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## Franchise & Distribution Counseling and Litigation

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Seyfarth Shaw LLP's Franchise & Distribution attorneys draw upon decades of experience to assist our clients as they plan, structure, develop and grow their franchising systems and as they confront the numerous issues affecting their franchise, dealer, licensing and distribution networks.

We help clients structure and manage those networks to minimize risk while achieving their business and strategic objectives. Our experienced team of lawyers can help your company develop its franchising programs through the initial stages, and then lead the process of drafting comprehensive disclosure documents which meet all of the federal and state legal requirements from a regulatory prospective. When disputes arise, our experienced team of attorneys located throughout the country work to aggressively, strategically and efficiently enforce our clients' rights. Our Franchise & Distribution practice leaders are well recognized as pioneers and thought leaders in the fields of franchise law and strategy, and serve as authors of multiple books, hundreds of articles, and regularly conduct media appearances, speaking engagements and on-site training to our global base of clients. Our practice leaders regularly appear as program panelists for a variety of organizations, including the International Franchise Association, the International Franchise Expo and overseas franchise associations.

Our team of nationally recognized Franchise & Distribution attorneys represents manufacturers, distributors and franchisors in all aspects of their relationships with dealers, franchisees, licensees, and other participants in their supply chain and distribution networks. We understand the federal and state franchise registration and disclosure requirements and can assist clients in navigating those obligations. Our experience and capabilities include gathering relevant client information, and helping prepare disclosure documents, franchise agreements, operating manuals, policies and standards, and related agreements. Our experience and knowledge covers the broad scope of legal issues and challenges that our clients regularly face as they develop, structure, operate and manage their franchise and distribution networks. We have worked with clients in numerous industries, including motor vehicles, heavy equipment, hospitality, fast food, convenience stores, specialty retail, real estate services, apparel, temporary office leasing, petroleum, financial services, and home furnishings. While the services and products are varied, a core set of critical legal issues are common to all. We know the importance of understanding our clients' businesses so that we can help them effectively navigate the complex patchwork of state and federal laws affecting their industries as they establish, manage, and restructure their distribution and franchise networks.

Our team takes a unique approach to the development of the regulatory documents that will be the backbone of the franchise offerings. We understand that these documents are not only used for regulatory purposes but will be the documents which franchisees will use to measure the strength and future viability of a franchise system. We approach the development of these core documents from the perspective of a marketing document that will meet all the regulatory requirements, while telling a compelling story about the history and future goals of the company, its core values, its business model and its company objectives. We have also worked on hundreds of domestic and international master franchising, joint venture, multiunit development, subfranchising and area development agreements in over 50 countries over the past 30 years.

When disputes arise, we bring an unmatched track record litigating and arbitrating literally hundreds of cases before state and federal courts and administrative agencies throughout the United States. Our attorneys have defended individual, multi-plaintiff and class actions, and have

obtained numerous favorable dismissals, summary judgments, trial verdicts and appellate decisions. We have been retained as national and regional franchise counsel for a number of Fortune 100 clients. We also understand that many times the client's strategic goal is to try to resolve the dispute consensually. In those situations, we bring a deep breadth of experience in negotiating favorable solutions with franchisees, dealers, suppliers, distributors and government agencies directly or through alternative dispute resolution.

Our Distribution & Franchise experience includes:

[Franchise, License and Dealer Agreement Development and Structuring](#)  
[Enforcing Franchise and Dealership Agreements and Operating Standards](#)  
[Pricing, Incentive and Promotional Programs](#)  
[Multi-District, Multi-Plaintiff and Class Actions](#)  
[Antitrust and Trade Regulation Counseling and Litigation](#)  
[Bankruptcy and Financially Distressed Operations](#)  
[Trademarks, Trade Secrets and Non-Competition Agreements](#)  
[Labor & Employment and Employee Benefits](#)  
[Real Estate](#)  
[Data Security and Privacy](#)  
[Our Unique SeyfarthLean Approach](#)  
[Representative Distribution & Franchise Matters](#)

