



One Firm WorldwideSM



FRANCHISING & DISTRIBUTION PRACTICE

The Firm's Franchising & Distribution team has a long history of representing franchisors, distributors, multi-unit retailers, intellectual property licensors, and rapid-growth and established companies with complex channel partner relationships in a wide variety of industries and on a wide variety of legal issues. These issues include franchising regulation and compliance, franchise agreement disputes, intellectual property, real estate, private equity, mergers and acquisitions, labor and employment, antitrust, dealer litigation, and commercial litigation.

Jones Day's cross-border capabilities and our integrated-practice approach enable us to provide creative and comprehensive solutions to the complex problems of multinational transactions. We help clients assess new ventures and structure and expand

their operations to maximize business opportunities while minimizing legal, regulatory, and reputation risk.

Many of our lawyers are leaders in these areas, publishing articles, appearing on major television and radio networks, and consulting with publications like *The Wall Street Journal*, *USA Today*, *BusinessWeek*, and *Fortune*. Our lawyers have also spoken at conferences around the world hosted by the International Franchise Association and other franchising organizations.

STRATEGIC PLANNING AND CHANNEL DESIGN

Across the globe, companies of all sizes and industries are looking for strategies to drive cost-efficient growth

and harvest intellectual property value. Companies coping with channel distribution fatigue, underperformance, or burn-out may be searching for ways to strengthen or improve channel partner relationships.

Jones Day has in-depth experience with the strategic planning needed to address these issues, adding value early in the process. Among the many services we provide to our clients are the following:

- Acting as strategic advisor to a wide variety of companies in the areas of:
 - Business and strategic planning.
 - Protection and harvesting of intellectual capital.
 - Distribution channel development and optimization.
- Engaging in the strategic restructuring or conversion of large-scale channel partner relationships.
- Working closely with leadership teams and in-house counsel on:
 - Inadvertent or unintentional franchising issues.
 - Analysis of alternatives.
- Serving as outside advisors to “skunkworks” operations within *Fortune* 1000 companies and assisting in the design of innovation and intellectual asset management systems.
- Providing legal and strategic support on the design, implementation, and subsequent modification of regional, national, and global franchising systems.

PREPARATION OF KEY FRANCHISE DOCUMENTS

Our team has prepared and registered hundreds of franchise disclosure documents and franchise agreements for clients in more than 50 industries. We also have extensive experience in the regulation and structuring of the following franchising agreements:

- International and domestic joint ventures.
- Master franchising and subfranchising agreements.
- Area development agreements.
- U.S. inbound and outbound transactions in more than 30 countries.

RELATIONSHIP MANAGEMENT AND COMPLIANCE

Drawing on their in-depth experience in relationship management and compliance, our Franchising & Distributor lawyers provide clients with the following services:

- Legal and strategic counseling for senior management and franchise development teams on day-to-day operational, real estate, and marketing issues.
- Assistance with the development of effective regulatory compliance systems.
- Negotiation and structuring of transactions with:
 - Key vendors.
 - Suppliers.
 - Strategic alliance partners.
 - Cobranding relationships.
 - Capital sources.
 - National account customers.
- Assistance with the structuring and documentation of:
 - Financing transactions.
 - M&A transactions.
 - Equity and debt offerings.
- Advice to management on:
 - Corporate governance.
 - Franchisee and dealer relationship management challenges.
 - Franchisee advisory councils.
 - Alternative expansion strategies.
- Establishment of IP development and exploration programs for the adoption, protection, and use of company IP within the franchised business.

LITIGATION AND COUNSELING

Distributors and franchisors operate in a challenging regulatory and litigation environment. Not only must they wind their way through complex state, federal, and/or international regulatory regimes, but they are often faced with complex civil actions brought by their franchisees, dealers, and others in the distribution chain. The ability to anticipate and minimize the impact of complex litigation, from pre-litigation counseling through discovery and trial, helps prevent litigation from negatively impacting the company's business operations and bottom line. Jones Day can assist with the defense of claims brought against franchisors and distributors, including the following:

- Multiparty and class-action lawsuits.
- Pre-litigation planning and creative settlement strategies.
- Arbitration and mediation.
- Federal and state antitrust and deceptive trade practices claims.

- Risk mitigation planning.
- Media relations and crisis management support and advice.
- Business tort and contractual claims (including interference and noncompete covenants).
- Consumer product defect and product liability claims.

BROAD LITIGATION EXPERIENCE WITH THE ISSUES FACING DISTRIBUTORS AND FRANCHISORS

Jones Day lawyers have substantial experience as national and regional litigation counsel on behalf of distributors and franchisors. Coordination of regional, nationwide, and class-action litigation can avoid inconsistency and promote efficiency, and in many cases is indispensable. Coordinating counsel can develop a thorough understanding of the underlying business considerations, provide a template for use by trial counsel throughout the country, and avoid strategic or evidentiary ploys in one case that might jeopardize litigation in others. Coordinating counsel can also provide consistency of discovery responses, deposition preparation, motion practice, identification and preparation of defense fact and expert witnesses, and trial preparation. Given our decades of combined experience as coordinating counsel, we can navigate the issues that need to be addressed and then try the cases that need to be tried.

ISSUES FRANCHISORS AND DISTRIBUTORS MAY FACE

Claims against distributors and franchisors often involve tortious interference; breach-of-contract, statutory, and regulatory claims; and antitrust—all of which may call into question the scope and availability of certain types of relief and whether statutes in a given jurisdiction apply to activities in another. Cases may also involve requests for expedited temporary and permanent injunctive relief. In addition, a company faced with national litigation must deal with many complex procedural challenges. These challenges include deciding whether to remove cases to federal court, whether to seek multidistrict litigation to allow coordinated treatment of cases, how best to coordinate state-court actions, and whether to oppose class certification where there may be a later need to seek a classwide settlement.

Jones Day attorneys are skilled in advising our clients on these issues. We have defended innumerable matters, including class actions, relating to the issues faced by distributors and franchisors. We have defeated efforts to certify class actions and have tried verdicts to juries and government agencies. As one example of our experience in this area, we recently defended claims based in one state that arose from a change in the distributor's national channel in another state. We argued that the state court in which the action was pending could not apply the law of that jurisdiction to activities in other states, and we raised other jurisdictional and merits defenses. The court dismissed the lawsuit.

High-profile, high-stakes litigation often receives extensive media attention. How will you respond when an "investigative" reporter seeks comments for a program that will feature sympathetic distributors or franchisees as "victims," along with "experts" from "consumer" organizations? Jones Day lawyers have extensive experience working with internal and external public relations advisors on media relations.

PRE-LITIGATION COUNSELING

The risks of litigation for distributors and franchisors can be reduced by providing clients with effective counseling before they make changes in the way they do business. Jones Day attorneys are available to consult with in-house counsel and regulatory affairs personnel on ways to reduce litigation risks and costs. Clients have asked us to review proposed changes to their distribution networks and agreements with others in the channel. We have also advised clients on creating and changing their franchise agreements to reduce the risks of litigation—and to enhance their chances of winning if litigation ensues. Effective pre-litigation counseling helps our clients avoid litigation before it starts and minimizes the cost of litigation that does occur.

ADDITIONAL INFORMATION

For additional information regarding our Franchising & Distribution practice, please contact your principal Firm representative or one of the lawyers listed in this publication. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

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