

ABA Forum on Franchising



FRANCHISING IN FOCUS

43rd Annual Forum On Franchising
October 27-30, 2020

Registration Now Available Online, click below:
<https://www.xpressreg.net/eReg/?ShowCode=FOFR1020>

Dear Colleagues and Friends,

We are pleased to invite you to the 43rd Annual Forum on Franchising on October 27-30, 2020. With Franchising in Focus 2020 we had hoped to welcome you to another great live Forum in Phoenix. But COVID-19 changed those plans, leading us to the first ever virtual Forum on Franchising. We made the decision to go to an all virtual Annual Forum after much thought and a careful evaluation of all available alternatives. First and foremost in our decision-making was protecting the health and safety of Forum members while still providing the outstanding workshops, plenaries, and intensive programs you have come to expect from the Forum on Franchising. Combine that with some unique and interesting virtual networking opportunities, and we continue to have a great Forum on Franchising planned for you this year.

As you will see in this brochure, our virtual program will enable you to watch the workshops, plenaries, and intensive programs in real time or access them for up to six months after the Forum while still obtaining full CLE credit in most states. No longer will you need to decide which of the great workshops you will attend—you can view as many of them whenever you want. Our goal is to turn the adversity we are all facing this year into an opportunity for you to have your best and most flexible access ever to our great selection of programs!

In addition to the high quality plenary sessions, intensives, and workshops, we will also have virtual social events to allow us to catch up with old friends and make new friends—one of the best parts of the Forum. Harnessing the latest in networking technology, we are providing a number of opportunities for you to virtually interact with your Forum colleagues and friends. There will also be opportunities for

the Women's Caucus, the Diversity Caucus, LADR, the Corporate Counsel Section, Solo/Small Firm members, international lawyers, law professors, and paralegals and franchise administrators to connect virtually.

We are finalizing the virtual platforms that will allow you to access our programming and networking and will be in touch further with things like log-in details after registration. Please continue to visit our event website for the latest information and program details at www.americanbar.org/groups/franchising. We will also post and update a Frequently Asked Questions section on this website to address some questions you may have on the technology and this year's program.

To register, click below:

<https://www.xpressreg.net/eReg/?ShowCode=FOFR1020>

We look forward to seeing you in the virtual world of Franchising in Focus 2020 @ Home and setting our sights on all the good we have to offer in the Forum. We are grateful for your support of the Annual Forum.

Your Program Co-Chairs

Elizabeth M. Weldon,
Snell & Wilmer L.L.P.,
eweldon@swlaw.com

Gary R. Batenhorst,
Cline Williams Wright
Johnson & Oldfather, L.L.P.,
gbatenhorst@clinewilliams.com



FRANCHISING IN FOCUS

43rd Annual Forum On Franchising
October 27-30, 2020

To view the 2020 Forum FAQs, click below:

https://www.americanbar.org/content/dam/aba/events/franchising/2020/forum_2020_faqs.pdf

Intensives & Plenaries

TUESDAY, OCTOBER 27, 2020

8:00 a.m.-1:00 p.m. Pacific/11:00 a.m.-4 p.m. Eastern (concurrent)

Intensive 1: A Sharper Focus on the Shifting Realities for Franchisees in the 2020s

Registration Fee: \$445

Changes in franchising are impacting the representation of franchisees in the 2020s. The increased involvement of private equity in franchising, open questions about the franchise relationship and employment and independent contractor relations, the shifting roles of franchisee associations, COVID-19, changing views of fairness in the franchise relationship, and new opportunities for effective franchisor/franchisee collaboration make this intensive appropriate for all franchisor and franchisee lawyers. This intensive program will take an in-depth look at a wide range of topics including:

- Prospective franchisee interests, such as: fees and initial investment; financial performance representations; the consequences of the form of the franchisor's ownership—including private equity and publicly owned companies; understanding the dynamics of the franchise relationship and roles and responsibilities of the franchisor and franchisee; product sourcing, supply chain disclosures and buying cooperatives; territories and sales restrictions; and franchisor support;
- Operational interests, such as: the appropriate use and limits of franchisor discretion; the rise of the use of sanctions for noncompliance; control over franchisee pricing decisions; the development and use of franchisee associations; the role franchisees play in system wide change; representing multi-unit franchisees; and privacy and ADA concerns; and
- Protecting franchisee interests and understanding the franchisor's perspective in dispute resolution matters, including in the context of encroachment, termination, nonrenewal, noncompetition, and indemnification issues.

Speakers:

Eric H. Karp, Moderator, Witmer, Karp, Warner & Ryan, LLP

Robert M. Einhorn, Zarco Einhorn Salkowski & Brito, P.A.

W. Michael Garner, Garner, Ginsburg & Johnsen, P.A.

Nicole Liguori Micklich, Urso, Liguori & Micklich, P.C.

Brian B. Schnell, Faegre Drinker Biddle & Reath, LLP

Intensive 2: A Practical Vision of Trademark and Trade Dress Issues Affecting Franchised Businesses

Registration Fee: \$445

In this in-depth intensive, learn how to protect a franchise system's most valuable assets: its trademarks, service marks, and trade dress. Hear practical advice on selecting, promoting, and protecting marks and trade dress, including the impact of these decisions on litigation and whether to manage this process internally or to engage outside counsel. Topics will include: best practices for selecting, registering, and managing marks, both domestically and internationally; advising businesses interested in expanding under an established mark that is used by third parties in target markets; using watch notices and other policing strategies; responding to infringement scenarios ranging from obvious and intentional duplication to less clear instances of infringing use; developing trade dress that enhances the franchisor's brand; drafting franchise agreement provisions related to the franchisor's intellectual property; and the role of franchisees in protecting the system's intellectual property from third party use, including actions they can take to protect their investment in the brand.