**Franchise, License and Dealer Agreement Development and Structuring**

Our Distribution & Franchise attorneys help our clients develop, establish and restructure their distribution, franchise, and license arrangements. We have helped clients with all aspects of their network agreements, including preparing, modifying and updating various forms of relationship agreements. We are well equipped to prepare and help you deploy the necessary documents quickly and efficiently in the marketplace to ensure that your company is in compliance with both federal and state laws and regulations. Among other things, we regularly negotiate our clients' dealer and distributor agreements, framework agreements, area development or multiple ownership agreements as well as various other related agreements, including holding company arrangements and various forms of license and agency agreements. We strive to always stay ahead of the legal and strategic curve as it comes to the rules and regulations that affect franchisors in both franchising laws and legal developments which impact the business model. This means being prepared to efficiently update and make necessary adjustments to disclosure documents and agreements on a regular basis. Our clients include globally recognized specialty retailers, quick-serve fast casual and full-service restaurant chains, automobile distributors, automotive repair and maintenance, business services, home services and related business format franchisors.

We also develop strategies for how to best structure various networks for distributing products and services and implement new or modified agreements. We can also play an active counseling and oversight role in that process if clients chose to use other providers and consultants to develop these basic documents, which we then help customize to meet our clients' specific needs.

We often draw on the expertise of Seyfarth's leading [M&A practice](#), which has been engaged in more than 250 transactions over the last two years, including representing the buyers and sellers of franchises. Our M&A attorneys help clients evaluate, negotiate, structure and execute transactions, including conducting due diligence and working across other disciplines to address tax, antitrust, employee benefits, and intellectual property issues. In addition, our team is experienced in the nuanced issues of buying and selling franchises – from addressing compliance and regulatory issues, reviewing franchise-related provisions, and assessing the

impact of distribution, franchise and license arrangements already in place.

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#### **Enforcing Franchise and Dealership Agreements and Operating Standards**

The ability of our clients to enforce not only the operative agreements, but also uniform and consistent standards is fundamental to a successful business operation. We have successfully defended challenges to a wide variety of agreements and operating standards, from basic facility and image requirements to monetary incentive programs based on customer satisfaction scores. We regularly enforce the right of our clients to terminate franchise, distribution and related agreements, including operating, management and related real property agreements. Our experience includes:

- Developing enforcement standards
- Enforcing operating and performance standards, including sales and other performance commitments and requirements
- Enforcing brand image requirements and facility related standards, including site control rights
- Enforcing approved supplier and vendor certification programs
- Enforcing renovation and development requirements and agreements
- Enforcing right of first refusal provisions
- Defending challenges to warranty and warranty reimbursement programs and other franchisor financial or promotional related programs
- Enforcing financial covenants, including working capital, debt limits, and credit and financing requirements
- Defending challenges to exclusivity requirements, non-compete covenants and other operating restrictions
- Defending encroachment claims and other territory-based claims
- Protecting trademarks and trade secrets, and challenging unauthorized use
- Structuring and enforcing advertising fund usage, segregation and operating standards

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#### **Pricing, Incentive and Promotional Programs**

We regularly assist clients in navigating the various federal and state laws as they structure pricing, incentive and promotional programs. In various industries and business sectors, we routinely counsel clients on resale price maintenance compliance and pricing policies. We have defended claims that our clients' pricing or promotional programs result in unfair discriminatory treatment among franchisees and dealers. Our experience includes:

- Evaluating and defending challenges to rewards programs, sales promotions and other incentive programs and claims of discriminatory conduct in the administration of such programs
- Structuring and defending loyalty discounts, bundling, and rebate programs
- Designing and administering cooperative advertising programs
- Structuring and defending volume and national account price discounting another product or services sourcing programs
- Defending price discrimination claims under Robinson-Patman Act and state "one-price" statutes

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#### **Multi-District, Multi-Plaintiff and Class Actions**

Our clients endeavor to apply uniform and consistent policies and practices to the hundreds or thousands of dealers and franchisees that distribute their products and services to the ultimate retail customer. This model necessarily exposes our clients to claims from retailers and their associations involving challenges to their system-wide conduct. Our clients also regularly face claims from retail customers alleging defects in the products and services that their dealers and franchisees distribute. Our attorneys have extensive experience defending consumer fraud, false advertising, privacy, data security and product liability class actions. Plaintiffs' lawyers frequently file multiple suits across the country in an attempt to obtain what they perceive to be economic leverage. Working in collaboration with Seyfarth's [Commercial Class Action Defense](#) group, our Distribution & Franchise attorneys can counteract such tactics by building an integrated, cohesive defense team from our 10 offices across the country. Doing so not only minimizes costs, but also facilitates the development of a consistent defense strategy that can be implemented across jurisdictions. Our experience includes:

