

**In this issue:**

<b>ARTICLES</b> .....	<b>2</b>
<b>Who Exactly is an Employee?</b> .....	<b>2</b>
<b>Seven Reasons You Might Not Be Concerned About the Foreign Corrupt Practices Act and Seven Reasons You Should Be</b> .....	<b>4</b>
<b>AROUND THE GLOBE</b> .....	<b>6</b>
<b>Arabic and Russian Domain Names Now Available in Non-Latin Script Domains</b> .....	<b>6</b>
<b>Australia: Amendments to the Code</b> .....	<b>7</b>
<b>Canada: Provinces with Franchise Disclosure Acts</b> .....	<b>8</b>
<b>European Commission: New Block Franchise Exemption</b> .....	<b>9</b>
<b>Malaysia: The Malaysian Competition Act 2010</b> .....	<b>10</b>
<b>South Africa: New Consumer Law Covers Franchises</b> .....	<b>11</b>
<b>United Arab Emirates: Commercial Agency Law Amendment</b> .....	<b>12</b>
<b>United States</b> .....	<b>12</b>
<b>Federal</b> .....	<b>12</b>
<b>Health Care Tax Credit</b> .....	<b>12</b>
<b>Nutrition Labeling of Standard Menu Items at Chain Restaurants</b> .....	<b>13</b>
<b>New Gift or Loyalty Card Rules</b> .....	<b>14</b>
<b>Red Flag Rules to Protect Privacy of Credit Reports</b> .....	<b>14</b>
<b>More on <i>Leegin</i> and The Discount Pricing Consumer Protection Act of 2009</b> .....	<b>15</b>
<b>States</b> .....	<b>15</b>
<b>Georgia: Constitutional Amendment Proposal on Noncompetition Agreements</b> .....	<b>15</b>
<b>Hawaii: Red Mango Case: Enforceability of Forum Selection Clause</b> .....	<b>15</b>
<b>Minnesota: Bonus of America Case: Texas Covenant not to Compete Enforced</b> .....	<b>16</b>
<b>Texas: Roly Poly Franchise Systems Case: Forum Selection Clause Enforced on Appeal</b> .....	<b>17</b>
<b>Texas: <i>7-Eleven, Inc. v. Combs, Sales Tax Decision</i></b> .....	<b>18</b>
<b>KUDOS</b> .....	<b>18</b>
<b>PUBLICATIONS</b> .....	<b>19</b>

## ARTICLES

### Who Exactly is an Employee?

Contributed by Gavin George, Bart Greenberg, Lisa Garono and Gayle Cannon

**California: Independent Contractor Treated as an Employee.** For those who use a captive advertising agency, media agency, translator or other contractor, we want to bring a fairly obscure California law to your attention. Many of you engage outside contractors under standard independent contractor agreements, pursuant to which any copyrightable work delivered to you is usually categorized as a “work made for hire.”

However, under the federal Copyright Act, only certain types of deliverables made by contractors can legally qualify as a “work made for hire.” Specifically, each of the following three requirements must be met:

- The deliverable must be specially ordered or commissioned (it cannot already exist).
- A written contract must state that the deliverable is a work for hire.
- The deliverable must fall within a list of limited categories, only two of which are likely to come up in franchising: (1) a part of a motion picture or other audiovisual work, and (2) a translation.

Now, here’s where the fun begins: Section 3351.5(c) of California’s Labor Code treats as an employee “Any person while engaged by contract for the creation of a specially ordered or commissioned work of authorship in which the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire, as defined in Section 101 of Title 17 of the United States Code, and the ordering or commissioning party obtains ownership of all the rights comprised in the copyright in the work.”

The issue is that Section 3351.5(c) applies not only when a deliverable actually meets the requirement for a “work made for hire” under the Copyright Act, but rather when the parties simply agree that the deliverable should be considered a work for hire (even if the deliverable doesn’t legally qualify). The impact is that you can inadvertently trigger the employee designation in Section 3351.5(c) without needing to do so.

In this way, Section 3351.5(c) can ensnare unwary parties to a standard independent contractor agreement with an insurance requirement usually reserved for employers and employees. If you unwittingly trigger Section 3351.5(c), you must have workers compensation insurance covering the contractor before the agreement is signed, the contractor does work, and you make any payments. The failure to obtain workers compensation insurance is a crime under California law. The crime is committed when the independent contractor agreement is entered into without having the insurance in effect. It does not matter whether the contractor is injured or dies during the engagement, causing an insurance claim.

For this reason, when dealing with contractors in California, you should modify your standard independent contractor agreement. In lieu of an express agreement that a deliverable is a “work made for hire,” you should consider requiring a simple assignment of deliverables, without mentioning the “work made for hire” provisions of the Copyright Act, thereby avoiding Section 3351.5(c).

However, one disadvantage of using a simple assignment, instead of “work made for hire” language, is that Section 203 of the Copyright Act will apply. This means that a copyright transfer made by simple assignment may be terminated by the creator after 35 years, under certain circumstances. Section 203 of the Copyright Act does not apply to “works made for hire.”

Alternatively, you may want to consider including an irrevocable license to the deliverables, such as the following: "Contractor hereby grants to Company an exclusive, irrevocable, royalty-free, perpetual, fully sub-licensable, worldwide and fully paid license to all works created or delivered in the performance of this Agreement, including the right to distribute, reproduce, make derivative works of, publicly perform, publicly display (in any form or medium, whether now known or later developed), make, have made, use, sell, import and offer for sale."

**Massachusetts. Franchisees are Treated as Employees.** The Massachusetts Independent Contractor Law (Massachusetts General Laws chapter 149, § 148B) provides that an individual performing any service is considered to be an employee unless: (1) the individual is free from control and direction in connection with the performance of the service, both under the person's contract for the performance of service; and (2) the service is performed outside the usual course of the business of the employer; and, (3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

In *Auwah v. Coverall N.A., Inc.*, a U.S. district court ruling raised the stakes for franchisors in Massachusetts. The court held that franchisees were employees of the franchisors instead of business owners, finding that the franchisor did not meet the second prong—that the service was performed outside the usual course of business of the employer. Coverall claimed that its business was selling franchises and training and supporting its franchisees, not cleaning any establishments or employing anyone who cleaned establishments. The court relied on a previous Massachusetts case, holding that franchising was not a separate business, but a mode of distribution that permitted the franchisor to spread the costs of its business among its franchisees. Perhaps just as threatening to franchisors, in another case still pending in California against Coverall (*Laguna v. Coverall North America, Inc.*), in a franchisee class action, the plaintiff was permitted to proceed against the sole shareholder of the franchisor on its claim that the franchisee had misclassified its employees as franchisees to avoid paying minimum wage, rest and meal breaks, overtime and other employment protections.