Speakers:

Jason Adler, Cellairis Franchise, Inc.

William Bryner, Kilpatrick Townsend & Stockton LLP

Matthew DeAntonio, Bradley Arant Boult Cummings LLP

Dawn Newton, Donahue Fitzgerald LLP

Intensives & Plenaries

WEDNESDAY, OCTOBER 28, 2020

9:15 a.m.-10:30 a.m. Pacific/12:15 p.m.-1:30 p.m. Eastern

Plenary 1: Annual Developments

The Forum's signature event! Join your colleagues for a thoughtful, comprehensive and lively review of the year's key judicial and legislative developments affecting franchising and distribution.

Speakers:

Benjamin B. Reed, Plave Koch PLC

Antonia Scholz, Cheng Cohen LLC

THURSDAY, OCTOBER 29, 2020

8:00 a.m.-9:15 a.m. Pacific/11:00 a.m.-12:15 p.m. Eastern

Plenary 2: No Ordinary Time: The Impact of COVID-19 on Franchising

As 2020 began, few of us had ever heard of the coronavirus, social distancing, or knew how to use Zoom. Soon the COVID-19 pandemic had swept the world, infecting millions of people, killing hundreds of thousands worldwide, and causing job losses and other economic damage of a magnitude not seen in the United States since the Great Depression. Franchised businesses, and the lawyers who represent them, were not immune from this economic damage, as many systems endured mass unit closings literally overnight as millions of people went through extended periods of staying at home.

Ten months removed from the first reports of the coronavirus in the United States, what has been its impact on franchising and franchise relationships? What are franchisees and franchisors doing to recover from the severe blows they suffered this year? How did they share the pain? What does this experience teach that will help us as lawyers working for franchise clients and companies in this new world? In this lively, thought provoking program, a panel of experienced franchise lawyers will discuss these issues and more as Franchising in Focus 2020 looks at the pandemic's cataclysmic past, current, and likely future impacts.

Speakers:

Will K. Woods, Moderator, Baker McKenzie

Scott A. Catlett, Yum! Brands, Inc.

Ronald K. Gardner, Dady & Gardner, P.A.

James A. Goniea, Self Esteem Brands, LLC

Natalma (Tami) McKnew, Fox Rothschild LLP

Workshops

W-1: Bringing Clarity to the Accidental Franchise Conundrum

Not all companies believe they need to comply with franchise laws, and some don't even know franchise laws exist. Others try to convince themselves that their "license agreement" does not create a franchise relationship. But the bar for being a franchise is quite low, and many business relationships are actually "accidental franchises." Consequences may be significant, which can jeopardize an entire system, and can lead to litigation and regulatory action, with powerful remedies including rescission and restitution that can be sought by franchisees and regulators. The panel will discuss common types of license, training, and other programs and support that can trigger accidental franchise issues; how to explain to a prospective or existing accidental franchisor that its distribution model may really be a franchise; the potential litigation, liabilities, and other repercussions for being an accidental franchise; how the accidental franchisee may approach this situation; and finally how to work with an accidental franchisor after the fact to become compliant from a regulatory standpoint and minimize litigation exposure and liability that could jeopardize the entire brand.

Speakers:

Robert A. Lauer, Haynes and Boone, LLP

Howard R. Morrill, Howard R. Morrill, Attorney at Law

W-2: Litigation Trap: Preventing, Prosecuting, and Defending a Claim of Spoliation

Although it seems in this electronic age that nothing ever really goes away, deletion of electronic records is possible and, when done in the context of a dispute, can lead to claims of spoliation of evidence and devastating sanctions. This workshop will cover how to make sure—both offensively and defensively—that spoliation does not happen in the first place. The panel will also cover what to do if one party accuses another of spoliation, the potential repercussions of spoliation claims, issues that are specific to franchising cases, best practices for litigation holds to prevent spoliation, how courts are addressing such claims under the revised procedural rules, and how to best deal with the consequences if spoliation occurs, whether intentional or unintentional.

Speakers:

Emily I. Bridges, Fox Rothschild LLP

Joseph S. Goode, Laffey, Leitner & Goode LLC

W-3: Corraling Business Valuation Damages Issues in Franchise Cases

Determining the value of a franchisee's business is a critical part of the damages analysis of many franchisor-franchisee disputes. This issue can arise in the context of cases involving claims of breach of contract, wrongful termination, tortious interference, or buy-back rights under a franchise agreement. This workshop will examine more closely business valuation damage issues and strategies, including legal theories and arguments, expert witnesses and their reports supporting and attacking business valuation damage calculations and valuations, the practical and strategic differences between business valuation and claims for lost profits, and trial presentation strategies.

Speakers:

Carmen D. Caruso, Carmen D. Caruso Law Firm

Susan E. Tegt, Larkin Hoffman Daly & Lindgren Ltd.

