



EXPANDING TO THE UNITED STATES



Lee Plave, Partner
Plave Koch PLC
Reston, Virginia / Washington, D.C.
USA
lplave@plavekoch.com

Franchising in the USA

The Market: **330 million population**

Top 10 US Metro Areas

New York City *	19.2 million	Washington, DC	6.3 million
Los Angeles *	13.2 million	Miami	6.2 million
Chicago *	9.5 million	Philadelphia	6.1 million
Dallas	7.6 million	Atlanta	6.0 million
Houston	7.1 million	Phoenix	4.9 million

53 Metro Areas > 1.0 million

110 Metro Areas > 500,000

* indicates a “registration state”

US Franchise Law – The Basics

FTC Franchise Rule

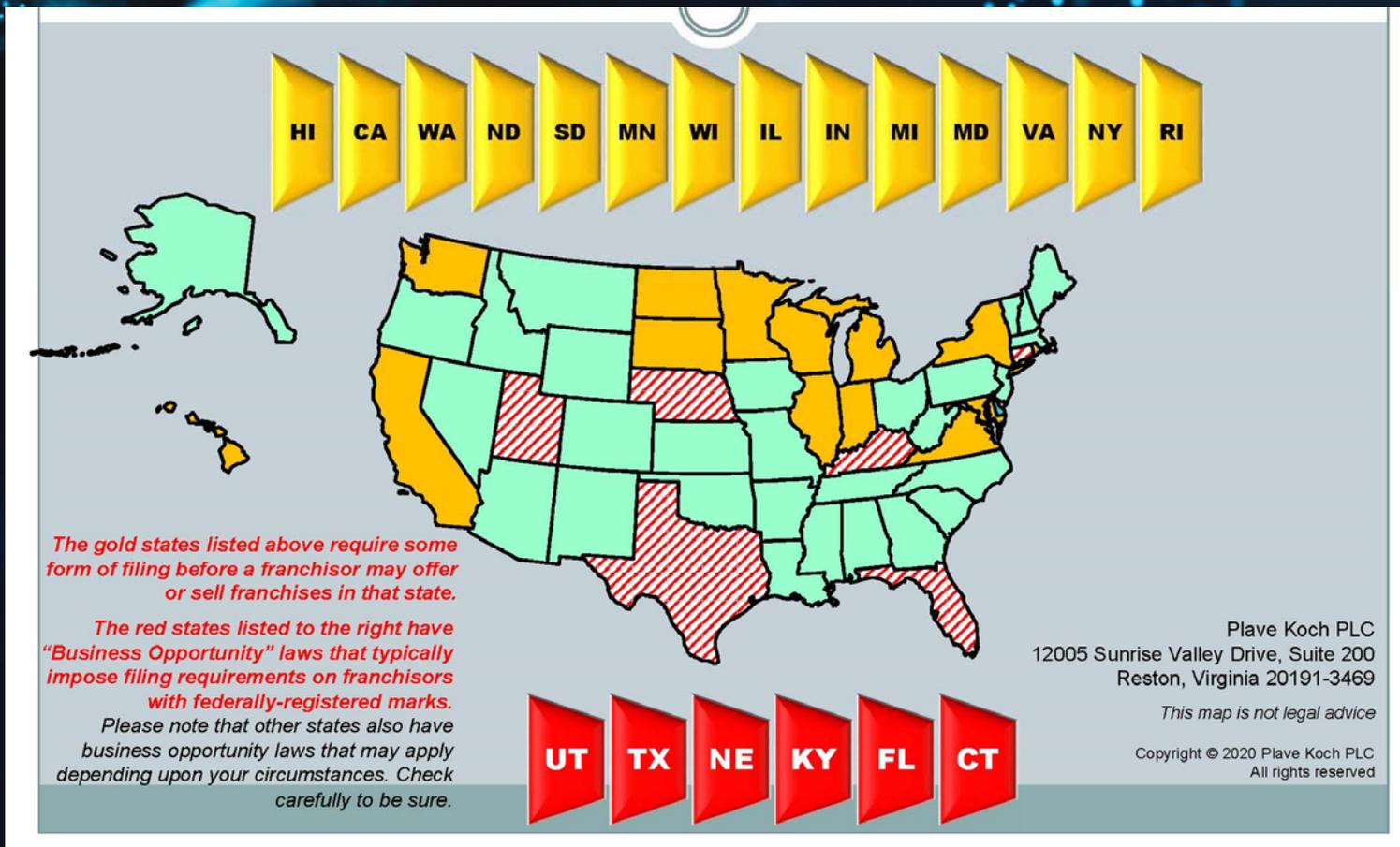
- Requires disclosure
- The **FDD** (“**F**ranchise **D**isclosure **D**ocument”)
- 23 items
- No filing with FTC or other US gov’t agency
- 50 states, DC, PR, and USVI



