize these liabilities arising due to such risks should be properly documented in the franchise agreement.

4. Foreign Remittances: Foreign Exchange Management Act (FEMA) 2000 and the regulations of RBI come into the picture when it is the matter of FDI and one party is a foreign entity. The confluence of the two then govern the terms of payment such as franchise fee, management fee, royalty for use of trademarks and systems, training expenses, advertisement contribution etc. These can be remitted to the foreign franchisor without any approval provided the appropriate nomenclature is used to denote such payments.

5. Taxation: The franchisor's income in the form of royalties or franchise fees is treated and taxed under the Income Tax Act 1961 and is subjected to tax deduction at the applicable rates. This applies irrespective of the fact whether a franchisor is a Foreign or an Indian entity. Similarly, the taxes such as local sales tax, property tax or withholding tax vary from region to region. Nevertheless, a lot depends on how the franchise agreement is structured and the treaties that exist between the countries.



6. Competition Act: With the advent of globalization and liberalization in 1991, Competition Act as amended in 2007, shifted its focus from curbing monopolies to promoting healthy competition. The provisions in respect to anti-competitive agreements and abuse of dominant positions thus came into effect. The Competition Act basically prohibits any arrangement/activity with respect to production, supply, distribution, storage or acquisition that causes or likely to cause an appreciable adverse affect on competition within India. Following are the arrangements that could affect the healthy spirit of competition:

- Directly or indirectly determines the purchase or sale price;
- Limits or controls production, supply, markets, technical development, investment or provision of services;

INSIGHTS INTO THE LEGAL ASPECTS OF FRANCHISING

- Shares the market or source of production or provision of services by way of allocation of geographical areas of the market, or type of goods or services, or number of customers in the market or in any other similar way;
- Directly or indirectly results in bid rigging or collusive bidding;

7. Tortious Liability: Any act by the franchisor or franchisee which caused harm to any person or property is actionable under the law of Torts. A tortious liability could arise in a franchise agreement in the case of Negligence and Vicarious liability.

8. Labour Laws: Labour Laws are essential in franchising in relation to the number of outlets or offices where employees are recruited. Even the franchise agreement cannot derogate the applicability of the labour laws, whether it is mentioned or not. The Labour Laws comprise a number of Acts, which a domestic or foreign franchisor must know before taking up the franchise route to expand the business.

Some of the Acts are Apprentices Act, 1961; Contract Labour Act, 1970; Employees Provident Fund and Miscellaneous Provision Act, 1952 etc.

9. Property Laws: Laws affecting the real estate and leasehold property form an essential part of franchising. It is necessary to carefully evaluate the property laws and determine that whether the franchising scheme is possible or not.

10. Weights & Measures: The Standards of Weights and Measures Act, 1976 and the rules under it come into effect if the franchise arrangement deals with the sale or distribution of goods by weight, measure or number. This would connote that under the Act mentioned above, all the commodities which are to be sold in packages must conform to certain standards and each package must have certain declarations. Thus, depending upon the nature of the franchise business, both the parties have to comply to these laws.



FROM THE CHAIRMAN'S DESK

BREAKING BOUNDARIES IN 2011



Gaurav Marya,
Chairman, IFA

Dear Friends,

Let me take this opportunity to introduce you to IFA's Newsletter - Fra(n)ews. With Fra(n)ews, we aim to bring forth the latest developments taking place in the franchise sector, thereby increasing awareness in the franchise community. This newsletter would also act as a platform for all the start-ups as well as established brands, to showcase the business potential and seek potential franchisee's attention.

It's my sincere hope that Fra(n)ews would successfully help in disseminating franchise knowledge to the entire franchise fraternity. In addition, I strongly believe that it would assist franchisors in reaching out to their potential investors, and in turn aid the aspiring entrepreneurs to get their desired brands.

Gaurav Marya
Chairman | Indian Franchise Association(IFA)

OBLIGATIONS OF A FRANCHISOR & A FRANCHISEE TO FOLLOW IN A FRANCHISE AGREEMENT



A franchise agreement is a legal document that comprises the rights and obligations of the franchisor and the franchisees. It is an official arrangement that binds both the parties together. Any act outside the prescription of the agreement would be considered an attempt of breach of the agreement. Hence it is exceedingly important for both the parties to adhere to the obligations mentioned in the franchise agreement in spirit. Some of the obligations that both the parties should follow are:



Obligations of the Franchisee:

- 1. Services to be provided:** The agreement must lucidly lay down the duties and services that a franchisee is expected to render. If possible, a separate schedule could be attached to the agreement for seeking more clarity.
- 2. Minimum Investment and Infrastructure:** The franchisee has to make certain amount of initial investment to set up a franchise business. Together with this, he may also have to include additional or specific equipments on being particularly asked by the franchisor.
- 3. Location of the franchise outlet:** The location of a franchise outlet should be decided with the prior consent of the franchisor. The reason being that the success or failure of a franchise business depends a lot on the positioning of the outlet. The franchisee, in the agreement, could also be obligated from not starting any competing business in the same area or location after the termination of the agreement.

