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Effective Relationships with Franchisee Associations - Legal and Practical Aspects

Over the last fifteen years, franchisee associations have become a mainstay of the franchise community.¹ Much like the development of labor unions in this country, franchise systems have witnessed the development and rise of franchisee associations as a powerful vehicle of franchisee representation and negotiation. While large franchise systems have co-existed with franchisee associations for decades, such associations were traditionally unusual for smaller franchises.² Today, for better or worse, franchisee associations drive, or at least contribute to, many of the marketing or operations decisions made by franchisors. This paper will review some of the issues related to the formation of franchisee associations, the relationship between the franchisor and franchisee association, the costs and benefits of franchisee associations, and the recent activities of some franchisee associations, as well as present the individual experiences of a franchisor and a franchisee with respect to the formation and effectiveness of franchisee associations.³

A. Franchisee Associations - How Are They Formed?

The formation of a franchisee association can occur for a variety of reasons and in a variety of ways. In some cases, franchisees decide to organize to address certain common disputes they have with their franchisor, in response to certain conduct of the franchisor or to develop an avenue of communica-

tion with a non-responsive franchisor. Once franchisees have identified a common purpose or a unifying goal, the development of franchisee associations from groups of similarly dissatisfied franchisees may simply be a matter of organization.⁴

For example, in January 2000, a group of CD Warehouse franchisees formed a franchisee association to address their concerns that their franchisor was devoting substantial resources and support, which the franchisees claim had been promised to them, to the development of the internet store and company-owned stores.⁵ Shortly after its formation, the CD Warehouse franchisee association placed a moratorium on new store openings by its members in order to pressure the company into responding to their concerns.⁶

Similarly, in March 2000, a group of Mail Boxes Etc., Inc. ("MBE") Center franchisees formed the Independent Association of Mailbox Center Owners ("IAMCO").⁷ According to IAMCO's press releases, the impetus behind the formation of IAMCO was the announcement by MBE of several changes to the franchise system, including modifications to the franchise renewal agreement, changes in trade dress, and advertising issues.⁸ The IAMCO franchisees claimed that because MBE was not adequately addressing their concerns, they decided to band together to form an associ-

ation to listen to franchisee issues and to present those issues to the franchisor.⁹ Although the goals of the MBE franchisee association are not unique, the success of IAMCO's approach in creating a dialogue with MBE remains to be seen.¹⁰

The formation of a franchisee association in response to some franchisor action or to perceived franchisor indifference to franchisee issues is not unusual.¹¹ Franchisees often remain focused on their businesses until an issue arises which changes their operation or threatens the success of their businesses. In some cases, the franchisor may take preemptive action to address the inevitable conflicts that arise between the interests of the franchisor and those of the franchisee by forming an advisory council.¹² An advisory council is usually organized exclusively by or with the participation of the franchisor.¹³ Some councils are created using the franchisor's funds, are controlled by franchisor appointees and may be subject to the franchisor's imprimatur.¹⁴ These sorts of limits on the franchise advisory council and the perception that the council is controlled by the franchisor ultimately lead franchisees to seek out independent representation and a more appropriate forum for addressing issues of franchisee rights and control and other controversial subjects.¹⁵ If franchisees perceive that the franchise advisory council is not addressing their needs, is not independent or is not the right mechanism for negotiating disputes with the franchisor, the franchisees may create a new organization or they may simply convert the former advisory council into the model for the creation of an independent franchisee association.

In the Denny's franchise system, the franchisor had established an advisory council to address the concerns of franchisees and to give the franchise community the ability to communicate with Denny's corporate.¹⁶ The Denny's Franchise Advisory Council (the "DFAC") was established in 1988 under corporate sponsorship for the purpose of providing a means of direct communication between the franchisees and the franchisor.¹⁷ In November 1997, however, the DFAC was replaced by the independent, franchisee-sponsored Denny's Franchisee Association in order to eliminate the franchisor's veto power over the association's decisions and to allow the franchisees to develop bargaining power with outside vendors.¹⁸

The reasons for the formation of the franchisee associa-

tion may initially guide the activities of the association and determine how the membership dues are spent. If the association is formed to pursue litigation against the franchisor or to negotiate a particular issue, the association will direct its resources to payment of legal fees and enlisting a large number of franchisees to increase its leverage. Ultimately, however, most franchisee associations must expand their goals to encompass a variety of purposes: (1) protection of franchisees' rights and investments; (2) advocacy of franchisee issues; (3) communication with the franchisor; (4) greater participation in system and brand equity decisions; and (5) cooperative functions.¹⁹

B. What can a franchisor do in response or to resist?

In certain circumstances, franchisee associations can be viewed by franchisors as threatening to the operation of the franchise system. A franchisee association formed by a group of disgruntled franchisees seeking to harness the bargaining power of the franchise chain or to address specific disputes with the franchisor may be regarded by the franchisor as an adversary within the system. After all, in many franchise systems, the franchisor has absolute power under the terms of the franchise agreements to make all decisions regarding the operation of its franchises, franchise locations, brand development, advertising and marketing. Given this broad autonomy, the franchisor may view any suggestion or requirement to involve its franchisees in certain decisions as an infringement on the franchisor's rights. In addition, the franchisor is not legally bound to negotiate or otherwise recognize a franchisee association unless its franchise agreement so requires.

Many franchisors also face certain practical difficulties in implementing policies or changing procedures because of the internal architecture of the franchising company. As a result, adding another step in the bureaucratic procedure, which may include protracted negotiations with the franchisees, may seem unduly cumbersome to franchisors.

As franchising continues to evolve, however, the power of franchisees, as well as their financial means, continues to grow. Many franchisees now own multiple units in a franchise system or are corporations with substantial holdings. This change in the balance of power between franchisors and franchisees may render the franchisees'

participation unavoidable. Still, depending on the circumstances, franchisors may attempt to resist the formation of a franchisee association with the hope of diffusing the franchisee initiative and retaining complete control over system decisions.

Resistance to the formation of a franchisee association may occur in several ways. In some cases, franchisors may refuse to deal with the association or to recognize the association as a representative entity of the franchisees. In other situations, franchisors may be more aggressive in promoting the use of the advisory council in an effort to dispel the belief that another avenue of communication between the franchisor and its franchisees is required.