- Defending class allegations of fraud, violation of state and federal statutes and economic loss in the context of product defect claims
- Defending direct and indirect purchaser claims under state and federal antitrust and unfair competition statutes
- Defending class claims of discrimination in the selection, treatment and termination of actual or prospective franchisees or dealers
- Defending statewide claims brought on multi-dealer and class basis allegations systemic and chronic underpayment of warranty reimbursement claims

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#### **Antitrust and Trade Regulation Counseling and Litigation**

Antitrust and trade regulation law, both domestic and foreign, inevitably affects distribution and franchise relationships. In some cases, companies accused of antitrust violations face not only significant private litigation financial exposure but also the possibility of a criminal investigation and resulting penalties. Our Distribution & Franchise attorneys (many of whom are also members of our [Antitrust & Trade Regulation Group](#)) have extensive antitrust knowledge and experience, which allows them to identify the antitrust issues facing our clients. We regularly counsel clients on the antitrust aspects of distribution and franchise arrangements as well as the laws governing inter-competitor collusion, resale price maintenance, cooperative advertising programs, supplier and dealer trade associations and exclusivity requirements. Our experience includes:

- Prosecuting and defending antitrust claims arising in disputes between suppliers and dealers
- Structuring business transactions, joint ventures and alliances
- Developing and implementing antitrust compliance programs
- Defending unfair competition and consumer protection claims

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#### **Bankruptcy and Financially Distressed Operations**

A financially distressed or bankrupt franchisee, licensee or dealer poses a myriad of potential issues and risks. Negative publicity, potentially dissatisfied customers, limited or closed operations, loss of market share or a liquidation sale or assignment to an undesirable buyer are just some of the potential consequences of a franchisee or licensee unable to meet its financial obligations. A bankruptcy filing also places an overlay of federal bankruptcy law on the already significant body of state law governing dealer, franchise and other business relationships. It also means that most, if not all, of the issues will be determined within a system whose goals are to

maximize recovery for creditors and not necessarily to protect the reasonable expectations of parties to the franchise or dealer agreement. Our Distribution & Franchise attorneys have the unique combination of franchise and bankruptcy experience to assist clients in effectively navigating these complex proceedings. Our experience includes:

- Developing strategies for dealing with financially distressed and bankrupt franchisee and dealer operations
- Counseling regarding post-filing operations, including franchisor rights and limitations
- Effectuating termination and other enforcement action in a franchisee or dealer bankruptcy
- Protecting our clients' rights in asset and operation transfers in a bankruptcy proceeding
- Advising our clients on reorganizations and liquidations

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#### **Trademarks, Trade Secrets and Non-Competition Agreements**

A company's trademarks and trade secrets are the heart of a franchise or licensing relationship. They create the value that is the franchise or trademark license system. Trademarks reflect the brand being marketed and quality of the goods and services being provided. Our Distribution & Franchise and [Trademark](#) attorneys work hand in hand to both proactively protect trademarks (through clearance and registration) and to respond quickly and aggressively to any trademark infringement using all available strategies to protect the clients' brand recognition. Seyfarth has distinguished itself as a leader in trademark prosecution through the innovative use of technology and trademark litigation by combining our attorneys' deep experience before all relevant tribunals, including the courts, local trademark offices, and similar courts. We understand that often times trademark cases involve high stake, bet-the-company issues, and we have a proven track record of success protecting our clients' trademark rights. Also, enforcing both interim and post-termination no-competition agreements is often essential to protecting the value of a branded system and we help clients develop and enforce confidentiality, non-disclosure, and non-competition agreements with franchisees and key employees. Our trademark experience includes:

- Counseling regarding the creation, clearance and adoption of trademarks, service marks, and trade names and preparing and prosecuting trademark applications (domestic and international)
- Litigating trademark, false advertising, and unfair competition disputes
- Prosecuting counterfeiting actions and executing seizures of counterfeit goods, including coordination with U.S. Customs
- Prosecuting and defending oppositions, cancellations, and appeals before the U.S. Patent and Trademark Office and domain name proceedings under the Uniform Domain Name Dispute Resolution Policy (UDRP)
- Asserting and defending false advertising and deceptive trade practice actions before courts, the Federal Trade Commission, the National Advertising Division of the Better Business Bureau, and other federal and state agencies

