

NEGOTIATING FRANCHISE AGREEMENTS

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The franchise agreement is the main document governing the relationship between a franchisor and a franchisee. Successfully negotiating the franchise agreement is of critical importance to the new franchisee.

Here are three important points to consider regarding the negotiation of franchise agreements:

1. The Wide Spectrum.

There is no such thing as a “standard” franchise agreement. While franchise agreements all typically address certain topics (e.g. grant of territory, license of trademarks, royalties, advertising funds, transfers, etc.) the differences in how they do so are significant from company to company. Franchise agreements are drafted by the franchisor with the franchisor’s best interests in mind, so their terms can range all over a very wide spectrum from relatively even-handed all the way to downright one sided in favor of the franchisor. You never know until you look into the details.

2. The Myth of “Non-Negotiability.”

Franchise agreements have a reputation for being “non-negotiable.” This is not exactly the case. Many items within a franchise agreement are in fact subject to negotiation, items that can make a big difference to the franchisee. Generally items that impact the overall desired uniformity of a franchisor’s system are off limits and items that are specific to the franchisee are fair game. The size and age of a franchise system also can come into play—a bigger, more established franchisor may be less likely to negotiate than a smaller, newer one. One thing is for sure, however, when it comes to franchise agreements, “if you don’t ask, you don’t get.”

3. Port City Java Case.

Franchisees need to be well aware of the contents of their franchise agreement and FDD if for no other reason than the fact that they’re going to have to live with them. In 2009 the North Carolina Business Court ruled against a franchisee who claimed fraud in the purchase of his franchise, strictly enforcing against him the franchise agreement provision to the effect that the franchisee could not rely upon any verbal representations of the franchisor or its broker outside of the written documents. The franchisee could only rely upon the language of the franchise agreement and FDD as written, regardless of any verbal statements made to him in the course of the sale.

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