

As an adjunct to our General Corporate and Antitrust practices, Calfee counsels companies extensively regarding franchising and product distribution matters. These services begin with assisting clients in the process of deciding how to market or franchise their products or services, and then continuing with the preparation, negotiation and execution of contracts and documents. We address the company's objectives while complying with applicable federal and state laws. Our goal is to assist clients in implementing franchise and distribution systems that afford the greatest amount of flexibility and control permissible by law.

Our attorneys discuss with clients the elements of franchising and how they often overlap with other forms of distribution and marketing. We assist in deciding whether your business should be conducted as a franchise or under another distribution or marketing system, including a critical analysis of the risks and benefits of each. We then help document and implement your chosen method of distribution and marketing.

Do franchise laws apply to businesses using distributorships or sales representative agreements?

Yes. Regardless of what label a business may give its distribution or marketing system, it will be subject to federal and state franchise laws if the elements of a franchise are present. Business owners must understand the differences between franchising and other methods of distribution and marketing, and then determine which system best fits their business.

Representative Experience

Corporate Counseling

- > Compliance with federal and state franchise laws
- > Antitrust and trade regulation
- > Alternative structuring of distribution systems
- > Preparation of franchise, distribution and representative agreements
- > Preparation of franchise Offering Circulars

- > Negotiation of franchise, distribution and representative agreements
- > Advice in preparation of franchise operating manuals
- > Lease preparation and negotiation
- > State registration of franchises

Private Litigation

- > Enforcement of non-competition provisions
- > Termination disputes

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How do franchise laws affect distribution businesses?

The intent of franchise laws is to prevent franchisors, who are perceived to have more business sophistication and savvy than franchisees, from taking advantage of a potential franchisee through the imposition and execution of onerous contracts. If a distribution or marketing system qualifies as a “franchise,” then, regardless of the label applied to the system by the business owner, a comprehensive disclosure document called an Offering Circular must be prepared. This summarizes in detail the business history and experience of the franchisor and the contractual obligations that will be imposed upon the franchisee. Federal and state laws prohibit discussions between a franchisor and franchisee until after the Offering Circular has been delivered to the franchisee. In some states, the Offering Circular must be submitted to a state agency for review, comments and registration.

The unwary owner may discover too late that his business qualifies as a franchise system that is subject to federal and state franchise disclosure laws. Proper planning in advance of entering into any contractual relationships can ensure that the chosen distribution system complies with or, if appropriate, avoids applicable franchise laws.

Representative Projects

Calfee’s franchising attorneys counsel business owners on both sides of the distribution and marketing fence -- franchisees, franchisors, distributors and sales representatives, suppliers and manufacturers who desire to appoint distributors or sales representatives. The following describes some of our representative engagements:

- > Ongoing franchise counseling on a multi-state basis to a nationally recognized company regarding (1) preparation and registration of franchise offering circulars, (2) drafting, negotiation and execution of franchise agreements and related documents, and (3) enforcement of franchise agreements, including territory infringement and termination issues.
- > Advising nationally recognized, publicly traded company regarding implementation of national retail product distribution which avoids franchise laws.
- > Counseled nationally recognized manufacturer desiring to avoid franchise laws regarding development national product servicing network.
- > Ongoing counseling to nationally recognized company that operates as a franchisee of numerous fast food franchises, including negotiation of franchise agreements.
- > Ongoing franchise counseling for nationally recognized chain of “theme” restaurants currently operating in six states. Services include (1) creating limited partnership and limited liability company entities to hold franchise interests, (2) reviewing of franchise agreements, (3) reviewing of lease arrangements, (4) preparing of franchise offering circular, and (5) general advice regarding penetration of new markets and exit strategies for current markets.
- > Counseling of franchisees, including negotiation of franchise agreements, lease agreements and development agreements.
- > Counseling business owners in implementation of franchise systems or, in the alternative, sales representative and distributor networks, including preparation of contracts, franchise agreements and offering circulars, as applicable.
- > Counseling of sales representatives and distributors, including negotiation of contracts.