Although Coverall prevailed in this case, it did so not on the merits of its arguments, but because the plaintiffs failed to prove their case for damages. Therefore, the determination that franchisees may be employees still is an issue in Massachusetts. The franchisees for Coverall have not given up. A class action may be forthcoming based on the same theory—that they are employees and not independent contractors—and they will face the same challenge of proving damages.

Massachusetts is serious about enforcing this law. In 2007, the Attorney General sued FedEx Ground, claiming that its drivers had been misclassified as independent contractors. In July, FedEx Ground settled the claim by agreeing to pay \$3 million into Massachusetts' general fund to pay back taxes and workers compensation. A lawsuit by the drivers against FedEx Ground is still pending.

**Federal.** The Senate Committee on Health, Education, Labor, and Pensions held hearings in June on Senate Bill 3254, the Employee Misclassification Prevention Act. That act proposes to amend the Fair Labor Standards Act of 1938 to require persons to keep records of non-employees who perform labor or services for remuneration and to provide a special penalty for persons who misclassify employees as non-employees, and for other purposes. Another feature of the act would require states to conduct audits to identify employers who misclassify persons as independent contractors and strengthen penalties for violations.

## **FOREIGN CORRUPT PRACTICES ACT (FCPA) AND THE DODD-FRANK WALL STREET CONSUMER PROTECTION ACT OF 2010**

### **Seven Reasons You Might Not Be Concerned About the Foreign Corrupt Practices Act and Seven Reasons You Should Be**

**Contributed by Brian McKay**

Business leaders need not look far to find evidence of the federal government's increased efforts to root out foreign corruption. Newspaper headlines have showcased record-setting monetary sanctions imposed on companies—and substantial criminal sentences on individuals—for bribery abroad, including nine-figure settlements with Siemens and Halliburton/KBR. The primary tool used in this anticorruption campaign is the Foreign Corrupt Practices Act (FCPA), a statute that prohibits bribery of foreign officials and requires certain companies to maintain accurate accounting records and adequate internal controls.

Recent legislation creates an additional incentive for companies operating internationally to be aware of the FCPA. Signed into law July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act provides certain whistleblowers personal financial incentives for reporting violations of the FCPA. Specifically, whistleblowers may receive up to 30 percent of monetary penalties assessed by the Securities and Exchange Commission for FCPA violations.

Despite the revival of the FCPA since 2003, some companies operating internationally have been slow to recognize the implications created by the FCPA. Whether the result of a misunderstanding about the statute or a misperception about how it is being enforced, some executives have inaccurately gauged the sources of risk posed to the business. Discussed below are just a few of the misperceptions that some companies hold in dismissing or minimizing FCPA risk.

#### **My company doesn't contract with foreign governments.**

Bribery used to obtain foreign government contracts or approvals is at the heart of the conduct that the FCPA was designed to prevent. Indeed, the federal government has prosecuted several high-profile cases in industries often associated with government contracting, such as in the defense, telecommunications, and energy sectors. But the FCPA reaches far beyond paying bribes to win business. The Act potentially reaches bribe payments to foreign officials made to secure any business-related quid pro quo or unfair advantage. For example, a federal appellate court upheld convictions of two American citizens on the basis that the FCPA prohibited them from making bribe payments to Haitian customs officials to obtain reduced import duties. Companies assessing their FCPA risk should consider that any interaction between the company and foreign officials provides an opportunity to have an FCPA violation.

#### **My company doesn't interact with foreign officials. . .much.**

Companies doing business in another country undoubtedly will come into contact with foreign officials, whether to move products or people in and out of the country, pay taxes, obtain various licenses or permits, employ people, or do various other things. Even more, in some countries, the company may be interacting with people that are not readily identified as foreign officials. Under the FCPA, employees of state-owned businesses, such as railroads or airlines, are considered foreign officials. Therefore, the FCPA reaches bribe payments to these foreign officials who, by American standards, do not appear to be officials at all.

**My company is insulated by agents and consultants hired to interact with foreign officials on the company's behalf.**

Many companies do business abroad through local agents or representatives. Some managers who are unfamiliar with the FCPA believe that they do not have issues with public corruption because they do not deal directly with public officials. In fact, the use of third parties to interact with foreign officials does not insulate a company from FCPA issues. The Act prohibits a payment to a third party with knowledge that all or part of that payment will be transmitted to a foreign official. And "knowledge" under the statute does not require absolute certainty that improper payments are being made. The list of defendants in FCPA enforcement actions is replete with cases in which the illicit payments were made to foreign officials by third parties who represented the company.

**My company is not a public company.**

While it is true that record-setting FCPA fines and other monetary penalties that pervade the headlines have been garnered against publicly-traded companies, a look below the fold reveals that many private companies also have been ensnared in FCPA issues around the world.

**Any payments my company has made to foreign officials have been "grease payments" that are permissible under the FCPA.**

One of the "grayest" areas of the FCPA is the facilitating payments exception. Under the Act, a payment to a foreign official is not a violation if it is made "to expedite or to secure the performance of a routine governmental action." Although the Act provides examples of what would be considered "routine governmental action" (e.g., providing power and water supply), the contours of the exception are far from clear. One common misperception about the exception is that any payment of a small amount can be considered a facilitating payment. While a permissible facilitating payment likely will be nominal, a small payment is still viewed as a prohibited bribe if it is for an impermissible purpose. But the "purpose" of a payment might be difficult to assess objectively. For example, was a payment made to simply speed up issuance of a license that the company was entitled to, or was it made to influence the license official's discretion and give the company an unfair advantage? Because identification of a permissible facilitating payment can be unclear, many companies avoid the issue by prohibiting facilitating payments altogether as a matter of company policy.