W-4: How to Be a Strong Advocate and Effective Counselor to Your Client in Mediation

Mediation is often a central focus of the dispute resolution process, and for it to be successful, the lawyer must be effective in a variety of roles throughout the process. Depending on the stage and format of the mediation, the lawyer will need to continuously change which hat she is wearing with the client at any given time—that of a fierce advocate, a deft negotiator, a teacher, a peacemaker, and a reality check and evaluator, among others. Just as important, the effective lawyer also has to navigate the relationship with the mediator and opposing counsel, nimbly reacting and adapting to their styles and approaches, which significantly impacts the tone, pace, and rules of the mediation. This workshop will address the lawyer's juggling of the multiple roles she takes to advocate effectively for the client and achieve the ultimate goal of mediation—advancement towards a resolution (however defined).

Speakers:

Matthew J. Soroky, Lewitt, Hackman, Shapiro, Marshall & Harlan LLP

William K Whitner, Paul Hastings LLP

Workshops

W-5: Seeing it Through: Maximizing the Benefits of Insurance in Franchise Disputes

Whether commencing or defending litigation or arbitration, counsel representing franchisors, franchisees, franchise associations, and their respective principals must consider how insurance coverage applies to the legal action. Appropriate coverage can mitigate risks and impact litigation and settlement strategies. This workshop will address types of coverage that may be applicable to franchise disputes, crafting demands to trigger coverage, providing notice to insurers, drafting pleadings with insurance coverage in mind and to minimize the likelihood of denial of coverage, working with coverage counsel when the insurance company provides a reservation of rights or denies coverage, and the lawyer's responsibilities in communicating with the insurance company during the case. In addition, the panel will address legal principles and laws related to insurance that affect parties' choice of counsel and ability to control the litigation.

Speakers:

Michael Einbinder, Einbinder & Dunn LLP

Nina Greene, Genovese Joblove & Battista, P.A.

W-6: Ethics of Joint Representation: Representing Franchisors, Franchisees, and Their Officers, Employees, and Affiliates in Litigation

Representing multiple parties is often a necessity in franchise litigation in order to create consistency and efficiency. However, joint representation can also be a legal and ethical minefield—one that sometimes should be avoided at the outset. How do lawyers determine when it is appropriate to represent multiple parties, and when to avoid it? When there is a joint representation, what are the best practices to achieve a successful joint client relationship? How should a lawyer respond when conflicts arise that did not exist at the beginning of a joint representation? These issues can occur when representing the franchisor or the franchisee and related parties, such as franchise salespeople, area developers, master franchisees, current and former employees, officers, directors and principals. This workshop will cover the ethical issues that arise in these situations and provide guidance on whether and how to avoid, establish, adjust, and maintain such relationships.

Speakers:

Randy J. Curato, ALAS

Michael R. Gray, Lathrop GPM LLP

Ann H. MacDonald, Schiff Hardin LLP

W-7: The Evolution of Litigating Good Faith and Fair Dealing Claims

The concept of good faith and fair dealing is not new in franchising but may be evolving. The level of protection that good faith and fair dealing statutes and case law provide to franchisors and franchisees is up for debate following recent decisions that may be expanding the scope of good faith and dealing. This workshop will cover the current status of good faith and fair dealing law in franchising in the United States and Canada, the arc of a good faith and fair dealing claim in dispute resolution, how best to prosecute and defend claims relating to the scope of the duty of good faith and fair dealing, and best practices for carrying on a continuing day to day franchisor/franchisee relationship when in a dispute.

Speakers:

Sally Dahlstrom, Haynes and Boone, LLP

Jennifer Dolman, Osler, Hoskin & Harcourt LLP

Caroline Bundy Fichter, Bundy Law Firm PLLC

Workshops

W-8 Focusing On the Bottom Line: Managing Costs and Driving Value When Resolving Franchise Disputes

Disputes can be a reality of doing business for both franchisors and franchisees. This workshop will provide you with practical direction on how to manage dispute resolution costs. The panel will discuss identifying and leveraging the right professionals and resources to help you maximize efficiency in different dispute phases and workflows. The panel will also explore certain specific litigation strategies to help drive cost containment, including: the use of early case assessment and decision-trees, limiting depositions and document exchange, and bifurcation of issues. There will also be an examination of how “scorched earth,” “no stone unturned” and “win at any cost” approaches to litigation can impact your savings strategies and how to best respond. Finally, the panel will review appropriate alternative fee arrangements for disputes, their role in driving outside counsel/client alignment and budgetary certainty, and the growing use and availability of third-party litigation funding.

Speakers:

Jeffrey S. Haff, Dady & Gardner, P.A.

Gillian Scott, Osler, Hoskin & Harcourt LLP

Gerald C. Wells, Rita’s Franchise Company, LLC

W-9: Spotlight on Advanced Termination Issues and Incurable Defaults

Franchise terminations require diligent investigation and analysis to avoid potential liability and to accomplish the franchisor’s business goals. Contract requirements and relationship laws in some states impose restrictions on a franchisor’s ability to terminate. Many termination scenarios are not as straightforward as where a franchisee simply does not pay the fees prescribed by the franchise agreement. Relying entirely on an incurable default strategy to terminate a franchise relationship also can be tricky because the line is not always clear as to what is incurable or what can serve as the basis for termination, and the repercussions for choosing poorly are high (as exemplified by California’s recently amended relationship laws). This advanced workshop will address these issues from both the franchisor’s and franchisee’s perspective, and will go beyond basic termination scenarios to focus on special situations that can complicate termination decisions, including unique applications of good cause, improper use of trademarks or social media, and what is and isn’t an incurable default, and how

to prove it and defend against it.

