

## Franchise Law

Greenspoon Marder's Franchise Law practice group provides legal counseling and unmatched client service to national and international franchisors from the pre-launch stage through the exit and beyond. Our industry-leading franchise attorneys have deep knowledge and experience advising entrepreneurs and business owners on building franchise systems, drafting customized Franchise Disclosure Documents (FDD), advising on franchise sales compliance, and ensuring compliance with all state and federal regulations. From existing, emerging and established franchisors, our team represents franchise systems of all sizes as a seamless legal partner with the type of easy and immediate access that franchisors would expect from an in-house counsel.

Our dynamic and energetic team works proactively and communicates effectively with growing franchisors on their operating system. We have extensive first-hand experience drafting FDDs, franchise agreements, multi-unit development agreements, area representative agreements, and the various exhibits to the required franchise disclosure and closing documents. We regularly conduct franchise sales trainings and franchise closings for our franchise clients. As a unique value proposition for business owners to expand through franchising for a firm that has a national footprint and reach, we offer a flat fee package inclusive of the requisite franchise documents, trademark registrations, and state registration filings.

Our attorneys offer proactive strategies to franchisor clients to best avoid conflict within their franchise systems but disputes happen. We have a nationwide franchise litigation team and a deep bench to assist in any kind of dispute that may arise for our franchisor clients. Our franchise team has the dispute resolution and trial experience in jurisdictions from coast to coast in state courts, federal courts and in arbitration where many franchise disputes are adjudicated. We have prevailed at trial in cases involving breach of the franchise agreement, fraud, state deceptive and unfair trade practices acts, disclosure violations, violations of the FTC Franchise Rule, the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), the Florida Franchise Act, rescission, and unjust enrichment among other issues.

We understand that representing both franchisees and franchisors gives our attorneys a wider perspective that can benefit our franchise clients. Our franchise attorneys regularly represent multi-unit franchise owners, private equity franchise development groups, area representatives, master franchisees and unit franchisees. We conduct due diligence on franchise systems for prospective franchisees, review FDDs, prepare buy/sell agreements, assist with corporate formation, and review commercial leases at cost-effective rates for franchisee businesses. Our franchise attorneys have resolved hundreds of franchise disputes for franchisees in mediation, through the arbitration process, and in court both pre-suit and at trial.

Greenspoon Marder's Franchise Law practice group uses cutting-edge technology and its national platform to provide value to our franchise clients. We understand the journey that franchise clients are on because we have been there as in-house counsel and as part-owners of franchise brands. Our goal is to help franchise clients identify opportunities and overcome challenges at every stage of their business from startup to maturity. We regularly represent franchisors and franchisees in a wide range of matters, including intellectual property, real estate, litigation, international transactions, and corporate disputes.

Our franchise attorneys are industry leaders and regular presenters through the ABA Forum on Franchising and International Franchise Expos. We have multiple franchise attorneys consistently recognized as Legal Eagles in the *Franchise Times*, Super Lawyers in Franchising/Distribution, and Legal Elite in *Florida Trend*.

### Who We Serve:

From domestic to international, our multidisciplinary attorneys represent major franchisors, emerging franchisors, startup franchisors, area developers, area representatives, sub-franchisors, pre-franchise brands, early-stage companies, private equity groups, franchise developers, franchise brokers, franchise development companies, multi-unit owners, and single-

unit franchisees in diverse industries, including quick service restaurants (QSRs), fast food, retail, pet care and wellness, fitness, health and wellness, medical spas, sports and entertainment, product manufacturing and distribution, education, pre-schools, residential services, B2B services, luxury brands, automotive dealers, and tech.

### **Representative Matters:**

We represent franchise systems in all phases from startup to national and multi-national franchisors, which either have included or currently include:

- Scenthound
- Bahia Bowls
- Pinspiration DIY
- 3Natives
- NERDiT Now
- Nguyen's Kitchen
- Gus's World Famous Fried Chicken
- Montessori Kids Universe
- P3 Cost Analysts
- Stoner's Pizza Joint
- Koala Insulation
- Fries Man
- Bahia Bowls
- Augusta Lawn Care
- Tapville Social
- Checkmark Collections
- Dynamo Surfaces
- Serotonin Enterprises
- Euforia Meds
- SugaringNYC
- Raining Berries
- Liquivida Lounge
- Ghost Kitchens
- Selfie WRLD
- Altus Jobs
- Rooster & Rice
- iFoam
- Rezzil
- Takorea
- Rock 'N Roll Sushi
- Island Wing Company
- Pause Wellness Studio