**My company isn't an American company.**

The enforceability of the FCPA is not limited to U.S. companies and individuals. In fact, one of the enforcement trends evident in recent years has been a pronounced increase in enforcement against foreign entities and individuals for business corruption that has only a tangential relationship to the United States. The FCPA may be enforced against foreign companies on several bases. First, foreign companies that are required to file reports with the Securities and Exchange Commission are subject to the FCPA, even if their stock is not traded on an American exchange. Second, a company organized under U.S. law or principally located in the United States must comply with the FCPA. Therefore, a private limited liability company organized under Delaware law but headquartered in the Bahamas is still subject to the Act. Third, even a foreign company that has no connection to the United States can fall under the FCPA if it does anything in the United States in furtherance of the corrupt payment. A telephone call from an American hotel room authorizing a corrupt payment or a layover at a U.S. airport en route to a meeting to discuss a bribe might provide the hook that allows the Department of Justice to reel the company and its employees into an American court.

### **It is unlikely that any improper payments my company might make would ever be detected.**

While it is true that a significant portion of investigations begin as a result of companies' self-reported violations, most do not. The Government has many tools through which it learns of FCPA violations. FCPA investigations may be initiated as a result of competitors' tips, information obtained from foreign governments and American embassies, or may spin off from other criminal investigations. The risk of detection has been heightened by passage of the Dodd-Frank Act, which creates monetary incentives for company personnel to report violations to the Government. Specifically, the Act permits whistleblowers to be awarded between 10 percent and 30 percent of monetary penalties—including fines, disgorged amounts, and interest—assessed by the SEC for the FCPA violations.

### **What steps should you take?**

There are several steps that companies operating internationally should take to mitigate risks posed by foreign corruption. A comprehensive company policy and training regimen that educates company personnel and guides their conduct is a starting point for compliance. Additionally, companies should carefully screen agents and consultants hired to act on behalf of the company and insist that those third parties abide by the FCPA. Periodic audits structured to identify FCPA issues should also be part of the company's routine practices. These steps may provide a foundation for an effective compliance program, but the details of a program that adequately monitors and addresses FCPA risk is often tailored to the needs and operations of a particular business.

## **AROUND THE GLOBE**

### **Arabic and Russian Domain Names Now Available in Non-Latin Script Domains**

According to The International Trademark Association Bulletin issued June 15, 2010, Egypt, Saudi Arabia and the United Arab Emirates (UAE) are the first countries to offer "internationalized" domain names—domain names composed entirely of non-Latin script. Following the success of the availability of Arabic script domain names by these three countries, additional countries and Palestine have followed suit. Those include Jordan, Qatar, Syria, Tunisia, Thailand and Sri Lanka, with surely more to come quickly.

- The initial sunrise period for registration by trademark owners and trade name owners expired July 12, however the "land rush" registration is anticipated to be available September 27, 2010. Applications will be processed on a first-come, first-served basis, after applications for the sunrise period have been processed. To register a domain name based on a trademark, the applicant must hold a trademark in Arabic identical to the one to become the domain name. The Saudi Arabia domain name is .AISaudiah.
- Egypt followed the same procedures as Saudi Arabia. The Egyptian domain name is .misr.
- The UAE is expected to follow substantially the same procedures as Saudi Arabia. Registration for trademark and trade name holders will begin September 27 through October 22. Then, from November 15 through November 19, another phase will permit registration of distinctive names, such as descriptive or commonly used names such as "hotels.emarat," "restaurants.emarat," "food.emarat," etc... (in Arabic translation). A global phase for registration by anyone begins December 11, 2010. The UAE domain name is .emarat.
- Palestine's domain name translates as "Falasteen," Tunisia's as "Tunis" and Jordan's as "al-Ordan". In Arabic, the dot will follow the Arabic script rather than to the left.
- Russia, Thailand and Sri Lanka also now have domain names in their national scripts.

Franchisors with franchisees in these countries should review their franchise agreements regarding registration of domain names. Many franchise agreements, although covering trademarks and trade names, may not include specific language regarding registration of domain names. Franchisors will want to ensure that no one else has registered their domain name, and if the franchisee has done so, will want to consider requiring the franchisee to assign the registration to the franchisor. That may become ticklish if the franchisee has registered the franchisor's mark in the local language without the knowledge of the franchisor. In addition, franchisors may want to retain trademark counsel to conduct a search to confirm that no infringements of their marks exists in these Arabic countries, which would complicate registration of the Arabic script domain name.

### **Australia: Amendments to the Code**

**The Franchising Code of Conduct (the "Code").** Changes to the Code, a regulation issued under the Australian Trade Practices Act of 1974, which governs existing and new franchises, became effective July 1, 2010. The Code requires a franchisor to deliver a franchise disclosure document in a specified format, with few exemptions. Upon request, a franchisor must provide existing franchisees its material changes statements and its current disclosure document upon request (but no more than once every 12 months) and upon renewal or extension or any expansion of the scope of the franchise. Thus, the franchisor must keep a disclosure document current, even if it is not offering new franchises in Australia. As part of this obligation, a franchisor must either provide a statement that the franchisor can pay its debts as they fall due, together with unaudited financial statements for the last two years, prepared in accordance with the Australia Corporations Law, or an audit for the last fiscal year to support the statement.

A summary of the Code material changes, effective with respect to all franchise agreements entered into on or after July 1, 2010, including transferred, renewed or extended franchises, includes disclosures on:

- details relating to amounts payable by the franchisee to a person other than the franchisor;
- unforeseen significant capital expenditures that were not disclosed before the franchisee entered into the franchise agreement;
- if the franchise agreement requires the franchisee to pay the franchisor's costs incurred in dispute resolution;
- the circumstances in which the franchisor has unilaterally varied a franchise agreement for the previous three years (adjusted for franchises entered into July 1, 2011 through July 1, 2013), or may unilaterally vary the franchise in the future;
- confidentiality obligations of the franchisee and which matters will be subject to the confidentiality obligation;
- details of any arrangements that will apply when the franchise expires, (including options to renew, right of first refusal, right of the franchisee to sell the business, and how prices or values are determined, among other term end concerns;
- if the franchisor will amend or require amendment of the franchise agreement upon transfer or a novation of the franchise (which is treated the same as a transfer).

The Code amendments also:

- require a franchisor to notify a franchisee at least six months before the end of the franchise term of renewal or non-renewal and any requirement to enter into a new franchise agreement upon renewal;
- provide that nothing in the code limits any common law obligation of good faith applicable to the parties;
- describe actions that will be deemed “to be trying to resolve a dispute” in a “reconciliatory manner”; and
- require the agreement to describe the costs of mediation, which the parties must split equally, unless they agree otherwise.