For example, when a group Mail Boxes Etc. franchise formed IAMCO,²⁰ MBE responded by directing IAMCO to communicate with MBE through the established channel of communications, namely MBE's Franchisee Advisory Council.²¹ MBE supported its position by stating that it had already addressed IAMCO's concerns through the advisory council and that the substantial size of the MBE franchise system required franchisees to comply with established communication procedures in order to avoid confusion and chaos.²²

In April, IAMCO filed a complaint with the International Franchise Association ("IFA") in which it asserted that MBE's conduct violated the IFA Code of Principles and Standards of Conduct.²³ Specifically, IAMCO alleged that MBE violated Section V(3) of the IFA Code, "Franchisor-Franchisee Cooperation," which encourages cooperation between a franchisor and its franchisees.²⁴ After reviewing IAMCO's allegations and MBE's response, the IFA Standards Committee concluded that MBE had not violated the IFA Code of Conduct.²⁵ Based on this IFA decision, it appears that under IFA guidelines, franchisors are not required to deal directly with franchisee associations. Moreover, no federal or state statutes impose any requirements on franchisors to recognize or negotiate with franchisee associations.

When franchisors take additional steps to resist the formation of a franchisee association, they need to be careful that their resistance falls within the confines of applicable laws. Specifically, franchisors should carefully scrutinize their treatment of franchisees involved in a fran-

chisee association. Twelve states have statutory or regulatory protections in place to shield a franchisee's right to associate.²⁶ These laws prohibit franchisors from "directly or indirectly" interfering with a franchisee's right to associate with its fellow franchisees.²⁷ Under these laws, a franchisor's open discouragement or disdain of a franchisee association may be subject to review for violation of applicable franchise statutes. Moreover, a franchisor's treatment of a particular franchisee may give rise to certain statutory claims. The Iowa and Rhode Island acts specifically prohibit franchisors from taking retaliatory action against franchisees for their participation in such associations.²⁸ Such acts may place franchisors in a tenuous position when seeking to terminate a franchisee for nonpayment of fees or other valid reasons if the franchisee is involved in a franchisee association. Specifically, a court may review the termination of an active franchisee association member, even when based on valid contractual grounds, to determine whether the franchisor acted with any retaliatory motive. Even in jurisdictions where no statutory protections exist, a franchisee may have common law causes of action for retaliation.²⁹

In *Dunafon v. Taco Bell Corp.*, the federal court in the Western District of Missouri reviewed a long-standing Taco Bell franchisee's claim that his franchisor refused to allow him to establish a new franchise because of his active role in forming a franchisee association in 1993.³⁰ The franchisor claimed that it had developed a four-step process for granting additional franchises.³¹ Although the plaintiff satisfied the first three requirements for expansion, the franchisor relied on the fourth step, an "ad hoc" provision, to deny the expansion based on the plaintiff's "attitude problem."³² On motion for summary judgment, the court considered whether the franchisor's actions breached its agreement to permit expansion or the implied covenant of good faith and fair dealing.³³

Although the franchisor argued that it was entitled to judgment on these claims because it retained the exclusive right to grant additional franchises under the franchise agreement, the court denied summary judgment based on the franchisor's prior course of dealing in granting additional franchises.³⁴ The court held that it was entitled to consider course of dealing parol evidence under Missouri law and that such evidence created a genuine issue of fact regarding the process used by the

franchisor in granting additional franchises.³⁵ With respect to the implied covenant claim, the court held that even where the franchisor has complete discretion under a franchise agreement, such discretion must be exercised in good faith.³⁶ Because a genuine issue of fact existed regarding whether the franchisor acted in good faith, the court denied summary judgment.³⁷ After the denial of summary judgment, the parties settled their claims out of court in 1998.³⁸

Based on the legal protections available, as well as for the sake of its business relationships with other franchisees, a franchisor is well advised to refrain from taking any acts that are overtly or covertly designed to punish a franchisee for his participation in a franchisee association. Even under the reasoning that a destructive relationship should be subject to certain restrictions, a franchisor does not always have the right to determine the extent of a franchise relationship where franchisee association issues exist.³⁹

C. What sorts of issues do franchisee associations become involved in?

Often, the initial issues that motivated the franchisees to organize a franchisee association give way to more enduring concerns. When a franchisee association is created to negotiate franchise renewal issues with the franchisor, the very formation of the organization may motivate the members to examine their common goals and to determine what other functions can be served by their association.

Communication and Negotiation. The most common goal of a franchisee association is to communicate franchise operators' concerns to the franchisor. A franchisee association provides a forum for franchisees to discuss emerging issues in a franchise system and, where the franchisor has a good relationship with the association, a channel of direct communication to address these issues with the franchisor. In addition, where the franchisee association represents a large percentage of the franchisees in the franchise system, the change in the franchisees' collective leverage provides the association with a substantially improved position in negotiations with the franchisor. In most cases, where a franchisor would not consider certain compromises with an individual franchisee or even a multiple store owner, its bargaining position is undoubtedly changed when faced with a demand from a substantial number of its franchisees

working together.

In 1995, the Burger King National Franchisee Association worked with its franchisor to negotiate a new franchise agreement, which addressed many issues raised by the franchisees.⁴⁰ These negotiations resulted in at least one significant change in the Burger King operation - Burger King agreed to an encroachment procedure under which it would compensate a franchisee if a new restaurant takes a significant amount of its business away.⁴¹ The National Franchisee Association, which represents approximately 1,700 franchisees owning about 7,500 Burger King franchises, continues to confer with the franchisor on marketing concepts and other system issues.⁴²

Similarly, in the Tricon system, which owns Kentucky Fried Chicken, Pizza Hut and Taco Bell, the franchisor's plans to co-brand and multi-brand its locations have required extensive negotiations with its existing franchisees regarding certain encroachment issues.⁴³ The International Pizza Hut Holders Association worked with Tricon to develop the program with specific protection for the Pizza Hut franchisees and with consideration toward the franchisees' needs.⁴⁴ Specifically, Tricon negotiated a limit on the number of restaurants carrying Pizza Hut products and their proximity to existing Pizza Hut restaurants.⁴⁵

Cost Sharing. Franchisee associations can also be instrumental in pooling resources to reduce costs for its members. First, with respect to disputes, a franchisee association can use its member dues to engage association counsel to negotiate or litigate with the franchisor.⁴⁶ As a result, like the Burger King franchisees described above, an association member can have certain provisions of its franchise agreement or renewal agreement negotiated for a fraction of the price of engaging a personal attorney. With respect to litigation, franchisee associations have enjoyed mixed success in establishing actionable claims against their franchisors.⁴⁷ Recently, however, the GNC franchisee association succeeded in restraining its franchisor from taking a franchisee vote on a new advertising initiative.⁴⁸ In court papers, the franchisee association claimed that the new plan to eliminate regional cooperatives shifted advertising money to national advertising for the greater benefit of corporate stores.⁴⁹ Without making any finding on the merits of the franchisee association's claims, a common pleas

judge ordered GNC to refrain from moving ahead with the vote - a majority of GNC franchisees must approve the change - until further hearings can be held.⁵⁰ As a result of the franchisee association's actions, GNC was restricted from even moving ahead with its apparently democratic system of polling the franchisees for approval of corporate action.⁵¹

In addition to litigation and negotiation costs, franchisees can use their association or regional association to pool local advertising funds in order to purchase larger or more effective blocks of advertising. In this way, an individual franchisee who could not afford television or radio advertising can receive the benefits of such advertising on a pro-rata basis with other association members.