4. Operating Manual: The franchisor can also provide a franchisee a "Manual" that would help the franchisee in performing his obligations. This could contain information on property specification, the layout of the franchise outlet, hiring policy that needs to be followed, outfits of the staff members, training and education to be imparted or manner of the marketing the franchise.

5. Protection of Intellectual property & know how: It must be strictly obligated to the franchisee not to divulge any secrets related to the trademark or know how. For this, the franchisor must stipulate negative covenants to protect the intellectual property and confidential information.

6. Restriction on Suppliers: The franchisor can restrict the franchisee from buying the material from all and sundry and may compel him to purchase from specified vendors, probably with whom the franchisor shares good negotiating power. This may also be to ensure the quality and standard of the product delivered.

7. Accounts and Inventory Audits: Periodic inventory and account audits can be sought by the franchisor with a view to supervising the activities of the business operations.

OBLIGATIONS OF A FRANCHISOR & A FRANCHISEE TO FOLLOW IN A FRANCHISE AGREEMENT

Besides this, the franchisor can also ask the franchisee to provide periodic reports on the functioning and performance of the franchise business.

8. Management & Control: A 'brand' is like an offspring for a franchisor which it wants to rear it up carefully and ensures that it is in safe hands. Likewise, a franchisor for his personal satisfaction may want the franchisee to personally participate in the management and operation of the business. This would be to ensure that the business is run smoothly.



Obligations for the Franchisor:

1. Assisting in deciding the location: The franchisor may be obligated to help and assist the franchisee in finding out the appropriate location, depending upon the needs of the franchisor.

2. Education & Training: With the aim of maintaining the quality and standard of the business, it is necessary on the part of the franchisor to train and educate about the new methods, equipments and services to the franchisee on timely basis.

3. Franchisee's Exclusivity: A franchisee may demand to be given exclusivity for a particular area with a motive to thrive well in his business. This would however depend upon the negotiating power of the parties involved. The franchisor should see through/consider a request like this.

4. Legal and Regulatory approvals: Before the commencement of a franchise business, several legal and regulatory approvals are required from the local and municipal bodies. In order to furnish this task smoothly the franchisor should always assist the franchisee in procuring/getting these approvals.

5. Handing over the Operations Manual: An operation manual is a collective set of instructions that comprises the specifications, standards and operating procedures that a franchisor expect a franchisee to follow stringently. Any activity going against such rules would violate the standard business operations.

6. Advertising & Promotion: This forms an important marketing tool that is required by any business to catch the eyes of the people. Though the franchise business taken by a franchisee is already well acknowledged by people, it is still necessary to actively promote the brand by adopting various marketing and advertising strategies. It is then a franchisee may look for the support of the franchisor to help furnish the same. This would in turn help increase the overall brand recognition, ultimately translating into high turnover.

7. Ongoing Support: The franchisee can impose an obligation on the franchisor to take personal interest in the franchise and help it grow and develop. For this, the franchisor is expected to guide the franchisee in all the activities that form part & parcel of the business operations. For instance providing regular training to the employees, contributing in giving ideas to promote the business, giving continual recommendations on the advertising and merchandising activities, keeping a check on the administrative and accounting practices etc. A proper and resolute adherence to these obligations would certainly lead to a win-win situation for both the parties and result in a successful business proposition.

FRAN BUZZ



Dunkin' Donuts joins hands with Jubilant Food work Ltd.,



Dunkin' Donuts, the world's leading baked goods and coffee chain, is continuing its steady expansion around the globe by signing an agreement with Jubilant Food Works Ltd. (JFL) to enter the Indian market. The master franchise agreement calls for Jubilant Food Works to develop, sub-franchise, and operate more than 500 Dunkin' Donuts restaurants throughout India over the next 15 years. The first Dunkin' Donuts locations are expected to open by early 2012. The Agreement marks the largest international store development commitment in Dunkin' Donuts' history.