**Canada: Provinces with Franchise Disclosure Acts; Ontario thinks current disclosures are not enough.**

**Although Canada does not have federal franchise legislation, five provinces in Canada do.** Those are Alberta (The Franchises Act), Manitoba (The Franchises Act), New Brunswick (The Franchises Act), Ontario (The Arthur Wishart Act (Franchise Disclosure) 2000)(Arthur Wishart Act) and Prince Edward Island (PEI) (Franchises Act). PEI’s law is modeled on the Uniform Franchise Act proposed by the Uniform Law Conference of Canada. The others follow Ontario’s law, which was the first to be promulgated. Each of the laws has many disclosure requirements with which U.S. franchisors will be familiar. New Brunswick’s Franchises Act will become effective in February 2011. Manitoba has not yet published draft regulations, and the Franchises Act will not be effective until that occurs.

**Use of National Disclosure Document.** Because of the similarities among the franchise acts and regulations, franchisors will be able use a national disclosure document, with addenda included for the different disclosures required in each province. The regulations of Alberta, New Brunswick and PEI expressly permit a “wrap-around” document for this purpose, and when they issue, the Manitoba regulations will likely also permit a “wrap-around” document. All but Ontario expressly permit the use of foreign disclosure documents with a “wrap-around” with addenda, however most practitioners do not take that route.

**Although the acts are similar in many ways, there are differences among them.**

**Similarities.** All of the franchise acts contemplate disclosure, but not registration of the disclosure document. All of the franchise acts include a duty of fair dealing in performance and enforcement on the parties and a right to associates with other franchisees. All of the acts mandate forum and venue in their respective provinces. All of the acts provide for personal liability for persons in control and involved in the grant of a franchise (called “franchisor associates”), agents and brokers and others who are involved in the disclosure process. All of the acts permit a private right of action for damages and rescission after 60 days from signing if the disclosure document does not meet statutory requirements and for two years if no disclosure was made. All of the acts require two officers (unless there aren’t two officers) to certify as to the accuracy and truthfulness of the disclosure document.

**Differences.** All but Ontario require substantial compliance regarding disclosure obligations; Ontario requires strict compliance. Although all of the acts include exemptions, they vary among the provinces. Manitoba, New Brunswick and PEI permit e-disclosure. To date, Alberta and Ontario do not permit e-disclosure, although they

could in the future by regulation. All except Ontario permit the signing of a confidentiality agreement before delivery of the disclosure document and during the 14-day period before an agreement may be signed or consideration passed. Manitoba's act would permit the payment of a refundable deposit before disclosure and during the 14-day period. The acts for Alberta, PEI and New Brunswick and proposed for Manitoba exclude bona fide purchases of goods and services from the definition of a fee, whereas the Ontario act does not.

**Proposed Amendment to Ontario's Arthur Wishart Act.** Representatives of all three parties in Ontario are sponsoring an amendment to the Arthur Wishart Act. Bill 102 would require a franchisor to deliver to a prospective franchisee an "educational document" in addition to the franchise disclosure document. Just as the state of Illinois website advises prospective franchisees to consider key issues, the educational document would advise prospective franchisees to conduct a "self-evaluation" for suitability as a franchisee. It also suggests that prospective franchisees review the franchisor's background and management as well as key provisions of the franchise agreement—most of which is the same information that is in the franchise disclosure document. However a few suggestions raise the investigation a notch or two, such as how selective is the franchisor in choosing its franchisees, whether the franchisor has introduced new innovations, what makes the goods or service unique, sales potential for a granted territory, questions that a prospective franchisee may wish to ask of other franchisees, whether the agreement protects both the franchisor and the franchisee, and how a franchisee may be compensated for goodwill upon sale of the business, among others. The franchisor must advise the prospective franchisee to seek legal and accounting advice. And lastly, the prospective franchisee must acknowledge that it has read the educational document.

**The Bottom Line.** Franchisors desiring to enter the Canadian market must consider the variances between the franchise acts of these five provinces. If a franchisee desires rights in more than one province, franchisors will incur increased legal costs to prepare the supplemental information disclosures that will be required for a universal Canadian disclosure document. If, as expected, the amendment to the Arthur Wishart Act becomes law, the franchisor must also bear the cost and effort to prepare a totally new educational document. Most important, franchisors must be aware which provinces will require strict compliance with their laws or else risk rescission or personal liability of those involved in the sale of the franchise. The above is intended to be a summary only and does not reflect all of the similarities and differences among the province franchise laws.

### European Commission: New Block Franchise Exemption

On June 1, 2010, the new Block Exemption Regulation on Vertical Restraints (the "new [VBER](#)") and accompanying Guidelines (the "new [Guidelines](#)"), became effective and will continue to be effective through May 31, 2022. The new VBER and the new Guidelines replace the previous versions, in essence continuing the same regimen, with a few important changes. The block exemption concept continues with the new VBER. Under that concept, certain actions, which might normally be considered anti-competitive, are deemed to be exempted if certain conditions are met—a "safe harbour"—and the supply and distribution agreements are at different levels of the production and distribution chain.

**Effect on Franchising.** Although there are other changes, the changes most likely to affect franchisors and franchisees include the following:

- The previous version, in effect since 2000 simply did not contemplate the growth of business conducted via the Internet, and the new VBER clarifies the rules governing those types of sales.
  - Although a franchisor may decide how many and which franchisees it desires within the market, generally, a franchisor may not restrict a franchisee from having a website or selling over the

Internet, which is considered a passive sale—doing so is a hardcore restriction. For example, the EU would consider it a hardcore provision if the franchisor required a franchisee to direct a potential sale from a customer outside of the franchisee's market to another franchisee in another market.

- Nevertheless, a franchisor may still restrict a franchisee from targeting customers in another franchisee's exclusive market, although the franchisee may respond to customers who contact the franchisee, even if that customer is not located in the franchisee's market.
- A franchisor may still require a franchisee to have a storefront as a condition of entering the system.
- A franchisor may impose quality standards on the franchisee's website.
- A previously existing market share threshold of 30 percent for franchisors was extended to franchisees as well. If either party has less than 30 percent market share, the new VBER and new Guidelines will not apply. As a practical matter, very few franchisors or franchisees will meet the 30 percent market share threshold. In addition, to be exempt, the franchise agreement must not contain any hardcore provisions, such as resale price maintenance.
- Restrictive hardcore provisions include resale price maintenance and other similar restrictive re-sale provisions that create barriers to the EU market.
  - Exclusive distribution and selective distribution (where a franchisee sells a franchisor's manufactured product) provisions are not hardcore provisions, as long as the franchisee is permitted to sell to other distributors in the market and to end users.
  - The new Guidelines recognize that some hardcore restrictions may actually benefit consumers; examples include fixing resale prices for a short-term marketing campaign or resale price maintenance when a franchisee is entering a new market or introducing a new product.