Franchisees may also utilize their associations as purchasing cooperatives for their franchise supplies or equipment. Capitalizing on bulk purchasing, franchisees can substantially reduce their overhead costs in ways that would otherwise not be available to an individual purchaser. In addition, associations may engage in certain competitive bidding processes with manufacturers or distributors to further reduce costs to association members.

Finally, taking the purchasing cooperative idea to the extreme, recent reports have suggested that at least two franchisee associations have explored the possibility of purchasing their respective franchise companies. As evidence of the evolving nature of the relationships between franchisors and their franchisee associations, the franchisee associations of both Burger King and Mail Boxes Etc. announced plans last year to explore the feasibility of purchasing the franchise companies from their respective parent companies.⁵² Although neither of these announcements resulted in a proposal from the franchisee associations (and MBE was subsequently purchased by UPS), they represent yet another relatively unexplored area of potential franchisee cooperative effort.

Lobbying Efforts. The growth of franchisee associations has provided Washington and various state governing bodies with a new lobbying force. Several franchisee associations have become involved in the efforts to enact legislation to regulate franchising and provide greater protection for franchisees. Most recently, the American

Franchise Association has been rallying franchisee associations to lend their support to the passage of federal legislation that would place certain restrictions on franchisors.⁵⁴ The bill, which was proposed by Representative Howard Coble, has been under attack by franchisors as an example of excessive and unnecessary government regulation.⁵⁵ On the other side, however, at least thirty-six franchisee associations, including associations from major franchise systems such as Burger King, A&W and Kentucky Fried Chicken, have been identified as active supporters of the Coble bill.⁵⁶ Notwithstanding the arguments regarding the necessity of such federal legislation, the considerable battle over the Coble bill suggests that franchisees, through the power of their associations, are enjoying a new level of influence in politics.

D. Does a franchisee association offer any benefits to a franchisor?

Communication. Although franchisee associations are clearly not created for the benefit of franchisors, franchisors can certainly enjoy certain benefits from a franchisee association. For a franchisor that has not developed a franchisee advisory council, the franchisee association provides a method of obtaining information and feedback from the franchisees on a variety of issues. Communication is not only important for the franchisees - franchisors often survive based on their ability to adjust and restructure their systems in response to market conditions and franchisee experiences. Often, as a corporate head of a franchise system, a franchisor may be somewhat removed from the practical and financial issues that affect franchisees on a daily basis. Having a channel of communication that allows the free exchange of ideas and concerns may help a franchisor to avoid a system-threatening problem by dealing with it early.⁵⁷

Litigation. This system of communication may also be invaluable in reducing the litigation faced by a franchisor. When a franchisee has an avenue to pursue in addressing its franchise problems, she may be less likely to proceed directly to court, where she will be required to incur costs and attorneys' fees to have her grievance heard. As a result, the franchisee association may provide a preliminary step in the dispute resolution process and may help a franchisor avoid litigation that would need to be disclosed in its Uniform Franchise Offering Circular.

Once litigation is instituted, however, the franchisor may reap other benefits from the existence of a franchisee association. For example, in *In re Sizzler Restaurants International, Inc.*, a bankruptcy court in the Central District of California reviewed a franchisee's claims that Sizzler had breached the covenant of good faith and fair dealing by abandoning its buffet court and grill marketing concepts.⁵⁸ In its decision granting summary judgment in favor of the franchisor, the court acknowledged that Sizzler had presented the new marketing concept to the Sizzler franchisee association and had received the support of the organization in abandoning the buffet court concept.⁵⁹ While the court did not rely on the franchisee association's position in finding that the franchisor had not breached its duties, its discussion regarding the franchisee association's involvement indicates that it carried some weight in showing that the franchisor did not act without regard to its franchisees' needs.⁶⁰

Likewise, in *Zeidler v. A&W Restaurants, Inc.*, when franchisees sued their franchisor for, among other things, failing to provide updates to the operations manual, as required by the license agreement, the involvement of the franchisee association became an issue in the court's decision on summary judgment.⁶¹ Specifically, the franchisees sought to rescind their license agreement based on the franchisor's failure to provide the required updates.⁶² A&W argued that although it was unclear whether the franchisees had received the manual updates, their claim for rescission was stale because they learned about the existence of the updates through correspondence and through their participation in the National A&W Franchisee Association ("NAWFA") and continued to perform their contractual obligations without having the updates.⁶³ The franchisees admitted that they were members of NAWFA and that they received NAWFA minutes discussing changes to the manuals.⁶⁴ The franchisees contended, however, that despite receiving this information, they did not know that updates had been issued until their lawsuit was pending.⁶⁵ Recognizing that a claim for rescission must be undertaken promptly, the court held that the franchisees' admissions regarding the NAWFA materials were fatal to their claim for rescission.⁶⁶

F. What are the costs of a franchisee association?

Franchisee Perspective. Despite the benefits of uniting as one voice for the purpose of negotiating or litigating

with a franchisor or the potential for reducing costs, franchisees should not assume that a franchisee association has only a positive effect on a franchise system. Certain costs may also be associated with the development of a franchisee association.

First, there are generally financial costs involved in franchisee association membership. Because the franchisee association is an independent organization, unlike the franchisee advisory council, the franchisees must bear the costs of operating the association. Accordingly, most franchisee associations charge their members certain dues in connection with their membership. Depending on the size of the association, these dues may be used to engage counsel, to pay travel expenses or to compensate employees of the association.

Aside from financial costs, there are less tangible costs associated with an organization that claims to represent the interests of franchisees. Even when a franchisee does not support the actions of the franchisee association, the association may proceed in negotiations or in court as the representative body of the franchisees. For example, in the GNC case described above, the franchisee association succeeded in enjoining the franchisor from conducting a franchisee vote regarding the company's advertising program.⁶⁷ As a result of the association's acts, the GNC franchisees' votes were not permitted to be counted until the court conducted further hearings.⁶⁸ This action potentially pits the franchisee association against at least some of the individual franchisees it claims to represent.