The Company's entry into India follows its expansion over the past several years throughout Europe, the Middle East, Latin and South

America as well as the Asia-Pacific market. According to Nigel Travis, expansion to India is an integral part of Dunkin' Donuts' international growth plan. "As one of the world's fastest-growing economies and the second most populous country, India presents a tremendous growth opportunity for Dunkin' Donuts. We are especially delighted that we are entering the country with Jubilant Food Works, a world-class food service company," said Mr. Travis. "With a deep understanding of the Indian consumer, solid operational expertise and best-in-class marketing, Jubilant will play a key role in delivering on our goal to bring Dunkin' Donuts coffee, baked goods and snacks to more people around the globe. We look forward to a long and mutually beneficial alliance.

Source: dunkindonuts.com



Lencia explores Indian market

NMS Jewels, a manufacturer of silver jewelry is all set for expansion in India as the exclusive Indian franchisee of the Lencia brand. Lencia is a popular trademark of the European design house, Zlatarna Celje which ensures modern and flawless products. Its name stands for quality silver jewelry of a premium price range. Today, Lencia is available in eight countries through one hundred retail outlets.

NMS Jewels has engaged Francorp, a part of Franchise India, for expansion via the franchise route, sub-franchising retail outlets across the country. NMS Jewels started operations by outsourcing silver jewelry and exporting it to Europe. Since 2004, it started its in-house designing and manufacturing unit. In November 2009, the company started marketing Lencia in India. Dipesh Saria, NMS Jewels says, they have successfully proven their credibility in manufacturing and designing and have substantial support backed by experience and industry knowledge. Lencia is quintessentially an Eastern European brand of silver jewelry that has risen to popularity in countries like Slovenia, Serbia, Croatia, Macedonia, Bosnia and Herzegovina, Macedonia and Bulgaria. India is one of its first forays outside its geographical "comfort zone markets".

Source: Fashion United



FRAN BUZZ

A plea for Industry Status to the Franchise Sector

Franchise sector in the country has demanded industry status from Government of India. Office-bearers of the Indian Franchise Association (IFA), a non-profit organisation representing the sector, said this on the sidelines of Business Opportunities Show 2011 which was organised jointly by IFA and Franchise India with the support of Ministry of Micro Small and Medium Enterprises (MSME). The industry is presently valued at US \$ 10 billion in India and is expected to touch US \$ 20 billion by 2030 said the Business head of IFA, Mohit Ganglani. "And if the Govt. Of India provides industry status to the sector there will not be any flaws as there will be proper guidelines" he further continued.

The provision of Industry Status would safeguard interest of investors as there would be guidelines



for proper non-disclosure agreements between the franchise holders and the investors.

At the same time, with industry status, there will be value addition which will attract big brands to enter Indian market.

Source: Times of India.

Perfume Station seeks Francorp support for its Expansion Strategy



Perfume Station by York Transnational Limited, a unique concept of a 100% perfume store joins hands with Francorp, a part of Franchise India Group, for its strategic nationwide expansion. York Transnational Limited is a Hong Kong based professionally managed company which has 16 Years of experience in Perfume Industry with international presence in 15 countries including Russia, Singapore, USA, Ukraine and Mexico. It has been nearly 10 months since the exclusive direct retail channel – Perfume Station is created in India starting from Jodhpur. With a deep understanding of the Indian perfume market, the product array is accessible with high value for money within an average range of INR 250 to INR 1500 and the collections include more than 100 SKUs with special ranges for men, women and children. The current geographical presence is limited to 5 operational stores in Jodhpur, Jaipur, Bawar, Udaipur and Ahemdabad with a strong logistic and supply chain management. At present, the company is operating on standalone format however, intends to follow both the standalone and kiosk model while penetrating other markets.

Source: PR Home.



HOT OPPORTUNITY OF THE MONTH

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INTERVIEW EXCERPT



Cocoberry™

In an exclusive interview with Fra(n)ews, CEO & MD of Cocoberry, J.S.Bhalla discusses the inception and growth of his company.



1. How and why was this company conceived?

Cocoberry was started in February 2009. After a detailed market intelligence survey, I was convinced that there was a huge scope in the health and wellness of foods category in India. It was observed that although yogurt was not new to the food world, it was gaining substantial importance as a healthy and yummy treat. Therefore, to target this particular sector I decided to start the venture by the name of Cocoberry, "Coco" from Cocoa beans and "Berry" from the assortment of fruits that we serve along with freshly made Non-Fat Frozen yogurt.

2. How much has been the investment so far?

We have invested over 10cr in the project so far.

3. What is the current ownership pattern of the company? In other words, who are the stake holders?

Cocoberry is a privately family held company.

4. Primarily if Cocoberry offers frozen yogurts, why did you divulge in sandwiches and pizzas/tea, coffee?

We always intend to serve the customers the healthiest food options blended with taste, flavour and variety. Innovation in food has always been the prime area of focus. Thereby along with freshly made Non-Fat Frozen yogurt we also serve a selection of hot and cold beverages such as coffees, teas, smoothies and a variety of freshly made sandwiches.