Speakers:

Ronald T. Coleman, Jr., Parker Hudson Rainer & Dobbs LLP

Elliot Ginsburg, Garner, Ginsburg & Johnsen, P.A.

W-10: Franchise Agreements in Bankruptcy Cases and Business Restructurings—The Problems and Issues that Bankruptcy Can (and Cannot) Solve

Bankruptcy and other forms of business restructuring can throw agreements that existed prior to the bankruptcy or restructuring into chaos, and franchise and licensing agreements are no exception. A 2019 Supreme Court case, *Mission Product Holdings, Inc. v. Tempnology, LLC*, demonstrated that when a licensor goes bankrupt, the licensee’s rights to the license (in that case a trademark) may not necessarily end. This workshop will assess the impact of that case on franchise agreements, and will also look at issues that arise when franchise agreements are terminated before the bankruptcy filing, the franchise related issues involved in the restructuring of large multi-unit franchisees both inside and outside of bankruptcy, and the impact of large restructurings on the franchisor’s and franchisee’s ability to obtain credit. The workshop will also address the different types of issues that bankruptcy can—and cannot—effectively address.

Speakers:

Jason B. Binford, Texas Office of Attorney General

John R. Gotaskie, Jr., Fox Rothschild LLP

Workshops

W-11: Independent Contractor or Employee?—Current State of the Ever-Changing Law and Its Impact on Franchising

The status of franchisees as independent contractors has come under increasing scrutiny around the country. These issues have received increased attention due to cases like Dynamex and the new independent contractor statute, both in California. But this issue is not finally settled or even limited to California. There are proposals to amend the California statute, other states and the federal government are considering similar legislation, and the ABC-test in Dynamex has been applied in other jurisdictions. This workshop will explore these issues and how they are developing across the country. It also will consider what substantive impact changes in this area of the law are likely to have on franchisor-franchisee relationships.

Speakers:

Theresa D. Koller, Cline Williams Wright Johnson & Oldfather, L.L.P.

Norman Leon, DLA Piper LLP (US)

Douglas Luther, Amada Senior Care

W-12: Responding to Franchise Enforcement Actions

Although the goal is to avoid a franchise enforcement action in the first place, what should a lawyer do when a client is facing one? We will hear from regulators and counsel about best practices once a brand is under investigation, or worse, responding to an enforcement action—what to do, and what not to do, when handling such an investigation or action, how to address the regulator's key issues and mitigate penalties, and how to position the brand going forward. This program will focus on franchise enforcement actions generally, and not those related to no-poaching clauses in franchise agreements.

Speakers:

Martin Cordell, Washington Department of Financial Institutions

Theresa Leets, California Department of Business Oversight

Warren L. Lewis, Akerman LLP

W-13: Regulatory Update

This workshop will cover the latest hot topics in franchise sales regulation and offer practical tips about best practices for managing franchise sales compliance duties. The panel of state regulators will discuss recent trends in registration, disclosure and law enforcement in their own states, and the panel at large will discuss current events across all registration states including the implications of COVID-19 on FDD disclosures, common regulatory compliance issues, the use of the new state cover pages, and the impact of ASC-606 on the regulators' review of financial statements.

Speakers:

Timothy O'Brien, Virginia State Corporation Commission

Rochelle Spandorf, Davis Wright Tremaine LLP

Michelle Webster, Washington Department of Financial Institutions

W-14: International Franchising in a Time of Change: COVID-19, Brexit, and Beyond

In the last few years, the established global economic order has come under attack from a number of angles—geopolitical trade wars between the US, China and the EU have led to a rise in regionalism and protectionism, a populist backlash against globalization has resulted in Brexit, and most recently the COVID-19 pandemic has created an unprecedented level of uncertainty over the future economic outlook. All of these factors will have a profound impact on the way international franchise systems organize themselves and operate effectively across borders. This workshop will provide a high level analysis of these key international issues and will suggest practical ways in which international franchisors should respond. It will cover a range of issues such as market entry, managing/supporting existing markets, supply chain, crisis response and mitigation, franchisee communication, contractual force majeure, adverse change of law and frustration, breach and terminations and future proofing. The aim of the workshop is to stimulate thought and debate on what legal steps international franchisors can take to become more resilient and agile.

Speakers:

Gordon Drakes, Fieldfisher LLP

Frank Robinson, Cassels Brock & Blackwell LLP

Workshops

W-15: Do You Want to Know a Secret: The Impact of Consumer Privacy Laws on Franchise Companies

The impact of the California Consumer Privacy Act (CCPA) is likely to extend far beyond California as other states look at passing similar laws and companies cope with the CCPA's reach. This program will look at some of the issues confronting franchising in complying with new consumer privacy laws and regulations, in particular the CCPA, including the benefits and risks of data collection and use by franchisees and franchisors. It will also highlight developments across the United States involving similar consumer data privacy laws. Finally, the program will cover what may come next and what franchisors should consider when working with their franchisees on compliance with data privacy laws, including how franchisors can work with franchisees in developing data privacy compliance programs while minimizing vicarious and other liability risks that may arise with these programs.

