



Leveraging Franchisee Associations and Advisory Councils to Strengthen Relationships

iFA INTERNATIONAL
FRANCHISE
ASSOCIATION

**2025 LEGAL
SYMPOSIUM**

||| MAY 4-6 | WASHINGTON, DC

Fredric A. Cohen, Cheng Cohen LLC

- Trial Lawyer/Litigator/Arbitrator/Mediator

Keith Miller, Franchisee Advocacy Consulting

- Franchisee, Franchisee Advocate

Brian Balconi, Balconi Mediation Services

- Mediator (Most Recently Franchisor General Counsel)

What is a Franchisee Advisory Council (FAC)

- Council of Franchisees
- Purpose – example: “to promote open and constructive communication between franchisees and management of the Franchisor”
- Controlled by Franchisors
- Typically, No Decision-making

Benefits of a FAC

- Improved Relationship
- Franchisor Decision-making
- Improved Operations
- Marketing Advisory Council
- Sourcing

Sharing of FAC Discussions

- Constituents
- Minutes
- Confidentiality
 - Highly Proprietary Matters - President's Council

Structure and Bylaws

- Statement: “Franchisor will consider input...”
- Elections or Appointed?
- Qualifications of FAC members
- Amending Bylaws – by majority of members
 - Franchisor Best Practice: “Franchisor may amend, waive, or terminate the bylaws or FAC itself at any time”

Initiating FACs for First Time

Expectations of Both Franchisor and Franchisees

Franchisor: Sufficient time to seek FAC feedback before implementation

Franchisee: Advisory only

Sharing Information with FAC

- Franchise Agreement Redline
- FDD Redline

What is a Franchisee Association?

- Independent organization of franchisees
- Most often formed as a non-profit corporation
- Managed by hired staff or an association management company
- Board members elected by association members

Why do Associations Form?

- Different incentives of Franchisor and Franchisee
- Often Result from Conflict
- Example: Subway

Benefits of an Association

- Sharpens the message from the franchisees
- Perception of true franchisee representation
- Obtain independent legal opinions
- Provide buy-in of system changes
- Provide members with valuable resources
- Join with other associations under a larger umbrella organization

Interactions Between Franchisor and Association

Initial Acknowledgment/Recognition by Franchisor

Communication between Franchisor and Association

Negotiation with Association

The Top Issues

From the FTC Request for Information
The Elephants in the Room

- Technology Fees
- Undisclosed “Junk” Fees
- Supply Chain Issues (Rebates/kickbacks)
- Franchisor Misrepresentation/Deception (related to disclosure)
- Unilateral Changes to Ops Manual (that change the business model)

State Relationship Laws

- ‘Right of Association’ States—AR, CT, MN, NE, NJ
- ‘Right to Join’ States—HI, IL, MI, WA
- ‘Belts-and-Suspenders’ States—CA, IA, RI

The FTC Rule's Requirement

16 C.F.R. § 436.5(t)(8) (2007)

Disclose, to the extent known, the name, address, telephone number, email address, and Web address (to the extent known) of each trademark-specific franchisee organization associated with the franchise system being offered, if such organization:

(i) Has been created, sponsored, or endorsed by the franchisor. If so, state the relationship between the organization and the franchisor (for example, the organization was created by the franchisor, sponsored by the franchisor, or endorsed by the franchisor).

(ii) Is incorporated or otherwise organized under state law and asks the franchisor to be included in the franchisor's disclosure document during the next fiscal year. Such organizations must renew their request on an annual basis by submitting a request no later than 60 days after the close of the franchisor's fiscal year. The franchisor has no obligation to verify the organization's continued existence at the end of each fiscal year. Franchisors may also include the following statement: "The following independent franchisee organizations have asked to be included in this disclosure document."

Associational Standing

The '*Hunt*' Test

- The association's members would otherwise have standing to sue in their own right;
- The interests sought to be protected are germane to the association's purpose; and
- Neither the claim asserted, nor the relief sought requires individual members' participation.

Hunt v. Wash. State Apple Advert. Comm'n., 432 U.S. 333 (1977)

Antitrust Considerations

- Franchisees as ‘*horizontally* situated competitors.’
- DOJ/FTC Guidance:
 - ~~2000 DOJ Antitrust Guidelines for Collaboration Among Competitors~~ (Dec. 11, 2024)
 - March 18, 2025 FTC “Spotlight on Trade Associations.”
 - August 1996 DOJ “Statement of Antitrust Enforcement Policy in Health Care.”
- “Safety Zone”—price/cost, current/historical, individual/aggregated.
- Requirements:
 - Maintained by third party;
 - Historical, not current—3-month rule of thumb;
 - Aggregated data of five or more participants, none representing more than 25% of data aggregated.
- Exclusion of would-be members.

Thank You!

Fredric A. Cohen, Cheng Cohen LLC

fredric.cohen@chengcohen.com

Keith Miller, Franchisee Advocacy Consulting

kmiller@franchiseeadvocacy.com

Brian Balconi, Balconi Mediation Services

brian@balconimeditation.com