State Laws

- **14** “**registration**” states
 - Must file before offering/ selling;
 - Annual filings
 - Disclosure too
- **6** “**bus op**” states
 - Bus Op laws – impact most franchisors
- **24** “**relationship law**” states
 - termination, non-renewal, transfer, discrim. (+ PR & USVI)

US Franchise Law – The “Registration States”





Key Features of US Franchise Laws

• FTC Rule

- Must give Franchise Disclosure Document (**FDD**)
- Give FDD 14+ days before signing or taking \$\$
- FDD - 23 Items, but really 3 Big Buckets, about:
 - the FR
 - the System
 - the Agmt + the deal
- Incl. agreements + audited financials
- Comparative format – easy to compare FRs
- Investment decision
- Sales tool vs Explanation tool
- Amend if material event occurs; annual renewal
- 2020 regulatory update process

FRANCHISE DISCLOSURE DOCUMENT

DUNKIN' DONUTS FRANCHISING LLC
a Delaware limited liability company
130 Royal Street
Canton, Massachusetts 02021
(781) 737-3000
www.DunkinFranchising.com
dunkinfranchising@dunkinbrands.com

DUNKIN'

The Franchisor is Dunkin' Donuts Franchising LLC ("Dunkin'", "we", "Dunkin' Donuts", or "DD"). We develop, operate and franchise retail restaurants utilizing the Dunkin' system. Our franchised restaurants sell Dunkin' coffee, espresso, donuts, bagels, muffins, compatible bakery products, sandwiches, as well as other food items and beverages compatible with our concept.

The total investment necessary to begin operation of a Dunkin' franchise ranges from \$199,700 to \$1,687,200. This includes a range of \$340 to \$125,340 that must be paid to the franchisor or affiliate.

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no government agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Dunkin' Franchise Information, 130 Royal Street, 3 East A, Canton, Massachusetts 02021 (tel: 1-877-800-2922).

The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "A Consumer's Guide to Buying a Franchise," which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Issued March 27, 2020

Key Features of US Franchise Laws

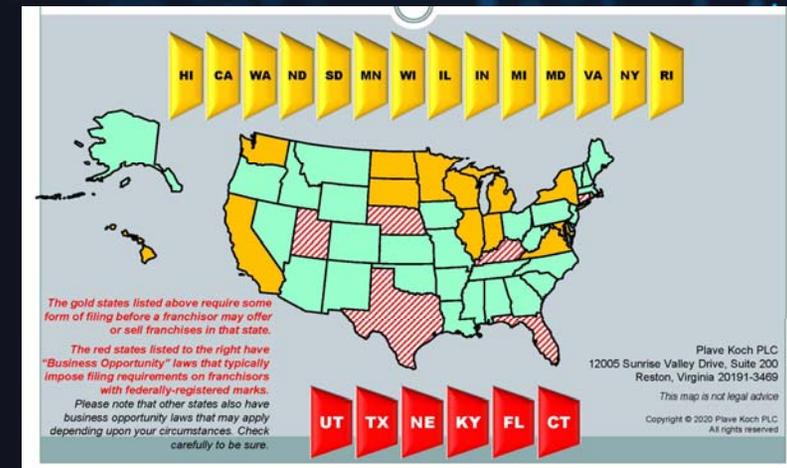
- **State Laws**

- **Registration States**

- Register & get state approval; then give out FDD
- Process easy in some states, more rigorous in others
- Annual filing – usually 120 d. post FYE
- 14 states

- **Business Opportunity Law States**

- 6 states
- 4 have easy permanent exemption
- 2 have easy annual filings





Purpose of Franchise Disclosure

- Compliance goals:
 - Know your essential documents
 - Smart, effective, professional team
 - Prepare prospective FEs to know what to expect – cut down on disagreements and disappointment
 - Avoid lawsuits, exposure to personal & corp. liability, enforcement actions, and cost
 - Be able to enforce rights and maintain system integrity
 - Which leads to higher FR and FE profitability



What if there is a violation?

- Exposure to private liability and gov't action
- Private lawsuits
 - FE sues directly or in a counterclaim
 - But – **US courts typically require proof that alleged violation caused real economic damages**
- Gov't Enforcement Action
 - State acts to address violations
 - Often not concerned with economic impact
 - Typically only in registration states
 - FTC usually only acts if there is fraudulent conduct





Selected Trends in Franchise Law

• COVID-19 impact on franchise sales and growth

- Restaurant openings – same pace in 2020 as in 2018; ahead of 2017
- ↑ CapEx + Time to open = ↑ likely to be proceeding ahead now
- Some businesses structured so they thrive even in midst of pandemic
- Softer RE demand leads to RE opportunities
- Some FRs and FEs are being bought-out (e.g., 130 unit *Friendly's* chain sold for \$2m after “canned bankruptcy” proceedings)
- Underlying strength remains (e.g., Inspire Brands buying *Dunkin'* for \$11.3bn at ~ 20% premium over market cap) – totally franchised system
- How and to what businesses will consumers “come back”?
- Warren Buffett: ***if you believed in fundamental strength of US economy before pandemic, you should continue to believe***