Speakers:

Earsa R. Jackson, Clark Hill Strasburger PLC

Anthony Marks, Bryan Cave Leighton Paisner LLP

W-16: Promises, Promises: Financial Performance Representations—Advanced Issues

This workshop explores issues that remain about financial performance representations (FPRs) even after the guidance provided by the North American Securities Administrators Association's 2017 Item 19 Commentary. The panel will address some of these issues, including FPRs that are based on surveys, subsets of outlet types, or territorial differences; FPRs that present sub-categories or ranges of information; how system changes or significant world events can affect the relevance of an FPR; whether a franchisor can make a financial performance representation in a multi-concept or model offering; FPRs in advertising; supplemental FPRs; and the most common comments regulators make about FPRs. The panel will also address non-traditional FPRs in industries such as janitorial and lodging.

Speakers:

Dale Cantone, Maryland Securities Division, Office of the Attorney General

Lulu Chiu Gomez, California Department of Business Oversight

David Gurnick, Lewitt, Hackman, Shapiro, Marshall & Harlan LLP

W-17: Change is Good? Franchisor and Franchisee Perspectives in Changing System Standards

Franchisors often face the need to revise system standards, sometimes in response to competitive challenges, and other times to adjust to trends and changes in consumer behavior. Common changes include store remodeling, product and service offerings, and methods of delivery. Franchisees may balk at such changes as expensive or unnecessary, or potentially damaging, for their businesses or markets. The program considers the legal authority permitting franchisors to change system standards, including the law of incomplete contracts and the covenant of good faith and fair dealing and applicable franchise statutes. The program will also consider relationship issues of how franchisors should communicate the rationale for changes to franchisees and implement those changes; and the important role franchisees play in the development and implementation of changes.

Speakers:

Jeffrey A. Brimer, Lexagon Law

Peter C. Lagarias, Lagarias, Napell & Dillon, LLP

W-18: Dueling Perspectives on Selected Franchise Agreement Provisions

Some franchisee lawyers believe that franchise agreement terms are unnecessarily one-sided in franchisors' favor, and some franchisor lawyers disagree. This workshop will discuss specific franchise agreement provisions, such as provisions on the number of arbitrators, franchisor step-in rights and buyout valuation provisions, trademark and system change rights, extensive use of the phrase "sole discretion," scope of non-compete provisions, out-of-state venue provisions, and the scope of personal guarantees, among others. Panelists will encourage discussion of the provisions, examine the consequences for franchisees, and debate whether language changes would minimize seeming unfairness and yet still achieve the franchisor's intended purposes.

Speakers:

Stanley M. Dub, Law Office of Stanley M. Dub

Bruce Napell, Lagarias, Napell & Dillon, LLP

Daniel J. Oates, Miller Nash Graham & Dunn LLP

Workshops

W-19: More Units, More Problems: Drafting and Negotiating Challenges in Multi-Unit Agreements

Drafting challenges increase when a multi-unit agreement is involved. Issues related to the size of the development area, carve-outs to exclusivity, agreeing upon an aggressive but realistic development schedule, and fashioning appropriate enforcement mechanisms add to the complexity. This program is designed to help simplify some very complicated negotiation and drafting issues for multi-unit development agreements.

Speakers:

Alan R. Greenfield, Greenberg Traurig, LLP

Julie Lusthaus, Lusthaus Law P.C.

William W. Sentell III, Baker McKenzie

W-20: Age of Disruption: Current Issues for Restaurant Franchises

Franchised restaurant businesses confront many issues in their increasingly competitive environments in the 2020s, including the rise of third party delivery services, preventing the development and spread of foodborne illnesses, responding to a pandemic, emerging trends in employee pay (including early pay), data privacy concerns, ensuring that gift cards and websites are ADA compliant, and vicarious liability issues. The panel will discuss how these issues impact restaurant franchises and provide their thoughts on best practices for managing them.

Speakers:

Anne P. Caiola, Caiola & Rose

Brittany A. Johnson, Starbucks Corporation

Andra Terrell, Church's Holdings Corp.

W-21: Running on Empty: Dealing with Supply Chain Issues

Online and brick and mortar franchised businesses have many differences but share one crucial commonality—the need to be able to deliver products to consumers in a timely and efficient manner. The development and maintenance of an effective supply and distribution system are critical to the success of many franchised concepts. This workshop will consider the components of an effective supply and distribution system, the process for approving suppliers and distributors, dealing with supplier contracts, handling proprietary products within a system, supplier rebate issues, the ever increasing role of blockchain and other new technologies in supply and distribution systems, and product recall and supply chain disruption matters.

Speakers:

Andrew Beilfuss, Quarles & Brady LLP

Jess Dance, Polsinelli PC

Jason Williams, Frost Brown Todd LLC

W-22: Who You Gonna Call: The Role of Franchise Lawyers in Mergers & Acquisitions

Franchise lawyers are often brought on as specialty counsel in franchise mergers and acquisitions to add their knowledge of franchise law and franchise systems to the deal team. This workshop will look at the role of franchise lawyers representing buyers, sellers, and lenders or rep & warranty insurers to PE buyers, in M&A transactions. It will discuss the degree and scope of their involvement from the early stages with legal due diligence, to later in the process when drafting and negotiating the purchase agreement and collateral agreements, and dealing with closing issues.

Speakers:

Mark Kirsch, Lathrop GPM LLP

Charlene York, Worldwide Express, LLC

Workshops

W-23: Advertising and Marketing Funds: What Are You Doing With “My” Money?