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#### **Labor & Employment and Employee Benefits**

Working together with Seyfarth's world-class [Labor & Employment](#) and [Employee Benefits](#) Departments, we provide the full range of workplace-related legal services for our franchisor and distributor clients, including restaurants, hotels and resorts, sports franchises, retail stores, and gaming and racing establishments. In recent years, courts and administrative agencies have increasingly viewed franchisors as joint employers of the employees of franchisees, creating potentially significant liability for our clients. Not only do we defend such claims, but we work

with our clients proactively to structure their relationships to avoid claims from arising. Our experience includes:

- Defeating claims that franchisors jointly employ and are liable to plaintiffs suing under various labor and employment laws
- Defending against class actions and other claims of discrimination, wage-hour violations, and denial of disability accommodations
- Developing, implementing and defending minority dealer development and often affirmative action plans
- Defending discrimination claims made by dealers, franchisees, and their customers and guests, including those arising under Title III of the Americans with Disabilities Act
- Counseling employers and providers of background information (resellers and consumer reporting agencies) on compliance requirements under the Fair Credit Reporting Act (FCRA) and related state laws, and litigation regarding these issues
- Training franchise and dealer development personnel and field reps on how to interact with retailers in order to avoid disputes
- Handling traditional labor matters such as positive employee relations, union organizing drives, unfair labor practice charges, negotiating and administering collective bargaining agreements, strikes, interest arbitration, grievance and arbitration matters
- Serving as employee benefits counsel to large national restaurant chains and entertainment companies with restaurants, professional sports teams and casino hotels
- Supporting franchisors with respect to the establishment, maintenance and even terminations of their retirement, health and welfare, and executive compensation plans and programs

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#### Real Estate

We understand that our clients face many substantive issues in developing, operating and managing their systems and networks. That is why our Distribution & Franchise attorneys are part of a multi-disciplinary and comprehensive team drawing on other specialized talent throughout the firm. Seyfarth's [Real Estate Practice](#) is one of the largest of its kind in the country. Given the breadth of our experience on real estate and distribution matters, we regularly help our distribution and franchise clients acquire and manage large real estate portfolios of leased or company-owned outlets using cross-disciplinary teams. Our experience includes:

- Managing the acquisition and disposition of real estate assets and investments in every state
- Negotiating and drafting real property arrangements, including leases, sale-leasebacks, purchase and sale agreements, and other real property agreements
- Enforcing our clients' rights under lease, exclusivity, site control and other real estate arrangements

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#### Data Security and Privacy

In today's economy, our clients' regularly collect sensitive financial and other personal information from their dealers, franchisees, licensees and retail customers. The exchange of information, and the various financial transactions between our clients and their retailers implicates a wide variety of legal issues, including protecting confidential information, maintaining consumer privacy, verifying requests for payment from retailers and taking appropriate action when irregularities or breaches arise. Working with our [Data Security and Privacy](#) attorneys, we regularly assist clients with:

- Enforcing financial reporting requirements
- Advising on maintenance of franchisee, dealer and customer confidential data
- Protecting the franchisor's audit rights
- Assessing state and federal constraints on sharing of consumer information
- Counseling on how to use personal data to drive the business forward without running afoul of the privacy expectations and laws of different countries

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#### **Our Unique SeyfarthLean Approach**

The Distribution & Franchise team uses [SeyfarthLean](#), our proprietary, value-driven client service model, which combines the core principles of Lean Six Sigma process improvement with project management and tailored technology solutions. The group makes use of right-sized staffing and alternative fee arrangements, along with process mapping, best practice documents, standardized forms, and protocols for e-discovery to manage costs and facilitate an efficient and effective client engagement. Technology plays a significant role in our approach, and as one example, we have utilized SeyfarthLink, the firm's award-winning client collaboration platform, as the basis to develop integrated multi-state franchise litigation portals and a variety of streamlined national and international trademark and real estate portfolio tracking and management, all to enable our clients to achieve predictable fees, reduced cost, greater efficiency, and improved outcomes in franchise matters. [SeyfarthLean creates tangible results for clients, including more consistent and high quality legal services, increased efficiency, improved communication and collaboration, committed and transparent pricing, and reduction in overall cost of services.](#)

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