In addition, collective actions undertaken by a franchisee association may have repercussions on all of its members. Association members need to be aware of the conduct of the association and whether they may be exposed to any personal liability for the acts of the association. For example, last year, twenty-two Chevron dealers suffered a crushing blow in an action they instituted against the oil company.⁶⁹ The dealers instituted an antitrust action against Chevron, alleging that Chevron tried to destroy their businesses.⁷⁰ After an initial victory in court, the dealers lost on appeal and were ordered to pay \$6.8 million to Chevron for their court costs and attorney's fees.⁷¹ Although the case was not instituted by a franchisee association, it illustrates the potential liability that franchisees may face for the acts of an association, especially when the franchisee associa-

tion is an unincorporated association. Another potential cost related to the formation of a franchisee association involves the relationship between the franchisor and the association. In many cases, because associations are so frequently formed in response to a system dispute, the tension sparked by the formation of the association itself creates a substantial distraction from the underlying business issues of the franchise system.⁷² The process involved in developing a new system of communication, in convincing a franchisor of the need to abandon or supplement the advisory council with an independent organization and in working through the issues that gave rise to the organization itself can be time-consuming, full of controversy and sometimes ultimately fruitless. This cost, which is less easily calculated, may provide the greatest risk for a franchise system, especially a small, struggling franchise system.

Franchisor Perspective. The costs of a franchisee association to a franchisor are well established and instinctively recognized by those franchisors besieged by a new franchisee association. First, the franchisees have certain demands, which if requested on an individual basis would likely be denied. Because the franchisor has traditionally held all of the power in the franchise relationship and may have successfully operated a benevolent dictatorship, any threat to its autonomy will necessarily be viewed as objectionable. This reaction may not be unwarranted. The operation of a business by democracy or similar approval process can be complicated and cumbersome and may ultimately result in the company's failure to timely act in response to market trends.

In addition, the goals of the franchisor and franchisee may be vastly different on particular issues. For example, with respect to the distribution of the franchisor's product through non-traditional channels, franchisees have traditionally bridled at the notion that they may be forced to compete with supermarkets or other outlets. From the franchisor's perspective, however, the mass distribution of product through various channels increases brand awareness and results in increased sales across the market. Based on this divergence of views, a joint decision with respect to such distribution issues may be impossible to achieve.

Even in cases where the parties share common goals, such as the development of brand equity, the franchisor

may face powerful resistance from its franchisee association on a particular marketing program. These decisions, which are typically subject to strict scrutiny within the franchise company itself and are based on specific knowledge of marketing and advertising, may result in corporate paralysis if the franchisor is required to obtain franchisee approval on creative, system-wide issues. As a result, it is important for a franchisor to develop an understanding with its franchisee association about the types of decisions that are appropriate for the franchisor to seek consultation with the association. Only once a balance is reached between the franchisor's desire to maintain total control and the franchisee association's desire to affect corporate policy can a franchise system begin to reap any benefits from the synergy between the company and the association.

G. A Franchisor's Experience: Subway Case Study

By now, much of the franchise community is familiar with Subway's⁷³ history. Humble beginnings, expansion in the face of failure and hypersonic growth characterized the stages of Subway's advance toward a mature franchise system. Today at thirty-something, Subway has nearly 15,000 stores in nearly 80 countries worldwide. Leaving the explanation of that success to others, this case study will examine one historical evolution that took place alongside the Subway chain's phenomenal growth - the Subway franchisee association. Subway has had franchisee associations as part of its franchise system since the early years. Without the participation of franchisee associations, it is difficult to say whether Subway would be the franchise leader of today. One conclusion is inescapable, though - if the franchisor had not satisfactorily addressed franchisee concerns along the way, Subway would not be today's franchising model. Many of those franchisee concerns were raised and dealt with through Subway's franchisee associations.

Subway actually has three major associations of franchisees which contribute to the operation of the chain: The Subway Franchisee Advertising Fund Trust (SFAFT), its oldest franchisee association, whose role it is to oversee national and local advertising; the Independent Purchasing Cooperative (IPC), a joint venture among franchisees to achieve maximum cost savings and distribution efficiency through chain-wide buying power; and the North American Association of Subway Franchisees (NAASF), an independent franchisee institution for communication with the franchisor. While

SFAFT and the IPC⁷⁴ are important members of Subway's overall organization, this study will focus on NAASF and its predecessor as the more traditional model of franchise association.

THE SFOAC

Subway began franchising in 1974. At that time, the chain consisted of sixteen stores, almost all in Connecticut where the operation began in 1965. Once Subway began its franchising program, the system experienced immediate growth, but the rapid expansion really occurred in the 1980s. Between 1983 and 1991, Subway grew from 200 to 5,000 stores,⁷⁵ and gained a presence in all 50 states, as well as Canada, Mexico and other countries. Not surprisingly, such extraordinary expansion brought some problems and some growing pains. While the chain was expanding, some stores were not profitable and some owners became concerned that the franchisor was not listening to their problems.

In the late 1980s, a movement of dissident franchisees sought to establish its own independent association. Rather than recognize this openly adversarial group, the franchisor decided to form an advisory council consisting of other, less confrontational franchisees to exchange information and to work toward improvement of the system.

To form the initial advisory board, the franchisor divided the country into five regions of roughly equal store density and requested volunteers from each region. The selection of board members was then made from the pool of volunteers by blind draw. The new members selected a name for the organizations - the Subway Franchise Owners Advisory Council (SFOAC) - and elected officers. This process of independent selection of board members and officers gave the early SFOAC members initial credibility with the rest of the owners in the chain. In its first meeting, the SFOAC established its bylaws, and set these goals:

1. Enhance communication with the franchisor to provide feedback from the franchisee community as a whole.
2. Improve the system by advocating change or refinement as needed.
3. Provide a forum for the open exchange of ideas to ensure that all are heard without the fear of undue criticism.

4. Increase store profitability by exploring all areas where franchisees have opportunities to cut costs or increase sales.

Under the SFOAC guidelines, board members served for a two-year period, and future members were selected by blind draw from another pool of regional applicants. This system continued until the first chain-wide SFOAC election in 1997.

Soon after SFOAC was formed, it became apparent that the system needed an efficient way to address the concerns of individual franchisees on the local level. In addition, when certain issues were raised by a number of franchisees, it became necessary to develop a procedure to allow the franchisees to discuss common concerns and to bring them to the attention of the franchisor. Based on these needs, the franchisees, in conjunction with the franchisor, established local SFOAC groups in the five SFOAC regions. In addition to addressing individual and group franchisee concerns, the local SFOAC groups provided another benefit in allowing franchisees to gain experience on a local level and, thus, become good candidates for the national board.