Under the impact of the new VBER and the new Guidelines, franchisors will find it more difficult to determine if a proposed franchisee grant would meet the "safe harbour" conditions. Any franchisor that is concerned about its existing franchise agreements in the EU or potential franchise relationships should closely consult the new Guidelines, which are more detailed with more examples than the old Guidelines, and seek legal counsel. Franchisors have until May 31, 2011 to evaluate and make revisions. After that date, any franchise agreement that does not meet the new regulation requirements must be evaluated under Article 100, instead of taking advantage of the block exemption safe harbor.

## Malaysia: The Malaysian Competition Act 2010

**Implementation of New Malaysia Competition Commission and Competition Enforcement Agency Anticipated by January 2012.** The Malaysian Competition Act 2010, which was approved by the Malaysian Parliament last April, will establish a regime under which illegal antitrust activity will be considered, however without any authority to consider merger issues. The new law:

- applies to any commercial activity (1) within Malaysia, and (2) outside of Malaysia if the activity has an effect on market competition in Malaysia;
- exempts acts in the energy, communications and multimedia sectors, and other commercial activities by order of the Ministry;

- covers anti-competitive agreements (such as cartels and abuses of dominant market position) between enterprises (1) operating at the same level of production or distribution chain, and (2) enterprises operating at different levels;
- creates a private right of action;
- establishes a Competition Commission for investigation and enforcement, with the same powers granted to police officers under the Criminal Procedures Code; and
- establishes a Competition Appeals Tribunal to hear appeals from decisions of the Competition Commission.

Other interesting provisions provide for:

- a reduction of up to 100 percent of penalties for those admitting an anticompetitive agreement and cooperate with the Commission to identify or investigate other violators;
- the ability of enterprises to seek exemptions from the law for specific agreements;
- the potential for the Commission to create block exemptions for specific categories of agreements;
- the authority to conduct market reviews of a particular market and to report its findings and recommendations and to issue and publish guidelines; and
- the authority to impose temporary measures under certain circumstances.

Penalties can be significant. The law provides for fines (1) for companies of up to five million ringgit (approx. US\$1.5 million) and, for second or subsequent offenses, fines not exceeding ten million ringgit (approx. US\$3 million); (2) for individuals up to one million ringgit (approx. US\$320,000) or imprisonment for up to five years or both; and (3) for individuals committing subsequent offenses, up to two million ringgit or imprisonment for up to five years or both. An officer of a violating corporation also has potential liability, unless the officer can prove that the offense was committed without that person's knowledge or consent and that the officer had taken all reasonable precautions and exercised due diligence to prevent the commission of the offense.

### South Africa: New Consumer Law Covers Franchises

**New Consumer Law Gives Franchisees New Remedies.** South Africa's new law, the Consumer Protection Act 68 of 2008, under which franchisees are deemed to be consumers, becomes effective on two different dates:

- Effective April 24, 2009
  - A 10-day cooling off period after signing, effective as of April 24, during which time a franchisee may cancel the franchise agreement without liability;
  - All franchise agreements must be in writing and signed by franchisees.
- Expected to be effective in October 2010, new provisions grant consumers, including franchisees, with certain fundamental rights. Those will include
  - Right of equality in consumer market;
  - Right to privacy;
  - Right to choose;

- Right to disclosure and information;
  - Right to fair and responsible marketing;
  - Right to fair and honest dealing;
  - Right to fair, just and reasonable terms and conditions; and
  - Right to fair value, good quality and safety.
- The new law will apply retroactively to existing franchises. Although the new law may not require franchisors to revise existing franchise agreements, a franchisor's management should be aware of the rights granted to franchisees when making decisions about the relationship.

### **United Arab Emirates: Commercial Agency Law Amendment**

The United Arab Emirates recently enacted amendments to the Commercial Agencies Law. After these amendments, the franchisor (the principal) should take certain actions to enhance the enforcement of a franchise termination provision and the potential appointment of another agent (franchisee) to replace the one terminated. The key changes include:

- The Commercial Agency Committee, which had been abolished by a 2006 amendment, was reinstated to review any dispute relating to commercial agencies, which would include a franchise agreement. Pursuant to the 2006 amendment, a franchise agreement expired in accordance with a fixed term, without any need to determine whether there was "justifiable cause." Now, even with a fixed term, if there is a dispute regarding the termination, the dispute must be submitted to the Commercial Agency Committee for review. No party may proceed to court without going through this process. A party has 30 days from receiving notification of the Committee's decision to contest the decision in court.
- A franchisor who desires to appoint a new franchisee must register the new franchisee with the UAE Ministry of Economy. To register a new franchisee agent, the previous franchise agreement had to have been terminated by agreement of the franchisor and the previous franchisee, where the Committee has found that a "material reason" justifying the agreement termination or non-renewal exists, or the court finds orders that the agency be terminated.

**The Bottom Line.** The bottom line of these changes is that the franchise agreement must be quite clear and objective about the reasons for termination. For example, the franchise agreement might set target sales requirements and might define certain defaults as "material," such as breaching a covenant not to compete or failing to timely pay obligations due to the franchisor.

### **United States**

#### ***Federal***

**Health Care Tax Credit.** Most franchisors will be interested in how the Health Care Tax Credit may be applicable to them. The first paragraph is from the Haynes and Boone's E-Benefits email newsletter:

**IRS Releases New Guidance Regarding Health Care Tax Credit for Small Businesses.** The IRS has issued new guidance (Notice 2010-44) to help small businesses identify whether they are eligible

for the new health care tax credit under the Patient Protection and Affordable Care Act and, if so, how to determine the amount of the credit. The guidance also (1) clarifies that small businesses receiving state health care tax credits may still qualify for the federal tax credit and (2) allows small businesses to receive the credit not only for regular health insurance but also for add-on dental and vision coverage and certain other supplemental coverage. The guidance provides detailed guidelines and numerous examples to help small employers, as well as transition rules for 2010. Notice 2010-44 is available at [here](#).