Advertising and marketing funds give rise to some of the most contentious issues between franchisors and franchisees. This workshop will look at management practices that are particularly likely to give rise to conflicts, but will also look at issues such as use of marketing fund advisory committees, required and suggested FDD disclosures, collection and use of advertising funds, fund management in complex franchise systems and by franchisors with multiple brands, as well as litigation issues.

Speakers:

Thomas R. Ayres, Witmer Karp Warner & Ryan LLP

Beata Krakus, Greensfelder, Hemker & Gale, P.C.

W-24: International Legal and Legislative Update

Join this panel for a comprehensive legal and legislative update on the latest developments in international franchise laws, including new and revised laws in countries such as Saudi Arabia, Thailand, Indonesia, and Brazil. The panel also will discuss trends in registration and disclosure matters, and will discuss lessons learned from international cases of interest. This program supplements the updates in the annual developments book and plenary to allow specific and detailed focus on these international market locations.

Speakers:

Iain Irvine, KHQ Lawyers

Kendal Tyre, Nixon Peabody LLP

Program Schedule

TUESDAY, OCTOBER 27, 2020

8:00 a.m.-1:00 p.m. Pacific/11:00 a.m.-4 p.m. Eastern
(concurrent)

Intensive 1: A Sharper Focus on the Shifting Realities for Franchisees in the 2020s

Intensive 2: A Practical Vision of Trademark and Trade Dress Issues Affecting Franchised Businesses

2:30 p.m.-3:30 p.m. Pacific/5:30 p.m.-6:30 p.m. Eastern

Group Meetings

- Solo/Small Firm
- LADR
- Corporate Counsel
- International
- Professors
- Para-professionals

Spouse/Guest Event

Wednesday, October 28, 2020

8:15 a.m.-8:20 a.m. Pacific/11:15 a.m.-11:20 a.m. Eastern
Welcome from Program Co-Chairs

8:20 am-9:00 a.m. Pacific/11:20 a.m.-12:00 p.m. Eastern
Forum Business Meeting

9:15 a.m.-10:30 a.m. Pacific/12:15 p.m.-1:30 p.m. Eastern
Annual Developments

11:00 a.m.-12:15 p.m. Pacific/2:00 p.m.-3:15 p.m. Eastern
Workshops

W-1 Bringing Clarity to the Accidental Franchise Conundrum

W-2 Litigation Trap: Preventing, Prosecuting, and Defending a Claim of Spoliation

W-20 Age of Disruption: Current Issues for Restaurant Franchises

W-24 International Legal and Legislative Update

1:00 p.m.-2:15 p.m. Pacific/4:00 p.m.-5:15 p.m. Eastern
Workshops

W-3 Corraling Business Valuation Damages Issues in Franchise Cases

W-10 Franchise Agreements in Bankruptcy Cases and Business Restructurings—The Problems and Issues that Bankruptcy Can (And Cannot) Solve

W-13 Regulatory Update

W-17 Change is Good? Franchisor and Franchisee Perspectives in Changing System Standards

3:00 p.m.-4:15 p.m. Pacific/6:00 p.m.-7:15 p.m. Eastern

YLD Event

and

Women's Caucus Meeting

THURSDAY, OCTOBER 29, 2020

8:00 a.m.-9:15 a.m. Pacific/11:00 a.m.-12:15 p.m. Eastern

Plenary 2: No Ordinary Time: The Impact of COVID-19 on Franchising

10:00 a.m.-11:15 a.m. Pacific/1:00 p.m.-2:15 p.m. Eastern
Workshops

W-5 Seeing it Through: Maximizing the Benefits of Insurance in Franchise Disputes

W-7 The Evolution of Litigating Good Faith and Fair Dealing Claims

W-15 Do You Want to Know a Secret: The Impact of Consumer Privacy Laws on Franchise Companies

W-16 Promises, Promises: Financial Performance Representations – Advanced Issues

12:00 p.m.-1:15 p.m. Pacific/3:00 p.m.-4:15 p.m. Eastern
Workshops

W-4 How To Be a Strong Advocate and Effective Counselor to Your Client in Mediation

W-12 Responding to Franchise Enforcement Actions

W-18 Dueling Perspectives on Selected Franchise Agreement Provisions

W-19 More Units, More Problems: Drafting and Negotiating Challenges in Multi-Unit Agreements

2:00 p.m.-3:30 p.m. Pacific/5:00 p.m.-6:30 p.m. Eastern
Networking Event

Please note that each Workshop will be offered in one time slot this year, live-streamed with real-time audience interaction, but recorded versions of all Workshops will be available on-demand after the Annual Forum for up to 6 months. CLE credit will be available in most states for both live-streamed and on-demand viewing.

Program Schedule

FRIDAY, OCTOBER 30, 2020

8:00 a.m.-8:30 a.m. Pacific/11:00 a.m.-11:30 a.m. Eastern
State of the Forum

8:45 a.m.-10:00 a.m. Pacific/11:45 a.m.-1:00 p.m. Eastern
Diversity Caucus Meeting

10:30 a.m.-11:45 a.m. Pacific/1:30 p.m.-2:45 p.m. Eastern
Workshops

W-9 Spotlight on Advanced Termination Issues and Incurable Defaults

W-11 Independent Contractor or Employee?—Current State of the Ever-Changing Law and Its Impact on Franchising

W-14 International Franchising in a Time of Change: COVID-19, Brexit, and Beyond

W-22 Who You Gonna Call: The Role of Franchise Lawyers in Mergers & Acquisitions

12:30 p.m.-1:45 p.m. Pacific/3:30 p.m.-4:45 p.m. Eastern
Workshops

W-6 Ethics of Joint Representation: Representing Franchisors, Franchisees, and Their Officers, Employees, and Affiliates in Litigation

W-8 Focusing On the Bottom Line: Managing Costs and Driving Value When Resolving Franchise Disputes

W-21 Running on Empty: Dealing With Supply Chain Issues

W-23 Advertising and Marketing Funds: What Are You Doing With “My” Money?