Initially, the franchisor paid the expenses of the SFOAC board members. These members were volunteers and were not compensated for their service; their travel expenses and housing (and other charges, including telephone and fax and local board reimbursement), however, were covered during the four meetings that occurred every year. At Subway headquarters, there was a full-time employee dedicated to act as liaison between the franchisor and SFOAC.

The advisory counsel sought consensus on system-wide issues, in accordance with the bylaws passed on to local boards:

Our purpose is to work together as a team as representatives of franchisees at the local, regional and chain wide levels. Our goal is to insure that all franchisees that work within the system receive our support whenever their concerns are shared with other groups of franchisees within the system. We will use whatever means are available to get a consensus and advise or suggest solutions to the franchisees or company when necessary.

Because the SFOAC's mission was to achieve consensus, competing interests and factions had little role. Even so,

throughout the Subway chain's history, two attempts to form competing organizations have taken place. The first (discussed above) was the catalyst for the formation of the SFOAC in 1990. The second took place in 1996 with the formation of the Independent Association of International Subway Franchisees (IAISF). The IAISF was formed through the efforts of some dissident Subway franchisees in various parts of the U.S. who were particularly concerned about encroachment in the system. Specifically, franchisees were concerned that rapid system growth could result in a loss of customers and profits from the placement of Subway stores too close to their own. However, even before the creation of the IAISF, the franchisor had implemented a policy to consider the interests of existing owners before placing a new store in their vicinity. This policy, called Site Review,⁷⁶ was very successful in allaying the concerns of existing franchisees, while at the same time maintaining a rapid growth rate. Perhaps for this reason and because IAISF was perceived as adversarial to the franchisor, IAISF eventually withered away.

For a time, there were franchisees that were members of both the IAISF and the SFOAC. Although the franchisor took no retaliatory action against the IAISF members,⁷⁷ real problems did result from dual membership. Considerations such as divided loyalties and confidentiality prevented IAISF member franchisees from operating effectively on the SFOAC. In addition, some board members felt uncomfortable in the presence of fellow franchisees who were part of the competing association.

As with any advisory council supported by the franchisor, the SFOAC faced issues of credibility and independence. Members needed to walk a fine line between toadyism to the franchisor and rugged individualism to the franchisees.

Substantive change comes to a large franchisor with difficulty. Franchise agreements tend to evolve with the changing needs of the system. As a result, a system with multiple franchises can have multiple versions of the franchise agreement. These sorts of systemic changes are necessary, however, to meet demands of the marketplace and competition.

Changes to the Subway system have been effectuated through the efforts of the advisory council. With the

SFOAC, Subway formed a captive self-insurer for franchisee worker's compensation policies, as well as the IPC to allow franchisees to maximize savings through a group purchasing cooperative. Other major systemic changes to Subway's system that have occurred during SFOAC's tenure include an increase in franchisee advertising contribution from 2½ % to 3½ % and a system-wide upgrade of the store cash registers to a computerized point of sale system.

NAASF

From the inception of the SFOAC, its members were concerned with both the appearance and the existence of independence from the franchisor. In the late 1990s, the SFOAC board undertook to research the possibility of becoming an independent entity by striking out on its own and severing the financial ties with the franchisor. The SFOAC spent the better part of a year looking at other companies and their franchisee associations, as well as conferring with recognized experts in the field. In addition, the SFOAC polled the Subway franchise community on the question of complete independence through self-funding and the payment of franchisee dues. The franchisee community responded affirmatively and the result was a concerted effort to bring about a new, completely independent organization.

After receiving franchisee support, the SFOAC sought the support of other existing organizations within the Subway system. Subway's area developers, IPC, SFAFT representatives and members of the regional and chain-wide SFOAC met to discuss the proposed move towards independence. Those organizations agreed that an independent franchisee association was a good idea. With the support of these organizations, the SFOAC board members decided to meet with Subway's founder and executive board to discuss their proposal.

As a result of the meeting, the parties developed a strategy whereby the SFOAC would have one year to solicit membership and support for the organization using its own resources. During that time, the franchisor agreed to remain neutral, neither speaking out against the formation of the independent organization nor supporting it. At the end of the one-year period, the SFOAC had succeeded in getting nearly 35% of the franchisee community to join the independent organization as dues-paying members.

Once formed, the new organization set to work establishing such critical points as the composition and size of the board of directors, the number of members needed to retain credibility with the franchisor and the level of responsibility to be undertaken by the new organization. Finally, in February 1999, the fledgling North American Association of Subway Franchisees held its first meeting and NAASF was born. In the newsletter following that first meeting, NAASF spelled out its mission:

To have a franchisee organization that will act as the official voice of all Subway franchisees - one that is truly representative, autonomous and accountable to the franchisee community. To have an organization that works to enhance franchisees' investment in a vital and growing Subway system.

NAASF today consists of twenty-one board members, including three from Canada. Currently, international owners are not on the board, but that issue is under consideration. NAASF has a seven-member executive committee that directs day-to-day operations and management. In addition to communication with the franchisor both to consider company recommendations and to present franchisee concerns, NAASF has taken on the specific task of hosting Subway's biennial convention, next scheduled for Las Vegas in July 2001.

The biggest challenge for NAASF continues to be achieving credibility with Subway franchisees. The membership continues to increase, and interestingly, most Subway franchisees consider that NAASF is their organization even if they are yet to become dues-paying members. One of NAASF's greatest accomplishments is the creation of the Subway Systems Advisory Council. This group consists of representatives from each of the main Subway organizations: NAASF, the IPC, the SFAFT, the Development Agent Advisory Board (Subway's area developers) and members of Subway's corporate management team. These representatives meet at least three times per year to discuss matters of chainwide concern.

Sponsoring Subway's convention is a huge, expensive undertaking, requiring most of NAASF's resources at present. Where NAASF goes from here in part depends upon the convention's success, but some indication of its intended direction comes from NAASF's choice of

legal advisor. Andrew Selden, one of franchising's most prominent attorneys and the author of numerous works on the franchisor-franchisee relationship, has been retained to represent NAASF. His advocacy of the "shared business enterprise" as the "new franchise paradigm" for conduct of the modern franchise system promises to keep NAASF at the forefront of Subway's future direction.

H. A Franchisee's Perspective On Franchisee Associations: Evolution of a Franchisee Association

As a franchise system begins and grows, franchisees generally have no representation or organization. Franchisors often take the position that they entered into individual contracts with individual franchisees and are, therefore, entitled to refuse to engage in anything that resembles collective bargaining. At this early stage, however, both individual and system-wide issues may and often do arise. An individual franchisee may have questions regarding the interpretation of his license agreement or a multi-unit franchise may wish to close a non-performing unit against the franchisor's wishes. System-wide issues of growth and encroachment, and what happens when encroachment occurs, also come to the forefront as the franchise system develops. Additionally, as the system grows, early franchisees need to deal with renewal issues. The more favorable franchise agreement terms, which franchisees were able to negotiate in the early years of a franchise system, may not be available at the time of renewal.

