LAREDO & SMITH, LLP

IN BRIEF

Starting Your Own Business – The Franchise Model, Part I

WHAT IS A FRANCHISE?

Franchising is a popular avenue to entrepreneurship where the business owner is able to take advantage of the brand, systems and experience of a larger, more established enterprise. What makes franchising attractive to entrepreneurs is the ability to go into business *for* themselves but not *by* themselves. At its essence, franchising is a way to sell goods and services that involves a relationship between an entity that has an established brand and system (the franchisor) and an independent business owner (the franchisee). In exchange for both initial and ongoing fees, the franchisor grants the franchisee a license to use a federally registered trade mark under the strict control of (and with assistance from) the franchisor.

> "Like any business, the franchise model has its disadvantages, as well as risks and traps for the unwary."

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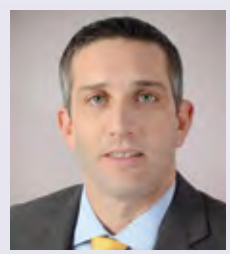
FIRM NEWS

Payal Salsburg spoke at a "Practicing with Professionalism" program for the Boston Bar Association. She also participated as a volunteer judge for the American Association for Justice's Student Trial Advocacy program held at Suffolk Superior Court.



Eric Sigman spoke on investor visas and franchise law at a recent New England Business Broker meeting.

Jessica Conklin and **José Sierra** attended the annual Massachusetts Black Lawyers Association Gala.

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One of the fundamental advantages of this model is that the franchisor, which has a vested interest in the success of its franchisees, provides training and mentoring to new franchisees. In addition to the direct support of the franchisor, the new franchisee often has the support of other franchisees and, in conjunction with the licensing of an established brand, is able (at least in theory) to get a jump start on the franchisee's customer base and improve her chances for success.

However, like any business, the franchise model has its disadvantages, as well as risks and traps for the unwary. First, there is an initial franchise fee which is in the range of tens of thousands of dollars and is almost always non-refundable. In addition, there are other fees the franchisor charges in exchange for its support, including monthly royalty fees and fees for advertising, insurance, bonding, training, and special equipment. Most of these charges are required even when the franchisee is not making money, which is not unusual for most new businesses.

Second, for any prospective franchisee, it is critical to do one's homework by carefully researching the opportunity and fully understanding the risks involved with the potential venture. It is imperative that the franchisor's business model itself be viable. A successful brand, system and training program is necessary for the success of any franchised business. And, as with any investment, the failure to properly evaluate these essential components – both within the model itself and as compared to other franchise models – can make an otherwise potentially profitable venture a financial catastrophe for the new business owner.

In Part II, we will highlight the key issues in the franchise due diligence process that a potential franchisee should explore when considering a particular franchise opportunity.

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