TUESDAY, OCTOBER 27, 2020

2:30 p.m. Pacific/5:30 p.m. Eastern

Spouse/Guest Event: Make a Persian Feast

Registration Fee: \$35 per household

Cook along with Chef Susan Barocas as she guides us through creating a delicious Persian meal of fish, rice and salad featuring the rich flavors of one of the world’s great cuisines. You will have fun during our 90 minutes together, while making a special dinner to enjoy.

Registered participants will receive the recipes, ingredient break down and instructions for advance preparation at least two weeks before the class. Ingredients will be easily accessible.



Please note that each Workshop will be offered in one time slot this year, live-streamed with real-time audience interaction, but recorded versions of all Workshops will be available on-demand after the Annual Forum for up to 6 months. CLE credit will be available in most states for both live-streamed and on-demand viewing.

Speaker List

Jason Adler, Cellairis Franchise, Inc.

Thomas R. Ayres, Witmer, Karp, Warner & Ryan LLP

Andrew Beilfuss, Quarles & Brady LLP

Jason B. Binford, Texas Office of the Attorney General

Emily I. Bridges, Fox Rothschild LLP

Jeffrey A. Brimer, Lexagon Law

William Bryner, Kilpatrick Townsend & Stockton LLP

Anne P. Caiola, Caiola & Rose

Dale Cantone, Maryland Securities Division, Office of the Attorney General

Carmen D. Caruso, Carmen D. Caruso Law Firm

Scott A. Catlett, Yum! Brands, Inc.

Ronald T. Coleman, Jr., Parker Hudson Rainer & Dobbs LLP

Martin Cordell, Washington Department of Financial Institutions

Randy J. Curato, ALAS

Sally Dahlstrom, Haynes and Boone, LLP

Jess Dance, Polsinelli PC

Matthew DeAntonio, Bradley Arant Boult Cummings LLP

Jennifer Dolman, Osler Hoskin & Harcourt LLP

Gordon Drakes, Fieldfisher LLP

Stanley M. Dub, Law Office of Stanley M. Dub

Michael Einbinder, Einbinder & Dunn LLP

Robert M. Einhorn, Zarco Einhorn Salkowski & Brito, P.A.

Caroline Bundy Fichter, Bundy Law Firm PLLC

Ronald K. Gardner, Dady & Gardner, P.A.

W. Michael Garner, Garner, Ginsburg & Johnsen, P.A.

Elliot Ginsburg, Garner, Ginsburg & Johnsen, P.A.

Lulu Chiu Gomez, California Department of Business Oversight

Joseph S. Goode, Laffey, Leitner & Goode LLC

James A. Goniea, Self Esteem Brands, LLC

John R. Gotaskie, Jr., Fox Rothschild LLP

Michael R. Gray, Lathrop GPM LLP

Nina Greene, Genovese Joblove & Battista, P.A.

Alan R. Greenfield, Greenberg Traurig, LLP

David Gurnick, Lewitt, Hackman, Shapiro, Marshall & Harlan LLP

Jeffrey S. Haff, Dady & Gardner, P.A.

Iain Irvine, KHQ Lawyers

Earsa R. Jackson, Clark Hill Strasburger PLC

Brittany A. Johnson, Starbucks Corporation

Eric H. Karp, Witmer, Karp, Warner & Ryan, LLP

Mark Kirsch, Lathrop GPM LLP

Theresa D. Koller, Cline Williams Wright Johnson & Oldfather, L.L.P.

Beata Krakus, Greensfelder, Hemker & Gale, P.C.

Peter C. Lagarias, Lagarias, Napell & Dillon, LLP

Robert A. Lauer, Haynes and Boone, LLP

Theresa Leets, California Department of Business Oversight

Norman Leon, DLA Piper LLP (US)

Warren L. Lewis, Akerman LLP

Julie Lusthaus, Lusthaus Law P.C.

Douglas Luther, Amada Senior Care

Ann H. MacDonald, Schiff Hardin LLP

Anthony Marks, Bryan Cave Leighton Paisner LLP

Natalma (Tami) McKnew, Fox Rothschild LLP

Nicole Liguori Micklich, Urso, Liguori & Micklich, P.C.

Howard R. Morrill, Howard R. Morrill, Attorney at Law

Bruce Napell, Lagarias, Napell & Dillon, LLP

Dawn Newton, Donahue Fitzgerald LLP

Speaker List

Daniel J. Oates, Miller Nash Graham & Dunn LLP

Timothy O'Brien, Virginia State Corporation Commission

Benjamin B. Reed, Plave Koch PLC

Frank Robinson, Cassels Brock & Blackwell LLP

Brian B. Schnell, Faegre Drinker Biddle & Reath, LLP

Antonia Scholz, Cheng Cohen LLC

Gillian Scott, Osler, Hoskin & Harcourt LLP

William W. Sentell III, Baker McKenzie

Matthew J. Soroky, Lewitt, Hackman, Shapiro, Marshall & Harlan LLP

Rochelle Spandorf, Davis Wright Tremaine LLP

Susan E. Tegt, Larkin Hoffman Daly & Lindgren Ltd.