Franchisees may have the perception that their franchisor is following a divide and conquer policy. Depending on the franchise system, this perception may be true, it may be merely a perception or it may be a combination of both. Nevertheless, under these circumstances, when a franchisor repeatedly responds to franchisee complaints by suggesting that no one else in the system has the same problem but the franchisees know that the problem is a system-wide issue, franchisees begin to realize the need for a formal franchisee organization. When franchisees feel that there are no lines of open communication with the franchisor, the need for some organization for franchisee representation becomes more compelling.

As a franchise organization grows, franchisee discontent often grows along with it. In many situations, the grumblings of franchisees regarding the need for more

open communication and some form of representation will lead the franchisor to form an advisory council. From a franchisee's perspective, the important element of an advisory council is that it is often organized and controlled by the franchisor. Advisory councils may create a system of communication between franchisee and franchisor but may fail to provide any form of real, meaningful participation by franchisees in the decision-making process. Franchisees often get the impression that the advisory council is at best window dressing and, at worst, an attempt by the franchisor to head off the development of a franchisee association. In many situations, this frustration leads the franchisees to desire more strength in their negotiations with the franchisor.

Of course, many franchisors have also worked to develop effective advisory councils in a structure which eliminates the franchisees' perception that they need more strength. From a franchisee's perspective, it is, therefore, in the franchisor's best interest to make a meaningful effort to accept the advisory council's input and to treat the advisory council as an important tool for two-way franchisor/franchisee communications. While using an advisory council as window dressing to placate grumbling franchisees seldom works, true support of an advisory council and meaningful independence for it may vitiate the perceived need for an independent association.

Independent associations, however, often become necessary for franchisees. Obviously, an independent association provides a more formal structure for franchisee organization and representation and may provide a greater connection to the process for more franchisees. Depending on the structure of the association and the degree of participation by franchisees, franchisees may have an opportunity, as part of a committee, to work with the franchisor's department heads and senior management. Independent associations have worked with various franchisors in the areas of marketing, operations, product development, store design and system standards. As stated earlier, associations generally support themselves by collecting dues which may be used for any purpose authorized in the association's bylaws including litigation expenses.

From a franchisee's perspective, the concept of a franchisor acting as a benevolent dictatorship simply does not work. Although, as a legal matter, franchisees are

generally considered to be independent contractors, in their day-to-day working relationship with their franchisors, franchisees want to be treated as adults and to feel like partners. The franchisee is on the front line of the system and often is more aware of changing market conditions than the franchisor's representatives may be. The franchisees perceive themselves to be the backbone of the franchise system and want their role recognized.

Once an independent association is formed, franchisors should recognize it and encourage membership. The association is now a foregone conclusion and the franchisor should try to do everything possible to create a mutually beneficial relationship between the association and the franchisor. For this reason, the franchisor should encourage participation by all franchisees in the system in order to get better representation and a more meaningful consensus. Such global participation also increases the possibility that franchisees will limit themselves to one association rather than splintering into various associations with individual agendas.

Franchisors should also encourage a positive agenda for the association and give franchisees a meaningful role in the decision-making process. As stated, the franchisor can establish committees to work with its department heads and senior management. It should also request and expect franchisees to accept responsibility for their participation, and franchisees must take that responsibility very seriously. Franchisors should share credit for development of ideas and should eliminate the perception of total franchisor control in order to encourage more meaningful participation. As a practical matter, everyone recognizes that the franchisor has, and should have, the final decision-making authority. There is no reason, however, for the franchisor to flaunt its authority.

Franchisors can participate in the association when asked, but also allow the association to work in closed session. The most successful associations have a process by which each side communicates with the other, at all times displaying an attitude of mutual respect. Each side should encourage communication with the other and should LISTEN to the other. There may be times when the sides must simply agree to disagree but in all events they should agree to continue their dialogue. Much of the relationship between a franchisor and its franchisees is built through the franchisor's staff.

Accordingly, among its staff, a franchisor should promote an attitude of respect for franchisees. Similarly, the franchisor should demand the same respect for its staff from the franchisees. By doing so, the franchisor preserves the opportunity for the most productive discussion and relationship. Most importantly, the franchisor must be willing to discuss with its franchisees any subject in any area.

Franchisors should not try to discourage formation of an association by any form of intimidation. This would include encouraging selected influential franchisees to refrain from participation or by retaliating in any way, such as scheduling excessive or more stringent inspections for association leaders. Similarly, the franchisor should avoid covert activity such as planting "moles" within the association or any other acts that could be perceived as retaliation or retribution.

Franchisees must also recognize the responsibility of the association to act for the benefit of the franchise system. They should be willing to contribute their time, effort and money to assist the franchisor in improving the system. A primary purpose of an association is to help protect and improve the system and, therefore, personal agendas must be set aside. Franchisees also have a responsibility to ensure that the association has objective and positive goals which represent the mainstream views of franchisees. Franchisees should also recognize the enormous power which peer pressure provides and, when necessary, should use this pressure to encourage all franchisees to do the right thing for the system. Both sides should be able to agree to disagree, to establish positive goals for the association, to measure results regularly and to demonstrate with their actions the mutual respect and trust which each should have from the other. Above all else, both the franchisor and the franchisee association should always work to do what is best for the system.

I. What is the future of franchisee associations?

While franchisee associations offer a mix of costs and benefits to both franchisees and franchisors, they are clearly here to stay. Franchisors continue to struggle to find the best way to deal with these associations while simultaneously focusing on the underlying business of the franchise companies to ensure the success of their franchisees. As more franchise systems witness the development of franchisee associations, the struggle to

incorporate franchisee associations without disrupting or destroying the franchise system may become a universal experience to be shared by franchisors and franchisees alike.