**Health Insurance.** Employers with at least 50 full-time employees will be liable for fines of \$2,000 per employee if they do not offer coverage as of 2014. Restaurant franchisors will be interested in the new Restaurant Health Care Alliance, a new initiative by the National Restaurant Association and United Healthcare to provide health insurance to millions of restaurant employees in the U.S. In the past, even when restaurant franchisors offered insurance plans, restaurant employees, who are often paid close to minimum wage and may be part-time, did not take advantage of the insurance offerings because of the expense. More information can be found [here](#). Other private efforts to provide health insurance to the franchising segment are being explored.

**Form 1099.** A provision of the health care law intended to help fund it has come under intense fire because it increases reporting requirements for small businesses. The new law requires businesses to report on IRS Form 1099 any purchase of goods and services that exceeds \$600 from any party. That requirement supersedes the previous requirement to report on Form 1099 only purchases of services that exceed \$600 from any unincorporated person or business. Small businesses believe that this new requirement will be very labor-intensive and expensive, severely affecting their profits. Now the Senate is considering either doing away with the Form 1099 provision or amending it to exclude its application to businesses with fewer than 25 employees, increasing the reporting threshold to \$5,000 or above purchases, and excluding those made with a credit card.

### **Nutrition Labeling of Standard Menu Items at Chain Restaurants**

**The Act.** As part of the new Patient Protection and Affordable Care Act of 2010, the recently adopted health care law, chain restaurants must post on their menus (including internet menus) and menu boards the number of calories per serving or per food item for standard menu items, and make available upon request other information, such as saturated fat, cholesterol, sodium, total carbohydrates, sugars, dietary fiber and total protein. In recognition that compliance by restaurants will require some time, the Federal Food and Drug Administration has published a non-binding draft guidance for the industry (available [here](#).) for comment purposes and indicated it would not seek immediate enforcement. In fact, the FDA has until March 23, 2011 to issue regulations, but says that it intends to issue its guidance by December 2010.

**Who Must Comply?** The nutrition labeling will apply to restaurants with 20 or more franchised or company-owned locations doing business under the same name and offering substantially the same menu items. "Standard Menu Items" exclude condiments and other items placed on the table for general use, daily specials, temporary menu items appearing on the menu for less than sixty days per calendar year, custom orders (such as a hamburger without toppings), and food that is part of a customary market test appearing on the menu for less than ninety days, and pre-packaged food that shows complete nutrition information. The final rules will offer more guidance on exactly how to disclose caloric values, however, the nutrition disclosures will mirror some state labeling requirements that the information be

provided in the same or larger size type as the item or its price, whichever is larger, and must be “clear, conspicuous and adjacent to the name of the menu item.”

**Pre-Emption?** The FDA has also issued another instructive guidance regarding how the federal law and the state and local labeling laws will interact. The new federal law is intended to preempt state and local labeling requirements, however until the final regulations issue, chains must abide by the state and local labeling laws. States that had nutrition labeling laws in effect before the new law (such as California and Massachusetts) will be able to apply for exemption from preemption. And chains with less than 20 locations that are currently subject to nutrition labeling laws must continue to comply with those laws unless those chains elect to comply with the federal nutritional labeling law.

**Take-Away.** Eventually, the federal nutritional labeling law should result in more consistency. In the meantime, the takeaway on federal nutritional labeling is that restaurant chains must pay attention not only to the new federal law, but also state and local laws until at least December 2010, and perhaps until March 2011.

**New Gift or Loyalty Card Rules Effective August 22.** The following is a summary of an article by Jan Gilbert and Suzie Loonam Trigg published in *Franchise Times*, August 31, 2010 ([Link to article here](#)).

The Credit Card Accountability, Responsibility and Disclosure Act (CARD Act) will apply to any gift or loyalty cards sold on or after August 22, 2010. The key provisions are:

- Expiration date:
  - must be at least 5 years after the purchase date or the date the purchaser adds more money to the card;
  - must be clearly and conspicuously stated; and
  - consumers may request replacement cards at no charge if the expiration date is earlier than the date a consumer adds more money to the card.
- Fees:
  - cards or packaging must clearly disclose all fees; and
  - no dormancy, inactivity, usage, service or maintenance fees are allowed unless there is no activity for 12 months, the fee is clearly and conspicuously disclosed before purchase; and no more than one fee is charged per month.
- Penalties:
  - Actual or statutory damages of \$100 to \$1,000 per consumer plus costs and attorneys fees; and
  - Class action claims have a damage cap.

**Red Flag Rules to Protect Privacy of Credit Reports.** Bill 3673 to amend the Red Flag Rules (the Fair Credit Reporting Act) was approved by the House and is now being considered by the Banking, Housing and Urban Affairs Committee of the Senate. The enforcement of the Red Flag Rules, which requires users of consumer reports to adopt policies and take other actions to protect the confidentiality of that information, has been deferred until December 31, 2010. This proposed amendment resulted from an uprising and filing of suits by physician groups

and the American Bar Association. It would exclude “any health care practice, accounting practice, or legal practice with 20 or fewer employees from the meaning of creditor subject to Red Flag Guidelines regarding identity theft promulgated by the proper federal financial regulatory agency.” For franchisors and franchisees, the most relevant change is that it would also exclude “any other business which the Federal Trade Commission (FTC) determines: (1) knows all its customers or clients individually; (2) only performs services in or around the residences of its customers; or (3) has not experienced incidents of identity theft, and identity theft is rare for businesses of that type.” (from the Summary of HR 3673)

**More on *Leegin* and The Discount Pricing Consumer Protection Act of 2009.** This bill, sponsored by Sen. Herb Kohl (D-WI), was reported out of the Senate Judiciary Subcommittee in March 2010 and was entered on the Senate legislative calendar on July 21 2010. This bill, if it passes both houses, would reverse the 2007 Supreme Court ruling in *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.* *Leegin* required minimum resale price maintenance agreements to be analyzed under the rule of reason analysis as to its anti-competitive effect. Minimum resale price maintenance would be per se illegal under the proposed bill. If *Leegin* remains the law of the land, manufacturers would continue to be able to set price floors below which retailers cannot sell their products. The House has also considered a similar bill. We have discussed *Leegin* more fully in previous *Hot Branding* issues.