Andra Terrell, Church's Holdings Corp.

Kendal Tyre, Nixon Peabody LLP

Michelle Webster, Washington Department of Financial Institutions

Gerald C. Wells, Rita's Franchise Company, LLC

William K Whitner, Paul Hastings LLP

Jason Williams, Frost Brown Todd LLC

Will K. Woods, Baker McKenzie

Charlene York, Worldwide Express, LLC

Conference Information

1. Program Registration

To register for all programs and events, please register online at <https://www.xpressreg.net/eReg/?ShowCode=FOFR1020>. Confirmations will be e-mailed to you within 72 hours of registration receipt.

2. Tuition Information

Tuition for the intensive programs is separate and in addition to the main program registration fee. Intensive program tuition includes course materials. Tuition for the main program includes admission to the four-day program and course materials. See main program registration fees listed below. The Forum will be providing this year's program materials via a web link. NEW THIS YEAR - Access to all recorded sessions will be available up to 6 months after the program. A limited number of scholarships may be available. For more information contact Yolanda.Muhammad@americanbar.org.

Main Program Virtual Forum Registration Fees (On/Before August 31, 2020)

- Non ABA Member: \$995
 - ABA Member: \$795
 - Forum on Franchising Member: \$695
 - Government/Academic: \$400
 - Paralegal, Legal Assistant, etc.: \$400
 - ABA Young Lawyer (35 Years or Younger): \$350
 - 1st/2nd Time Attendee of the Forum: \$350
 - Law Student: \$100
 - Speakers, Forum Governing Committee or Past Chair/Non-speaker, and Press*: \$0
- *Press must gain approval from ABA Media Relations Department

Main Program Virtual Forum Registration Fees (On/After September 1, 2020)

- Non ABA Member: \$1095
 - ABA Member: \$895
 - Forum on Franchising Member: \$795
 - Government/Academic: \$500
 - Paralegal, Legal Assistant, etc.: \$500
 - ABA Young Lawyer (35 Years or Younger): \$450
 - 1st/2nd Time Attendee of the Forum: \$450
 - Law Student: \$150
 - Speakers, Forum Governing Committee or Past Chair/Non-speaker, and Press*: \$0
- *Press must gain approval from ABA Media Relations Department

Intensive Program Registration Fees - \$445 per intensive
Spouse/Guest Event Registration Fee - \$35 per household

3. Cancellation Policy

Registrants who are unable to attend the conference and wish to cancel their registration will receive a refund less a \$50 administrative fee if written cancellation is received by September 25, 2020. Cancellations may be e-mailed to forumreg@dci-kansascity.com. No refunds will be granted after September 25, 2020. Substitutions are acceptable, or a link to conference materials will be sent in lieu of a refund after the program. The Forum reserves the right to cancel any programs and assumes no responsibility for personal expenses.

4. CLE Credit

The ABA will seek up to 26 hours of CLE credit including 1.25 hours of ethics credit for this program in 60-minute states, and 31.2 hours of CLE credit including 1.5 hours of ethics credit for this program in 50-minute states. Credit hours are estimated and are subject to each state's approval and credit rounding rules. View MCLE Details For more information about CLE accreditation in your state, visit www.americanbar.org/groups/franchising.html or contact Yolanda.Muhammad@americanbar.org.

5. Membership

To encourage registrants to join the ABA Forum on Franchising, the reduced member's tuition rate will be extended to registrants who join the Forum when they register for the conference. Forum membership dues are \$50 for attorneys/associates and free for law students. Please include a separate check (payable to the American Bar Association) or pay by credit card for membership dues.

6. Additional Course Materials

Materials for all programs may be available for purchase after the conference by calling the ABA Service Center at 800-285-2221.

7. Forum Policy Regarding Self Promotion and Conflicts

In order to ensure a spirit of collegiality at the Annual Forum, please respect the Forum on Franchising's policy which provides that no individual, group or entity (other than the ABA) may engage in any type of self-promotion or conflicting activities (such as giving gifts; hosting group functions (including digital or online events) i.e., more than six guests including meals, parties, sporting events, meetings or seminars; or displaying or distributing advertising, marketing materials, books, articles, case reports or anything of value or scheduling non-Forum sponsored group meetings) at or in connection with the Annual Forum or any Forum sponsored events (i.e., from the time the first event or program starts to the time the last event or program ends).

Conference Information

8. Tax Deduction for Educational Expenses

In the United States an income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees (see Treas. Reg. Sec. 1.162-2) Coughlin v. Commissioner, 203 F.2d 307 [2nd Cir. 1953.]

9. Americans with Disabilities Act

If special arrangements are required for disabled individuals to attend this program virtually, please contact forumreg@dc-kansascity.com by September 14, 2020.

10. For the Latest Program Information

Please visit the Forum on Franchising Annual meeting site at www.americanbar.org/groups/franchising.html

11. Questions

If you have questions or require additional conference information contact forumreg@dc-kansascity.com or call 913-387-5627.

12. Scholarship

A limited number of scholarships to defray tuition expenses are available for this program. To request an application or receive additional information, please contact Yolanda.Muhammad@americanbar.org. Qualifying attorneys may receive a 50% reduction in tuition fees.