ENDNOTES

1. In 1992, there were less than 30 independent franchisee associations. By 2000, approximately 250 associations had been formed in various franchise systems, both large and small. Marc Ballon, *Franchisees Organize to Counter Company Power*, LOS ANGELES TIMES, February 23, 2000, at Part C, Page 8.
2. Large franchise systems like Burger King and Kentucky Fried Chicken have had franchisee associations for years. The Association of Kentucky Fried Chicken Franchisees was formed in 1975 when Colonel Sanders sold the company. Colonel Sanders feared that the franchisees would lose control of their businesses under the new management so he encouraged the franchisees to unite to protect themselves and to give themselves a voice in the future development of the KFC concept. See www.akfcf.com/history.
3. The topic of franchisee associations has been extensively reported in other materials for both the International Franchise Association and the ABA Forum on Franchising. As a result, this paper concentrates primarily on the costs and benefits of franchisee associations and the recent developments in certain franchise systems. For a more detailed discussion of the formation of franchisee associations, see David C. Gurnick & Les Wharton, *Effective Franchisee Associations, Advisory Boards and Councils*, ABA FORUM ON FRANCHISING, § W7 (2000); Rodney R. Hatter, *Dealing with a Franchisee Association: Legal Issues and Practical Problems*, ABA FORUM ON FRANCHISING, § W14 (1993); Gerald T. Aaron et al., *Dynamics of Franchisee Associations*, ABA FORUM ON FRANCHISING, § A (1991).
4. For a complete discussion of the issues involved in the formation of franchisee associations and determining the appropriate entity for such organizations, see Mitchell S. Shapiro & Carl E. Zwisler, *Representing and Dealing With Franchisee Associations*, ABA FORUM ON FRANCHISING (1995).
5. See David DeWitte, *Oklahoma City-Based Music Store Chain Responds to Franchisee Complaints*, THE GAZETTE (CEDAR RAPIDS), October 2, 2000.
6. *Id.*
7. See www.iamco.org, March 30, 2000.
8. In their press releases, the IAMCO franchisees described their formation of the association as filling a "communications void" which they claimed existed between MBE and its franchisees. *Franchisees Announce the Formation of the*

Independent Association of Mailbox Center Owners, Inc., www.iamco.org, March 30, 2000. The franchisees' support of IAMCO is, however, a disputed issue. Although IAMCO claimed to represent at least 500 MBE franchisees in April 2000, MBE estimated the dissident organization's membership at less than 100 franchisees. See Frank Green, *Franchise Holders May Buy MBE Inc.: Dissident Group Explores Options*, SAN DIEGO TRIBUNE, April 18, 2000.

9. In describing the formation of the franchisee association, IAMCO maintained in a press release that "[a] group of franchisees felt frustrated at their inability to obtain details about the changes from MBE and to have their specific questions and concerns addressed." MBE had established a Franchisee Advisory Council to act as a liaison between MBE and the franchisees. The IAMCO franchisees, however, argued that the council, as a franchisor-sponsored entity, had failed in its mission to provide responses to many of the questions raised by franchisees, according to the IAMCO report. As a result, certain franchisees formed the independent association that did not rely on MBE's funds and was not subject to franchisor approvals. See www.iamco.org.

10. See *infra* notes 21-25 and accompanying text.

11. See *Dunafon v. Taco Bell Corp.*, 1997 U.S. Dist. LEXIS 22468 (W.D. Mo. September 2, 1997) ("Beginning in 1992, plaintiffs allege that defendant began to treat the franchisees poorly. In response to this treatment, franchisees from around the country formed the International Association of Taco Bell Franchisees (IATBF). The stated mission of the IATBF was to bring the issues of concern of the franchisee community to the attention of the defendant.")

12. See Andrew C. Selden et al., *Towards a New Franchise Paradigm*, ABA FORUM ON FRANCHISING, §P2 (1996) for a complete discussion of the divergence of business interests of the franchisor and franchisee. Advisory councils are usually created to provide a mechanism for obtaining franchisee input on particular matters of importance to the franchise system and to the franchisees. William A. Darrin, et al. *The Role of Trade Associations and Franchisee Associations in Franchising*, ABA FORUM ON FRANCHISING, §B3, at 12 (1998).

13. See Darrin et al., *supra* note 12, at 11-13.

14. See *id.*

15. *Id.* at 13.

16. See www.dennys.org.

17. *Id.*

18. *Id.*

19. See www.dennys.org for discussion of cooperative purchasing; see also www.sonicassociation.com (Sonic franchisees have used their franchisee association to negotiate a group

health insurance policy to cover the employees of individual franchisees).

20. See *supra* notes 7-10 and accompanying text.

21. Wendy Webb, *MBE Redesign Sparks Association Formation: The New MBE 2000 Store Design Is The Source Of Conflict Between Some Franchises And The Mail Boxes Etc. Corporate Office*, FRANCHISE TIMES, August 2000.

22. *Id.* MBE stated that it had addressed the franchisees' concern regarding the renovation requirement for existing stores. Working with its Franchisee Advisory Council, MBE considered the issues raised and ultimately revised its policy to require only new stores to implement the new MBE 2000 renovations. *Id.*

23. See www.iamco.org

24. *Id.*

25. *Id.*

26. ARK. CODE ANN. § 4-72-206 (Michie 2001)(unlawful trade practice "[t]o prohibit directly or indirectly the right of free association among franchisees for any lawful purpose); CAL. CORP. CODE § 31220 (Deering 2001)("violation of this division for any franchisor . . . to restrict or inhibit the right of franchisees to join a lawful trade association or to prohibit the right of free association among franchisees for any lawful purposes."); CONN. GEN. STAT. § 42-1331 (1999)("[n]o franchisor . . . shall . . . prohibit, directly or indirectly, the right of free association among franchisees for any lawful purpose . . ."); HAW. REV. STAT. § 482E-6 ("it shall be an unfair or deceptive act or an unfair method of competition for a franchisor . . . to (1) [r]estrict the right of the franchisees to join an association of franchisees."); 815 ILL. COMP. STAT. ANN. § 705/17 (2000) (unfair franchise practice and violation of franchise act for franchisor to restrict franchisees from joining or participating in trade association); IOWA CODE § 523H.9 (2001)(franchisor shall not restrict franchisee from associating with other franchisees and shall not retaliate against franchisee for engaging in such activities); MICH. COMP. LAWS § 445.1527 (2000)(any prohibition on right of franchisee to join franchisee association is void); Minn. Reg. 2860.4400 ("unfair and inequitable for any person to . . . restrict or prohibit, directly or indirectly, the free association among franchisees for any lawful purpose."); NEB. REV. STAT. § 87-406 (2000)(violation of franchise practices act to prohibit right of free association among franchisees); N.J. STAT. § 56:10-7 (2001)(same); R.I. GEN. LAWS § 19-28.1-16 (2001)(franchisor shall not restrict a franchisee from associating and shall not retaliate); WASH. REV. CODE § 19.100.180 (2001)(unfair or deceptive act to restrict or inhibit it right of franchisees to join franchisee association).

27. See *id.* Other states provide similar protections for dealers

in specific industries, such as petroleum dealers or motor vehicle dealers. See, e.g., N.H. REV. STAT. ANN. § 357-C: 10 (2000)(providing motor vehicle franchisees the right of free association); ME. REV. STAT. ANN. tit. 10, § 1180 (2000)(same).

