

New York: 212-391-9500

Philadelphia:

215-792-4819

White Plains:

914-664-8040

New Jersey: 973-921-2000

Practical help for franchisees; what to ask and how to negotiate fees for new technology.

By Mackenzie L. Dimitri

Jun 13, 2017

One expensive aspect of operating and/or acquiring a franchise that new franchisees often overlook is the expense of utilizing, adopting or upgrading the franchisor's technology. Technological advancements in franchising cross all industries. In fast-casual restaurants, servers often use tablets to place orders; in fast food franchises, kiosks are rapidly gaining popularity; hotel franchises frequently use cell phone apps to help consumers keep track of rewards points and track reservations; other mobile point of sale systems and back office software programs are likewise used to help businesses maximize profits.

As a potential or existing franchisee, the use of the franchisor's technology can represent a major advantage, as franchisors undertake the costs of testing new technology, marketing the rollout of consumer-facing technology and can often acquire the technology for a lower cost for their entire system than an individual franchisee would be able to acquire the same technology for itself.

The downside, as many franchisees learn the hard way, is that not all technology is relevant to every franchise location, is helpful, or is properly vetted by the franchisor. In order to avoid these and other pitfalls, it is helpful for franchisees to be mindful of how their franchise documents address technology, and how their franchisor's legal obligations to disclose fees may relate to new technology.

Typically, franchisors seek to reserve a great deal of flexibility when entering into new franchise documents, so that they can ensure their entire system is able to incorporate new technology in a timely manner. Most franchisors include a provision in their franchise agreement that requires franchisees to comply with "system standards" set forth in an operations manual that is consistently updated. Franchisors are required to disclose any known fees that the franchisee may incur in item 11 of the franchise disclosure document (FDD). However,

franchisors may reserve the right to adopt certain technology from time to time, and may require franchisees to incur additional charges that are unknown at the time the FDD is issued. When reviewing an FDD that reserves the right to impose unknown fees at a later date or franchise agreements that refer to an outside operations manual, franchisees should seek clarity regarding system standards and potential hidden fees, and should attempt to negotiate caps on potential hidden fees. Potential franchisees should also do their own research on both the technology currently used by the franchisor and technological developments in their industry to help determine whether upgrades are imminent.