Selected Trends in Franchise Law

• **Third Party Delivery & Ghost Kitchens**

- Who sets up (FR, FEs, 3rd party)?
- Cannibalization & impact on existing and future units?
- Delivery fees
- Data ownership

• **Antitrust Pendulum**

- Poss. swinging toward middle?
- Activity at state AG level

• **Employment issues**

- Jt Employer Issues – workable!
 - US gov't enforcement
 - Private litigation
- State issues – Calif. law re “gig” economy ensnares FRs
- Minimum wage issues
 - \$15/hr - some but not all states, not nationwide
 - ACA and health care ins.



EXPANDING TO CANADA

Larry Weinberg, Partner
Cassels

Toronto, Ontario, Canada

Partner: Lweinberg@cassels.com





Franchising in Canada

- Canada's Population: 37.8 million
 - Fairly sizable, but of course next door to US with population 10X the amount
 - Canada has about the same population as the State of California, but in a country bigger than the US
 - Canada's most populated province is Ontario, with 14.6 million people
 - 80% of Canadians live within 200km of US border
- Franchising thrives in Canada, even though it is regulated
 - 2nd only to the US in terms of franchise activity, and
 - #1 foreign market for US brands
- Some stats, courtesy of the Canadian Franchise Association
 - There are 1,200 franchisors = 76,000 franchised locations
 - C\$100B in gross revenues
 - Employs 1.9 million people



Proactive Steps in Expanding to Canada

- Protect your Intellectual Property, namely trademarks and copyright
 - Should apply for your trademarks asap – “yesterday, not today nor tomorrow”
 - Domain names – “.ca” top level domain
- Determine Corporate Structure and Tax
 - Who is the franchisor going to be? –
 - A variety of choices – domestic franchisor, new domestic entity, new Canadian entity
 - Driven by tax, liability and business issues
 - Residency equals taxable entity in Canada
 - Non-resident Withholding Tax
 - Are Boots on the ground important?
 - Subsidiary?
 - Employees vs. sophisticated multi-unit masters/developers?



Proactive Steps in Expanding to Canada

- Determine Franchise Structure –
 - Single unit- still used in international deals as between US and Canada
 - More likely- master franchising, area developer, area representative and/or joint venture
 - One size does not fit all
 - Pros and cons to each method
- Prepare new or “Canadianize” the Australian form of franchise agreement
 - Consider financial and legal terms if deal not like your domestic ones
- Prepare Canadian Franchise Disclosure Document
 - Australian or US FDD a good template but not a substitute
- Educate client’s staff on content of FDD, and process to follow, to avoid legal risk.



Canada – 6 of 10 provinces (shaded in blue) have a franchise law





Key Features of Provincial Franchise Laws

- Franchise laws in BC, Alberta, Manitoba, Ontario, New Brunswick and PEI
- No franchise laws in Saskatchewan, Quebec, Nova Scotia and Newfoundland
- Features of all Franchise Laws - Pre-Sale Disclosure
 - Franchisor must deliver a “Franchise Disclosure Document” at least 14 days before signing any agreement or taking any money from the prospect
 - Very limited exceptions, and limited ability to sign a binding LOI
- Right to Associate
 - Franchisees may “associate” with one another and may form or join an association
 - Prohibition on interference, penalty or threats by franchisor
- Duty of Fair Dealing
 - Every franchise agreement imposes on each party a duty of fair dealing in its performance and enforcement; includes good faith, and commercial reasonableness
- Limited Relationship Provisions
 - Governing law, venue and non-waiver provisions



Franchise Disclosure

- Legal Obligation to disclose in FDD “all material facts”, including those mandated by law.
 - Format must follow Regulations required by the 6 franchise laws
 - One FDD for entire country is common
 - If the current Australian FA and FDD are for single unit franchises then may or may not assist in a Canadian master franchise or area developer deal
- So FDD contains all material facts required by Regulations
 - Must include franchisor’s financial statements
 - Often an issue to be resolved
 - Must include copies of all agreements to be signed



Liability For Failure To Disclose

- Complete failure to comply with the disclosure obligations provide franchisee with 2 year right to rescind the FA and to walk away from business
- 60 day right to walk away if there are deficiencies
- On rescission, franchisee entitled to return of monies paid, and damages, and Franchisor takes back the business
- Right to sue for above, and for damages for misrepresentations
- So specialized advice from Canadian franchise lawyer and accountant is recommended.



Selected Trends in Franchise Law

- Current state of the market, pre and now during Covid-19
- Digital Systems and 3rd party delivery
- Data Privacy and Protection
- Joint Employer Issues