28. See supra note 26. In at least one case, despite the strong wording of Iowa's statute, a franchisor has instituted a lawsuit against franchisees, including an Iowa franchisee, seeking an order to prevent the franchisees from continuing "their collective action in organizing franchisees to fight for their franchise rights." DeWitte, supra note 5. CD Warehouse reportedly instituted a lawsuit against five franchisees, including the president of the CD Warehouse Franchise Association, but later dismissed the suit. The franchisees were directed to arbitrate their claims. It is not known whether any claims based on violation of the Iowa statute have been asserted in the arbitration. Id.

29. See Dunafo v. Taco Bell Corp., 1996 U.S. Dist. LEXIS 22026 (W.D. Mo. March 13, 1996)(court dismisses Missouri franchisee's retaliation claim under California Franchise Investment Law but denies dismissal on claim for breach of good faith and fair dealing based on retaliatory act).

30. Dunafo v. Taco Bell Corp., 1997 U.S. Dist. LEXIS 22468 (W.D. Mo. September 2, 1997).

31. Id. at *3.

32. Id.

33. Id. at *5-10.

34. Id. at *7-8.

35. Id.

36. Id. at *10. Based on the California choice of law provision in the franchise agreement, the court relied on California common law in denying summary judgment on the implied covenant claim.

37. Id.

38. See Ballon, supra note 1.

39. See Dunafo, 1997 U.S. Dist. LEXIS 22468 at *10.

40. Ballon, supra note 1.

41. Id.

42. Id.

43. Amy Zuber, *To Market, To Market: Chains Find Strength in Numbers, Use Co-Branding as Growth Vehicle*, NATION'S RESTAURANT NEWS, February 5, 2001, at 45.

44. Id.

45. *Tricon Introduces Express Pizzas to Chicken and Taco Crowd*, THE ASSOCIATED PRESS STATE & LOCAL WIRE, February 20, 2001.

46. Because the franchisees themselves hold the contract rights and suffer injuries from franchisor actions, a franchisee association attempting to sue on behalf of its franchisee mem-

bers may face certain challenges in establishing that it has standing to sue the franchisor. For a complete discussion of franchisee association standing issues, see Shapiro & Zwiler, supra note 4, at 34-36.

47. See id. See also Nat'l Coalition of Associations of 7-Eleven Franchisees v. Southland Corp., No. 95-00207 (N.D. Cal) as an example of a class action which was successfully instituted and later settled by the franchisee association as a named plaintiff. See also Nat'l Coalition of Associations of 7-Eleven Franchisees v. Southland Corp., 2000 U.S. App. LEXIS 864 (9th Cir. Jan. 20, 2000) (discussion of underlying case and settlement of class action issues).

48. Teresa F. Lindeman, *GNC Hit With New Franchise Uprising*, PITTSBURGH POST-GAZETTE, February 6, 2001, at B-1.

49. Id.

50. Id.

51. While the pooling of funds for litigation may be seen as a benefit of franchisee associations, there may be dissension within the franchisee association about the best course of action in dealing with a system issue. The GNC case clearly raises the question about whether franchisee associations always act in the interest of all franchisees. This issue will be addressed later in this paper.

52. See Green, supra note 8; *Bold Bid on Cooker at Burger King*, www.smh.com.au, April 12, 2000.

53. In response to the report that the National Franchisee Association had hired counsel and acquisitions consultants to explore a potential purchase of the franchisor, Burger King's parent, Diageo, announced that the chain was not for sale. *Bold Bid*, supra note 52. At the time the report was published, MBE's parent, U.S. Office Products, stated that it had received several offers for the purchase of MBE but had not received any from IAMCO. Green, supra note 8.

54. Richard Martin, *McD Chief Greenberg Urges Fight Over Federal Franchisee Legislation*, NATION'S RESTAURANT NEWS, March 6, 2000 at 1. The AFA and the American Association of Franchisees and Dealers are two examples of the growing influence of franchisees in the franchise community. The AFA and AAFD consist of franchisees from various franchise chains. These organizations are dedicated to the review and investigation of issues that transcend specific franchise systems and affect franchisees as a whole. Many of these issues are related to certain legislative efforts or common law developments in the treatment or interpretation of common franchise agreement provisions. For more information on these organizations, see www.franchisee.org and www.aafd.org.

55. Id.

56. Id.

57. In food service systems, the communication between the franchisees and their franchisor becomes critical when issues involving crisis management arise. For example, with the recent emergence of food-related illnesses, franchisors need to have the most sophisticated means of communicating with their franchisees about food service issues, marketing issues and public relations issues. Recently, the Taco Bell franchise system faced certain financial repercussions from the Kraft's recall of its Taco Bell brand shells from supermarkets. Although the supermarket brand shells were separately manufactured from those used in the franchised outlets, reports that the shells contained gene-spliced corn not approved for human consumption affected consumer confidence and, consequently, franchisee's sales levels. Amy Spector & Richard Martin, *Sales Hardship, Biotech Flap Shellac Taco Bell Operators*, NATION'S RESTAURANT NEWS, December 18, 2000 at 1. In response, Taco Bell, in conjunction with its franchisee association FRANMAC, devised a loan program to assist its franchisees by establishing a multimillion-dollar special fund for use by franchisees struggling with sales declines. Id.

58. 225 B.R. 466 (Bankr. C.D. Cal. 1998).

59. Id.

60. Id.

61. 2001 U.S. Dist. LEXIS 653 (N.D. Ill. January 25, 2001).

62. Id.

63. Id.

64. Id. at *21.

65. Id.

66. Id.

67. See Lindeman, *supra* note 48.

68. Id.

69. *Chevron Franchisees Lose Antitrust Ruling, Face Bankruptcy*, www.cnn.com, July 31, 2000.

70. Id.

71. Id.

72. After the MBE franchisee association was formed and sent out surveys to a number of MBE franchisees, the head of MBE's Franchisee Advisory Council reported that "the advisory council received letters from franchisees who were concerned that IAMCO's letter would be distracting and negative for the whole system." Webb, *supra* note 21.

73. Subway is a registered trademark of Doctor's Associates, Inc. For ease of reference, the author will refer to DAI's franchise system as "Subway."

74. SFAFT and the IPC are predominantly, but not exclusively, made up of Subway franchisees.

75. F. DELUCA AND J. P. HAYES, *START SMALL FINISH BIG* 62 (Warner Business Books 2000).

76. Site Review afforded existing owners prior notice of the intent to locate a new store, and an opportunity to "protest" the location.

77. See *Dunafon v. Taco Bell Corp.*, 1996 U.S. Dis. LEXIS 22026 (W.D. Mo. March 13, 1996).