

# INDEPENDENT FRANCH ASSOCIATIONS AND FRANCHISEE GROUPS



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# HI SEE

In order to level the playing field, it is often in the best interests of franchisees to organize themselves into a franchisee association or group.

An independent franchisee association is a trade association formed by franchisees within a single brand or system. It is different from an advisory council which is sponsored by the franchisor and therefore not an independent organization of franchisees. An alternative to the franchisee association is a franchisee group which is a less formal organization consisting of a smaller number of franchisees who want to accomplish specific shared goals in an efficient and cost-effective manner. Whether you are part of a franchisee association or franchisee group, working together with other franchisees offers many benefits.

## Goals of the Independent Franchisee Association

Independent franchisee associations are formed to pursue a number of goals on behalf of the franchisees in the system. These goals include: enhancing leverage in negotiations with the franchisor; potentially negotiating more favorable terms with outside vendors and contractors; educating franchisees on the state of the franchise system; and creating opportunities for franchisees to share information about best practices in their businesses.

Independent franchisee associations can provide an unfettered channel of communication within the franchisee community that is not regulated by the franchisor. As indicated above, a franchisee association may permit the franchisees to create leverage in

connection with their suppliers and provide the franchisees with the ability to create purchasing power. Franchisee associations also serve to educate the franchisees on the state of their franchise system as well as well as legal and legislative developments which may affect their rights and responsibilities as franchisees. The association provides a forum for sharing the benefits of this knowledge through a variety of means.

## Typical Issues Addressed by the Association

Franchisee associations are formed to address issues with the franchisor on a system-wide level. These issues may include those relating to the use of the advertising fund by the franchisor; concerns about particular suppliers; costs associated with implementing new requirements such as upgrades to computers; and concerns about the addition of a new product or supply required to be offered by franchisees. By forming an association, franchisees can work with the franchisor to address their concerns on behalf of the system as a whole.

## Formation of the Association

Franchisee associations are typically formed by a core group of franchisee leaders who determine that such an association is needed to protect the interests of franchisees. More often than not, the decision to form an association is the direct result of a crisis in the franchise system. Such a crisis acts as a catalyst to the formation of the association. The association is often benefitted by being formed at the earliest possible stage so that the organization and mechanisms for communicating with the franchisor and among franchisees are in place. This will undoubtedly be a tremendous benefit if a crisis in the system occurs and will allow franchisees to deal with such a crisis proactively rather than reactively.

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Associations are often created with the assistance of legal counsel who can create the necessary business entity, advise on procedures to be used by the association and assist the core group with the development and growth of the association. Once the association is created, the core group of leaders will begin communicating with fellow franchisees to advise that the association has been created, to provide franchisees with the opportunity to join the association, further advise of the general goals of the association and to request feedback regarding the key issues and concerns of the franchisee community. The leaders will then review the issues identified to create a list of short term goals and long term goals for the association.

Thereafter, an organizational and informational meeting will be scheduled and all franchisees should be urged to attend. The meeting should be scheduled at a convenient time (give franchisees at least several weeks notice) and at a location that is accessible to all franchisees. Frequently, counsel for the association will attend and assist the leaders with presenting the specific goals of the association and the methods which will be used to attain those goals. Counsel can also assist by answering questions that members and

prospective members may have about the association, its goals, the franchisor's expected response, and the obligations of membership in the association.

### The Franchisor's Response

Some franchisors initially react with concern to the creation of an independent franchisee association. However, it is not necessary for independent franchisee associations to function in an adverse or hostile relationship vis-a-vis the franchisor. Although conflict sometimes is the catalyst that brings about the formation of a franchisee association, independent associations function best in representing the interests of their membership when a constructive and businesslike collaboration is created with the franchisor. Indeed, there are a large and growing number of franchisors that have independent associations in their systems and actively welcome their participation in system affairs.

### Franchisee Groups

There are times when a group of franchisees may wish to address some concerns under a less formal structure. Such situations occur when a number of franchisees have very specific issues not relevant to the franchisee association

as a whole, or when there is a disparity between the group and the position of a franchisee association. Forming such groups, whether they consist of two, three or more members, means franchisees can address their concerns in the manner of their choosing and without association approval. It also affords franchisees the opportunity to share all related costs.

### Conclusion

If you are looking for a voice in your system that becomes exponentially magnified then an independent franchisee association or franchisee group is a necessity. There is indeed strength in numbers and only through an association with others can your voice be heard.

**A Partner of Einbinder & Dunn, Julie Lusthaus has been practicing law since 1996 in the areas of franchise and business law. She is a frequent speaker on franchise issues for the American Bar Association Forum on Franchising and has been asked to share her insights in the area of franchise law at the International Franchise Association Legal Symposium. Ms. Lusthaus is also a member of the American Bar Association Law Practice Management Section, the New York State Bar Association Committee on Franchise Distribution and Licensing Law and the International Franchise Association.**

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