

# Looking ahead at big trends in 20



## What are you watching in 2020, and how are you approaching it?

“There are companies that are starting to sell franchises even though they are not proven systems and have no financial backing behind them. I have recently looked at several new franchise systems that have one location for their brand and thereby are not systems that have proven that the concept is truly ‘franchisable’ and a model that can work beyond the one location. Additionally, these same franchises are completely underfunded as a franchise company, with balance sheets showing as little as \$1,000. How can these franchise companies expect to have a franchisee invest hundreds of thousands of dollars in their brand when they have not? This is a serious issue. In these instances, I try to talk the client into walking away from that brand and to going back to looking at others.”

—Nancy Lanard, Lanard and Associates

“The ever-increasing appetite for international expansion—earlier on in the lifecycle of franchise systems and beyond traditional borders—is one of the biggest trends for 2020. This requires franchise lawyers to have broader understanding of the widening regulatory regimes across the globe, together with a firm grasp on issues that are pertinent to structuring and implementing international transactions.”

—Andrae Marrocco, McMillan LLP

“Continued emphasis on Item 19 by state regulators. Regulators continue to push deeper into the 2018 FPR (financial performance representation) Commentary and beyond. Maintaining meaningful relationships with state examiners and consulting them often is key.”

—Dan Matthews, Drumm Law



▲ Tom Spadea



▲ Nancy Lanard



▲ Tal Grinblat

“The biggest trend is the impact of FASB’s new revenue recognition rules on emerging franchisors. We are working carefully with our franchisor clients to make sure their systems are structured to minimize fee deferral.”

—Ritchie Taylor,  
Manning, Fulton & Skinner

“The impact of California’s AB-5 on franchising. Specifically, whether California’s new law on classification of independent contractors may lead to increased employment-related claims against franchisors, both from franchisees and franchisee employees. We are reviewing and revamping franchise agreements to include stronger independent contractor acknowledgements, requiring franchisees to enter into agreements as an entity they own and control rather than individually, looking into insurance to help manage franchisors’ risks, and looking into lobbying efforts to help exempt franchisors from the law.”

—Tal Grinblat, Lewitt Hackman

“The sale of franchisors, typically to private equity firms. Because of the financial models used by the PE firms, what were once very strong financials of the franchisor become very weak. It makes solid systems needing to deal with financial

assurance obligations imposed as well as making it difficult for to meet banking requirements.

We have to live with the results explain to the states what has happened also try to explain to the PE firm are doing.”

—Douglas  
Robinson Watson

“With the economy staying flat, franchisors are struggling over the finish line. In a counter trend, franchise fees have actually increased and more franchisors depend on broker community to do deals and commissions arms race of sorts. Our advice to our franchisors is to play the long game and put more focus on franchisee unit economics. Franchisees make money and a will surely continue to grow. And pay out big commissions if necessary as you have the cash flow and can support your franchisees. In the franchising game, they are in the royalty game.”

—Tom Spadea, Spadea & Associates



# Overlooked issues & best lessons



**We asked Legal Eagles what issues they think more people in franchising should know about. Read what they had to say.**

## Lease Language

“Key points to negotiate in a retail lease. Retail leases are extremely important documents for any retail franchisee. A good retail franchisor should have a strong real estate team consisting of a national real estate firm to help locate good local realtors and ensure that the franchisor's requirements for the space are met, and an experienced retail lease law firm that can work with the franchisees in negotiating a strong lease. For example, one topic that is often overlooked is the requirement for assigning the lease. Many franchisors have their own assignment requirements, but what about making sure that the personal guarantee is released upon assignment? Many franchisors are not going to be concerned about that, but every franchisee should be. I am sure that a franchisee would not want to be guaranteeing the financial obligations of the buyer of their business. Leases are extraordinarily negotiable documents and having a strong lease attorney to negotiate the legal matters in the lease can often make or break a franchisee's business.”

—Nancy Lanard, *Lanard and Associates*

## Social Media

“The power of Facebook on franchise lead generations. Through my clients, I continued to be amazed how brands are innovating to use social media to identify qualified franchise prospects.”

—Ritchie Taylor,  
*Manning, Fulton & Skinner*



▲ Lloyd Hoffer



▲ Barry Heller



▲ Fredric Cohen

## Human Resources

“The franchising world has now been impacted by the application of employment issues. More folks in franchising need to be aware of the risk of ignoring the types of practices that expose the franchisor to employment-type claims and remedies.”

—Barry Heller, *DLA Piper*

**We also asked our 2020 Legal Eagles, what are your best lessons of late? Several obliged.**

## FDDs

“Picking up the phone and having a 10-minute call with an examiner can prevent wasted time and save money for the client. Recently, in response to an examiner comment on Item 19, we were preparing to edit a table and make amendment filings in several registration states. A brief call to the examiner and some negotiation resulted in the comment being withdrawn.”

—Dan Matthews, *Drumm Law*

## Tech & Litigation

“Mastery of and use of technology in the course of litigation is necessary, in the area of mass document files. This franchising scenario as much as I learned it by having to deal with mass document file and through technological developments in litigation and seeing what techniques often applying.”

—Lloyd Hoffer

## General Wisdom

“The faster you can figure out what the other side really wants, the quicker you can get to a solution.”

—Deborah Coldwell, *Hayes*

“An old lesson that revisits (and recently): A law license is a license to be an ass. And the most lethal of legal weapons is humility and understatement.”

—Fredric Cohen

“Managing disclosure. Not a new issue, but still a major problem we