5. In how many locations in India and abroad does Cocoberry exist currently?

Started in February 2009, Cocoberry today has 25 outlets across Delhi & NCR, Chandigarh, Goa and Mumbai. We are planning to increase the number of outlets from 25 to 100 by the end of 2011. In the next few months new stores will be opened in Ahmadabad, Pune, Bangalore, and Jaipur. We are also exploring options to expand its operations in the international market and are in the advanced stages of finalizing the locations in some South East Asian countries as well as in the Middle East.

6. The note mentions Cocoberry plans to expand from 25 to 100 locations by the end of 2011; how do you plan to achieve this target?

We will be opening new outlets in more cities across the country. We have also entered in to strategic tie ups with movies chains (DT Cinemas), hospitals (Fortis), IT parks to open locations there.

7. What is your investment budget like?

We are going to be investing over 100 crores in the next 3-4 years.

INTERVIEW EXCERPT

8. Would all these new outlets be through the franchise route?

About 20-30% of the outlets would only operate under the franchising route.

9. Is there any product innovation in the offering/are you coming up with any new offerings?

Trends suggest that savoury snacks like yogurt drinks and yogurt would be significant drivers for the growth of overall Health & Wellness Food space. Food manufacturers are responding to this growing demand by creating healthier products and packaging those products so that the health benefits are kept intact. However, the companies have to move as per the customers' psyche. As consumers these days prefer taste along with health benefits thereby all food innovation demands something interesting & exciting to evolve. We have a secret recipe that took a year to develop. We went to the US and Europe to come up with a suitable concoction of ingredients to finally arrive at the frozen yogurt.



10. What is your current market share and what is your achievement target & by when do you aim to reach it?

With a 95% market share in the frozen yogurt chain segment, we are today India's first and largest premium frozen yogurt chain with the widest network of stores across the country. After gaining a strong hold in Delhi, Mumbai, Goa and Chandigarh markets, we are going to expand their presence in Bangalore, Ahmadabad, Jaipur and Pune in a few months. Cocoberry is all set to experience a triple digit growth in the years to come from 2012 to 2013, as we are expanding our presence to other cities in India as well as abroad. We also intend to become one of the world's largest and finest frozen yogurt retail chains by the end of next year.

11. Which are the other Indian players exist in the same segment as you? And are there any international players?

Besides Cocoberry, there are small sporadic shops that have opened trying to mimic our concept. Currently we don't see major competition in the market.

12. Where does Cocoberry stand amongst them?

We are glad being the first & only premium frozen yogurt chain with the widest presence across the country – Delhi, Gurgaon, Chandigarh, Mumbai & Goa. Stores in Ahmedabad, Pune, Bangalore & Jaipur are all set to start in the coming month of February.

13. What is the current growth rate of the company?

We've witnessed a tremendous 300 percent growth this year. Cocoberry is all set to experience a triple digit growth in the years to come from 2012 to 2013, as we are expanding our presence to other cities in India as well as abroad. We intend to become the

world's widest and best frozen yogurt and healthy food retail chain by the end of next year.

14. What is your current production? Is it scale-able and by how much?

We are not a manufacturing unit. However we've placed special yogurt vending machines in our outlets, which produces healthy and fresh yogurt.

15. What is your annual turnover?

Since we are a privately held company I will not be able to share the figures

16. What kind of revenue figures did the company see last year and what is the estimate for the next year?

We have achieved a 300% growth this year (2010 to 11). Whereas, In 2011-12 and 2012-13 we will also be achieving a healthy triple digit growth.

ENSURING BEST PRACTICES IN FRANCHISING



Indian Franchise Association is India's premier, non-political, not-for-profit body representing Indian Franchise Sector. IFA's endeavor is to promote, promulgate and popularize the concept of franchising as a mode of doing business across the industry verticals and to nurture the entrepreneurial skill of every Indian.

IFA catalyses change by working closely with stakeholders and policymakers on policy issues, enhancing efficiency, competitiveness and expanding business opportunities for franchise sector through a range of specialized services and global linkages. IFA also provides a platform for Franchise sector consensus building and networking.

Partnership with counterpart chambers across the world carry forward our initiatives of inclusive development in franchise business, which encompasses entrepreneurship, training, governance, skill development, etc. IFA serves as the first port of call for Indian franchise sector and the international franchise business community.

If you would like to manifest your brand or company's profile in any of the sections particularly CaseStudy, Hot Opportunity and Interview Excerpt, Please contact:

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