### **Related Areas**

- Banking & Finance
- Corporate

- Hospitality, Alcohol & Leisure Industry Group
- Intellectual Property
- Labor & Employment
- Land Use & Zoning
- Litigation
- Real Estate
- Entertainment & Sports
- Tax

## **News**

- Greenspoon Marder Attorneys Frank Whitaker and Joseph Wasch Successfully Represent Client in Commercial Property Deal Valued at \$3.8 Million
- Greenspoon Marder Franchise Law Practice Group Ranked as Top Franchise Supplier In 2023 by Entrepreneur®
- Greenspoon Marder Attorneys Joseph C. Wasch and Frank Whitaker Successfully Represent Client in Commercial Property Deal Valued at \$26.5 Million
- Greenspoon Marder Attorneys Joseph C. Wasch and Frank Whitaker Successfully Represent Franchise Client in Connection with Acquisition of Multiple Tropical Smoothie Cafés in Excess of \$5 Million
- Greenspoon Marder Represents Latin America Master Franchisee in Restructured Development Agreement
- Greenspoon Marder Partners Evan M. Goldman and Kelly M. Purcaro Recognized as 2023 NJBIZ Leaders in Law Honorees
- Greenspoon Marder Promotes Three Attorneys to Senior Counsel in 2023
- Greenspoon Marder Partner Adam G. Wasch Appointed to Marketing Committee in ABA Forum on Franchising
- Greenspoon Marder Partners with The Health Benefit Alliance for Private Event at IFA
- Evan M. Goldman Named Co-Chair of Greenspoon Marder's Franchise Law Group
- Greenspoon Marder Associate Josh Goldberg Selected to Serve on the Sports Lawyers Association's NextGen Committee
- Greenspoon Marder Partners Deborah Baker and Adam Wasch Recognized in Florida Trend's 2022 "Legal Elite"
- Greenspoon Marder Successfully Represents Woof Gang Bakery & Grooming in Sale to Garnett Station Partners
- Greenspoon Marder Continues Expansion and Moves To New Office In Newark, N.J. at 1037 Raymond Blvd
- Greenspoon Marder Launches Franchise Law Practice Group Nationwide

## **Videos**

- 2022 Year in Review & 2023 Forecast: Franchise Law
- Know Before You Go! Six Key Considerations Before You Sell

## **Meet the Team**

- Jacob C. Elberg
- Josh Goldberg
- Robert Johnson

## **Sub-Practices**

### **Startup Franchising**

*Initial Franchise Consultation*

If you are considering franchising your business, Greenspoon Marder's Franchise Law practice group offers a complimentary initial franchising consultation virtually or in one of our offices nationwide. Our experienced franchise attorneys will walk you through the entire process of whether franchising is the right next step for your business.

### *Intellectual Property: Trademarks and Copyrights*

Securing your intellectual property rights is one of the key elements to owning and operating a scalable franchise system. Greenspoon Marder's Franchise Law practice group has extensive experience in intellectual property matters. As one of the first steps in the startup franchise package, we will file trademark applications for names, brand logos, and slogans with the United States Patent and Trademark Office and prepare an inter-company license agreement from your existing entity or the trademark holder. We will also contest any third parties who seek to file applications for trademarks that conflict with the marks of our clients

### *Creation of the Franchising Company*

Our attorneys will form the franchising company (either a Subchapter S corporation or limited liability company) that will serve as the franchisor in the franchise system. This formation includes filing a certificate of formation/articles of organization in the desired state, obtaining the EIN tax number and providing general counseling services. This step may include preparation of corporate governing documents such as a shareholder agreement or operating agreement.

### *Preparing the Franchise Disclosure Document and Franchise Agreements*

Franchising is regulated at the federal level by the FTC Franchise Rule, Rule 16 C.F.R. part 36 and at the state level through franchise and/or business opportunity and relationship laws. Our franchise team members will set an initial structure meeting and carefully gather the required 23 items of information needed to draft your FDD including:

- Information about the franchisor, affiliates, predecessors and parent companies
- The market of your franchise business and competition analysis
- Employment history of your officers and directors
- Litigation and bankruptcy history
- Competitive analysis of initial franchise fees in your industry
- Royalty fees, marketing fund fees, and other fees payable to the franchisor or affiliates
- Estimated costs to open a franchise unit
- Suppliers and vendors to be used by the franchise system
- Financial performance representations for Item 19