In a separate development, on August 18, 2010 as expected, the 5th Circuit Court of Appeals reaffirmed a dismissal of a second appeal of the *Leegin* decision. In the appeal, the plaintiffs had alleged a new claim of horizontal price-fixing violation. Horizontal price fixing arises when competitors on the same level fix prices. A per se violation requires no further inquiry into the practice's actual effect on the market or the intentions of those individuals who engaged in price fixing. The court held that the horizontal price-fixing claim could not be made in a suit that had been initiated as a vertical price-fixing claim, but also noted that it agreed with the trial judge that the horizontal price-fixing claim would have failed anyway.

## States

### Georgia: Constitutional Amendment Proposal on Noncompetition Agreements

On November 2, 2010, Georgia residents will vote on an amendment to the Georgia Constitution that would override the 2008 decision in *Atlanta Bread Co. International, Inc. v. Lupton-Smith, et al*; refusing to enforce an in-term covenant not to compete in a franchise agreement under Georgia law. That case was appealed and upheld by the Georgia Supreme Court. If passed, the General Assembly would have the authority to provide for judicial enforcement of noncompete agreements between franchisors and franchisees, among others. The ballot will ask the voters: “Shall the Constitution of Georgia be amended so as to make Georgia more economically competitive by authorizing legislation to uphold reasonable competitive agreements?”

### Hawaii: Red Mango Case: Enforceability of Forum Selection Clause

*RM Yogurt Hawaii LLC, Plaintiff, v. Red Mango Franchising Co.; Daniel Kim; and Doe Defendants 1-20*, U.S. District Court, D. Hawaii (June 29, 2010), CCH Bus. Fran. ¶14,405.

**Enforceability of Forum Selection Clause.** This case, arising from a dispute between a Texas franchisor and a Hawaiian area developer, reinforces a couple of points. After the plaintiff filed suit in state court in Hawaii, the defendant transferred the suit to federal district court and then asked for a transfer of the case based on the forum selection clause of the franchise agreement, the guarantee and the general release.

**Exceptions to Enforceability of Forum Selection Clauses.** The court granted the transfer to Texas. The court found that the plaintiff had not clearly shown that “enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or over-reaching,” all exceptions to the general rule that forum selection clauses are enforceable. A state’s expressed public policy against selection of forum outside of a state is another exception. In Hawaii, forum selection clauses are enforceable, notwithstanding the Hawaii Franchise Investment Law, because that law did not constitute a strong public policy against forum selection clauses that restricted venue to a forum outside the state, in contrast to California’s franchise law. California’s law expressly states that the forum must be in California; Hawaii’s does not.

**Principal Place of Business.** Secondly, the language of the forum selection clause led the court to hold that the forum selection provision was mandatory and not permissive. The clause stated that “any action brought by either party against the other in any court, whether federal or state, shall be brought within the state and federal judicial district in which FRANCHISOR has its principal place of business at the time the action is initiated.”

**Supreme Court Decision: Principal Place of Business = “Nerve Center.”** Until a U.S. Supreme Court decision in February 2010, the federal law was that, in addition to the state in which it is incorporated, a corporation was also a citizen of state in which it had its principal place of business. In), the Supreme Court decided that a corporation’s citizenship for purposes of considering removal of a lawsuit to federal court, should be made based on the state in which the corporation has its “nerve center,” usually its corporate headquarters. The Court clarified that “principal place of business” will refer “to the place where a corporation’s officers direct, control, and coordinate the corporation’s activities”—the corporation’s so-called “nerve center.”

**Takeaway.** First, use mandatory language in forum selection clauses. Second, in view of communication technology and the current trend for some companies to have their officers in more than one location, corporations should give some thought as to exactly where their “nerve center” actually is located. That means determining who really controls the direction of the company.

#### **Minnesota: Bonus of America Case: Texas Covenant not to Compete Enforced**

***Bonus of America, Inc. v. Angel Falls Services, L.L.C., Desiree Sanchez, Patron Supply, Inc. and Ana Diaz,*** U.S. District Court, D. Minnesota, CCH Bus. Franchise Guide ¶14,415, (Jul. 6, 2010).

**Minnesota Court Enforces Covenant Not to Compete Under Texas Law.** Although not a Texas case, the court interpreted Texas law to grant a preliminary injunction against a franchisee, its principals and third party operators of a competing cleaning business that was using the intellectual property of the franchisor. The court found that the covenant complied with Texas law in that it was ancillary to an otherwise enforceable agreement and the restrictions were reasonable. The covenant continued during the term of the agreement plus two years, and limited the restrained territory to a 50-mile radius of the franchise location or any other franchise.

**The key holding: Non-Signing Third Parties Were Covered by the Covenant.** After finding that irreparable harm was likely to occur and that the balance of harms favored the grant of the preliminary injunction, the court went on to find that the third party operators were subject to the preliminary injunction because evidence showed that:

- the franchisee was playing a role in the daily operations of the competing business;
- the competing business and its owner, although not signers to the covenant, were in active concert and participation with the franchisee in violating the noncompete covenant; and

- the competing business was using the images and features from the franchisor's materials in its business proposals.

The court noted that the franchisee could not avoid the terms of the noncompete covenant by doing through the owner of the competing business what he agreed in the franchise agreement not to do himself.

### Texas: Roly Poly Franchise Systems Case: Forum Selection Clause Enforced on Appeal

***Dunlap Enterprises v. Roly Poly Franchise Systems, L.L.C.***, Court of Appeals Fifth District of Texas at Dallas; Cause No. 05-08-01556-CV.

**Reasonable and Just: Appellate Court Upholds Enforcement of Forum Selection Clause.** This case dealt with some of the same issues as the Hawaii *Red Mango* case discussed above. In July 2010, the Dallas appellate court upheld enforcement of a forum selection clause in a franchise agreement, which resulted in dismissal without prejudice.

**The Background.** In *Dunlap Enterprises v. Roly Poly Franchise Systems, L.L.C.*, several franchisees and guarantors (the "Franchisees") filed a lawsuit against their franchisor, Roly Poly Franchise Systems, L.L.C. ("Roly Poly"), and master developer, Summers-Wood, L.P. and its officers (the "Summers-Wood Parties"). The general basis of the Franchisees' petition was that misrepresentations were made to them regarding the potential success of the franchises. The trial court ultimately held that the forum selection clauses were valid and enforceable and dismissed the entire case. The Franchisees appealed.

