THE MOST IMPORTANT ISSUES IN THE UFOC PACKAGE

There are literally dozens of important issues throughout the UFOC Package. Here are (in no particular order) what I consider to be the 4 most important legal issues in the UFOC documents:

1. **Franchisor's right to terminate the Agreement.** What rights does the Franchisor have to terminate the agreement and essentially force you to close your business? Usually there will be some matters (such as your bankruptcy or your wrongful disclosure of the franchisor's trade secrets) that will cause immediate termination by the franchisor. For most other matters you will typically have a period in which you can fix the problem and keep the agreement going. This is known as a "cure period" and 15-30 days is normal. The main thing you want to here is to make sure that there is a cure period for anything that is capable of cure.

2. **Renewal rights.** What rights do you have after the initial term (usually 10 years) to renew the Agreement? You want to make sure you haven't spent a decade building up your business only to have it taken away by the franchisor's refusal to renew the relationship. The big thing to watch out for here is if the franchisor can choose to renew your agreement in its sole discretion. Your franchisor should be willing to *automatically* renew your agreement if certain conditions are met, such as you are not currently in default, you haven't been a problem franchisee, you will upgrade your store to meet the then current requirements, etc.

3. **Transfer rights**. You will want to insure that you have the right to sell your franchise to a third party. This may be done because your franchise isn't doing well or may just be part of your exit strategy. It is customary for the franchisor to have some rights to approve the transfer. Things to watch out for here include: i) high transfer fees, ii) the franchisor's rights to block the transfer by withholding approval in their *sole* discretion, iii) a requirement that you remain liable for all obligations under the franchise agreement after transfer, etc. At a minimum you want the franchisor's approval rights to be tied to *reasonable* discretion and preferably you want approval or rejection tied to some objective criteria.

4. **Hidden Costs.** Initial franchise fees and royalty fees are standard in almost every franchise. However, most franchise agreements contain at least some other fees and they can vary widely. Examples of these fees can include advertising fees, required initial and on-going expenditures for equipment, supplies and inventory, real estate lease review fees, and the like. Although Sections 6 and 7 of the UFOC present all initial and on-going expenses in easy to read tables, you should still scan the agreement for other potential expenses, such as: i) consulting fees that may be charged by the franchisor if they feel your business is not performing as it should, and ii) the franchisor's unilateral right to completely change the system and have you spend unlimited amounts to upgrade to their new requirements.

In addition to these 4 issues, you should also be concerned about matters such as: i) non-compete clauses both during and after the term of the Agreement, ii) the scope of your protected territory, iii) the franchisor's specific obligation to provide assistance, iv) the franchisor's obligation to provide training, v) restrictions on products and services the franchise can sell, etc.

Remember, every franchise is different. While all franchisors are required by law to provide certain disclosures, they are largely free to draft their documents and govern their relationships however they choose.

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