After conducting the analysis and finalizing the deal points for your FDD, we will prepare customized documents needed to launch your franchise system or area development business opportunity including the:

- Franchise Disclosure Document
- Franchise Agreement
- Multi-Unit Development Agreement
- Area Representative Disclosure Document
- Area Representative Agreement
- Exhibits (Personal Guaranty, Non-Disclosure and Non-Compete Agreement, State Addendums and Disclosures, ACH Authorization, and other required attachments)

### *State Registration(s) and State*

After the franchise documents are completed and approved for launch, Greenspoon Marder's Franchise Law practice group will provide you with sales compliance training to enable you to comply with state or federal franchise laws and requirements. We will also register your franchise offering in the states in which you desire to offer or sell franchises. There are certain registration states which require franchisors to register the FDD and other franchise information on an annual basis including California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island,

South Dakota, Virginia, Washington and Wisconsin. Other states have business opportunity laws which regulate the sale of business opportunities and require a form of notice and a fee including, but not limited to Florida, North Carolina, South Carolina, Texas, Utah, Kentucky, Maine, and Connecticut. We offer our clients transparency and up-to-date state registration information.

### *Flat Fees and Personal Attention*

Our franchise attorneys offer competitive pricing and have a deep bench of attorneys in-house to cover several legal services areas that include real estate, litigation, international transactions, and complex corporate matters. For many of our services, we charge a flat fee that will work within your budget. The startup package flat fee, for example, generally includes the required franchise documents (FDD, Franchise Agreement, Multi-Unit Development Agreement, and all exhibits) plus at least one trademark application, and registration in at least one registration state or business opportunity state.

Our franchise clients get the benefit of a having the backing of a national firm but with the cost-efficiency and personal attention that you might expect from a boutique or small firm. Each one of our franchise attorneys has prior franchise experience at big and small firms. We work with each of our startup franchise clients to walk them through the entire franchising process from start to finish.

### **Established Franchisor Representation**

We represent franchisor clients in the full range of franchise law matters, including registrations, renewals and updating of FDDs, the preparation of franchise agreements and related documents, and handling franchise regulatory matters with various state agencies.

Our experience in representing established franchisors includes:

- Negotiating franchise, area representative and multi-unit development agreements with franchisees, including area developers and master franchisees
- Representing national and international franchisors in litigation regarding termination of franchisees, protection of intellectual property rights, enforcement of restrictive covenants and other matters
- Advising on financing and structuring of the franchisor and affiliated entities
- Negotiating merger and acquisition deals
- Private equity buy-outs
- Human resources and employment issues with employees
- Counseling the franchisor on effective strategies to employ within the franchise system
- Assisting with IP and branding issues, including trademark registration and protection
- Strategic partnerships with private equity groups, franchise development companies, franchise sellers, and other industry contacts
- Serving as general counsel to multiple brands
- Cross-border transactions and in-bound franchise documents
- Raising money through capital and debt financing
- Corporate litigation in all areas
- Bankruptcy and asset protection
- Antitrust and unfair competition
- Finance and lending
- Strategic partnerships

### **Franchise Litigation and Dispute Resolution**

Greenspoon Marder's Franchise Law practice group has experience representing both franchisors and franchisees in federal and state courts, as well as arguing before multiple appellate courts in the State of Florida and throughout the United States. To save our clients time and money, our attorneys use strategic planning to achieve the best resolution

through either mediation or arbitration. Whether the matter is local, national, or international, we represent our franchise clients in the following types of disputes:

- Enforcing Franchise System Standards
- Franchise Defaults and Terminations
- Franchise Disclosure Violations
- Violations of the FTC Franchise Rule and Little FTC Acts
- Fraud and Defamation
- Intellectual Property Litigation
- Enforcing Noncompete Agreements and other Post-Termination Covenants
- Franchise Employment & Labor Issues
- Real Estate and Landlord/Tenant Disputes
- Mediation & Arbitration
- Appellate
- Class Action

### **International Franchisor Representation**

For companies that are expanding nationally and for in-bound established franchisors from Latin America, Canada, South America, Mexico, Europe, India, China and countries across the globe that are expanding their business into the United States, we are the preferred firm having represented clients in franchise transactions from dozens of countries worldwide. We have considerable experience in assisting established and emerging international companies in a wide range of industries, from food and beverage, technology, retail, and more.