**The Arguments.** Roly Poly's position was simple: the Franchisee's claims were based on, and arose under, the franchise agreements, and enforcement of the agreements' forum selection clauses (which designated Georgia as the proper forum) was required under Texas law. The Franchisees asserted that clauses should not be enforced on one principal argument—enforcement would be unreasonable and unjust. The Franchisees argued that enforcement of the clause would deprive them of their day in court. The Franchisees' argument was primarily based on a former, unrelated action in Georgia between Roly Poly and the Summers-Wood Parties. In that action, a Georgia federal court held that no personal jurisdiction existed in Georgia over the Summers-Wood Parties.

**The Decision of the Appellate Court.** The appellate court disagreed and upheld the trial court's dismissal. In rejecting the Franchisees' argument, the appellate court highlighted several factors it considered to reach its decision. First, the Franchisees' lawsuit was based on the franchise agreements, not the master development agreement that was at issue in the Georgia action. The appellate court noted that whether the Summers-Wood Parties would be subject to jurisdiction in Georgia based on a claim by the Franchisees would be mere speculation. The appellate court further held that notwithstanding any jurisdictional issues over the Summers-Wood Parties in Georgia, the circumstances of this case did not mandate that the lawsuit involving Roly Poly and the Summers-Wood Parties be tried in the same venue. In other words, this case did not establish hardship if the Franchisees were required to sue Roly Poly in Georgia and the Summers-Wood Parties elsewhere. The appellate court observed that the Texas supreme court has declined to recognize a right to sue multiple defendants in the same forum, despite difficulty and/or expense.

**Takeaway.** *Dunlap Enterprises* reminds us of several concepts to consider both when entering into a franchise agreement and when deciding whom to sue. First, unless exceptional circumstances exist, forum selection clauses will be enforced. Therefore, the parties should pay close attention when agreeing to a venue for potential disputes. Second, a plaintiff has no right to sue multiple defendants in the same forum. In Texas, the

contract or the statutory venue provision will govern venue for each defendant (or group of defendants). Here, the forum selection clauses were held to be reasonable and just.

**Texas: 7-Eleven, Inc. v. Combs, Sales Tax Decision**

**7-Eleven, Inc. v. Combs, Tex. Ct. App. (Aug. 3, 2009), CCH Bus. Franchise Guide ¶14,374).**

**Texas Sales Tax Decision.** Franchisors who purchase software customized for their chains that they in turn sell to their franchisees for use in their franchised businesses will find this decision comforting. 7-Eleven was successful in its appeal of summary judgment against it on its claim that it was entitled to a sale-for-resale exemption from the Texas sales tax on its purchase of financial software for its franchisees outside of Texas. The court heard the state's motion for rehearing and 7-Eleven's motion for summary judgment, which it denied, and sent the case back to the trial court for more development of the issues regarding the exemption as it applied to the transfer of the software to its out of Texas company stores.

The Texas Comptroller argued that to qualify for the exemption, the sale of the software could not have provided any direct benefit to 7-Eleven. The court rejected that argument, instead holding that if 7-Eleven's intent when it acquired the software was to transfer it as an "integral part of a taxable service", that satisfied the elements for the exemption. The comptroller argued that the purpose for 7-Eleven's purchase of the software was for its own use in income tax reporting, setting gasoline prices and performing corporate accounting and audit functions. However, the court noted that nothing in the tax code required that a taxpayer had to be the sole benefiting party. 7-Eleven was granted a partial refund of sales tax it paid on the transfer of the software to its franchise stores, all of which were outside of Texas. In coming to its conclusions, the court reviewed the terms of the franchise agreement, as well as other data. The agreement required 7-Eleven to provide data processing services, a key distinction in that the comptroller argued that the software was "stores automation software" and not for data processing.

## KUDOS

**The Franchise and Distribution Law Group.** The inaugural issue of *U.S. News and World Report* 2010 Best Lawyers Best Law Firms placed our franchise law practice in Tier 1 for Austin and Dallas and Tier 2 nationally. Many other practice groups of the firm were also listed in Tiers 1 and 2.

**Joyce Mazero Receives WFF Leadership Award.** Joyce Mazero, the firm's lead partner of the Restaurant, Foodservice and Retail Industries Practice Group and the Franchise and Distribution Practice Group, was named the 2010 recipient of the Women's Foodservice Forum (WFF) Leadership Award. The award is presented annually to a female foodservice executive. Ms. Mazero is the first recipient to be honored for her work in a field serving other foodservice executives.

**Women Corporate Directors.** Joyce Mazero co-founded and serves as the Co-Chair of the Dallas chapter of Women Corporate Directors, a national organization with 27 chapters throughout the world, and six more in formation. Joyce serves on the boards of the Susan G. Komen for the Cure Advocacy Alliance Board Hospitality Committee, the Management Board of Governors for the School of Merchandising and Hospitality Management at the University of North Texas, the Advisory Board of New York-based fashion design house, Nina McLemore, and is also a member of the Development Committee of the National Restaurant Association Educational Foundation and IFA's 2011 Convention Committee.

**2010 Best Women Lawyers in Dallas.** Joyce Mazero and Deb Coldwell were named as two of the 126 attorneys recognized in *D Magazine's* Best Women Lawyers in Dallas for 2010. Ten of the 126 were Haynes and Boone attorneys—the most of any law firm.

**w2wlink Ascendancy Awards for Business Women.** Joyce Mazero was selected as a winner of the w2wlink Ascendancy Awards for Business Women, by *Corporate Fast Track*, an on-line newsletter and women corporate support group, 2010.

**Texas Rising Super Lawyers.** Rob Lauer was selected for inclusion in Texas Super Lawyers—Rising Stars Edition for 2010. Rob was also named in The Best Lawyers in America<sup>®</sup>, Franchise Law for 2010 and 2011.

## PUBLICATIONS

"Purchasing Cooperatives: Leveraging a Supply Chain for Competitive Advantage," Joyce Mazero and Suzie Loonam Trigg, *ABA Franchise Law Journal*, Vol. 29, No. 3, Winter 2010.

"Purchasing Cooperatives: Opportunities and Challenges," Joyce Mazero and Suzie Loonam Trigg, *Franchising World*, May 1, 2010.

"Franchising in the Middle East: Navigating the Risks and Rewards of the World's Most Interested Market," ABA Tele-Seminar, January 27, 2010, co-presenter, Rob Lauer.

"A Shifting Sales Paradigm - Private Equity Firms and Large Multi-Unit Developers as Franchisees," International Franchise Association Legal Symposium, May 16-18, 2010, co-presenter, Jan Gilbert.

"Liquidated Damages," *29 Franchise Law Journal* 4 (Summer 2010), Deb Coldwell, co-author.