

Southern Exposure

Franchising—and franchise regulation—takes hold in Latin America.

BY ANDREW A. CAFFEY

HERE IS A STATISTIC that makes most franchisors sit up and take notice: Central and South America, together with Mexico, have a combined population of more than 500 million inhabitants. This enormous and diverse market has undergone historic changes in the past decade, not the least of which has been the pace of the development—and regulation—of franchising in many Latin American economies.

Franchising has already gained a significant foothold there. The various Latin American franchise associations report a total of more than 800 franchisors as members. A number of well-known franchisors have established units in Latin America, including McDonald's, Burger King, Pizza Hut, Domino's Pizza, Subway, Godiva Chocolatier, Alphagraphics, Radio Shack, Avis Rent a Car, Jani-King and many, many others. In some instances, their success has been stunning. In December 1994, the McDonald's restaurant in São Paulo, Brazil, had the second highest sales volume in the company's 15,000-unit system, second only to its famous Moscow location.

For a closer look at what's happening in franchising in Mexico and Brazil, read on.

THE MEXICAN MARKET

In the three years since the adoption of NAFTA as well as the national financial crisis and devaluation of the peso, the Mexican economy has experienced a period of recovery, steady growth and development. NAFTA has provided a significant boost to franchise development in Mexico by liberalizing trade in services, reducing tariffs, and protecting trademarks and other

forms of intellectual property.

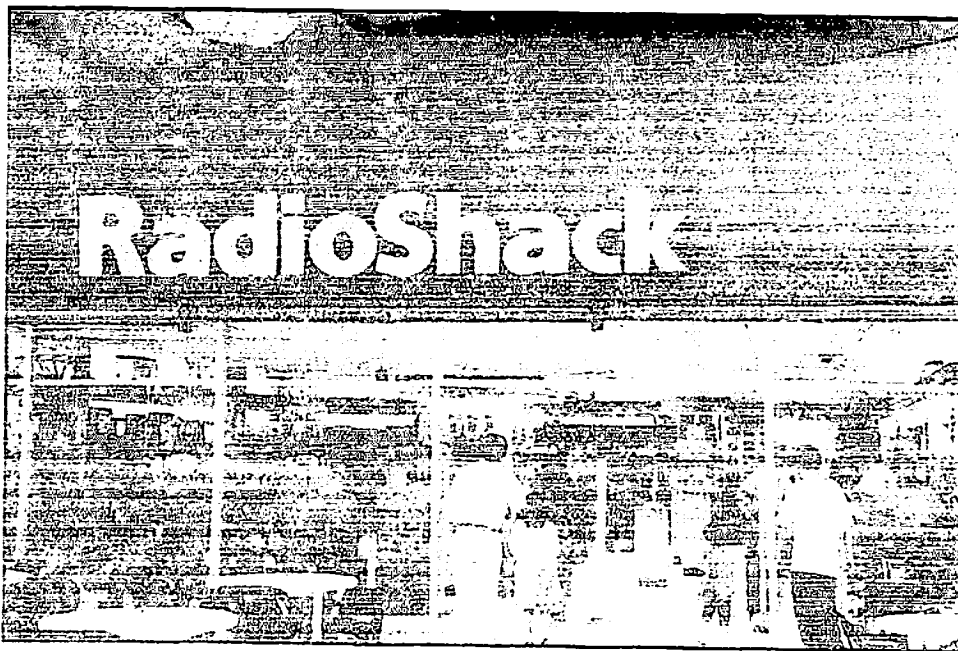
"Franchising is now growing steadily in Mexico again," says Mexico City franchise attorney Enrique A. Gonzalez of Gonzalez Calvillo y Forastieri, S.C. "Most franchisors have had to make some important adjustments over the past few years, but we can safely say that franchising in Mexico is alive and well."

One measure of that vitality is

The regulations include 10 disclosure items that must be delivered to the potential franchisee; the buyer must be allowed at least 10 days to examine the disclosures before deciding whether to accept the franchisor's offer. The disclosures will be familiar to anyone already acquainted with the U.S. franchising system because they are all contained in the disclosure statements mandated by U.S. regulations.

Franchisors in Mexico are required to disclose:

- ♦the franchisor's corporate name, domicile and nationality
- ♦a description of the franchise being offered
- ♦the amount of time the franchisor (or the master franchisee) has operated the business



Heading south: Radio Shack has established a strong foothold in Central America with its three Guatemala City locations.

the sophistication of the country's franchise regulations. Mexico put in place a basic set of disclosure requirements in 1994, similar to the franchise laws in the United States and France. The regulations followed the adoption of the 1991 Industrial Property Law, but their issuance was delayed during the implementation of NAFTA.

- ♦the copyrights included in the franchise program
- ♦the amounts and types of payments to be made by the franchisee to the franchisor
- ♦the types of service and assistance to be provided by the franchisor
- ♦the geographic area in which the franchisee will operate
- ♦the franchisor's rights to grant

subfranchises to third parties

- ♦the franchisee's obligations regarding confidential information provided by the franchisor

- ♦the franchisee's rights and obligations under the Franchise Agreement

Although the disclosure document does not have to be registered with authorities, franchisors are required to register franchise agreements with the Mexican Institute of Industrial Property.

FRANCHISING IN BRAZIL

In recent years, Brazil has been one of the most vigorous franchise markets in the world. Its nearly 30 million citizens are heavily concentrated in two huge urban areas, São Paulo (17 million) and Rio de Janeiro (11 million). And after several years of quadruple-digit annual inflation figures, the Brazilian economy has boomed under the comparatively low inflation rate in 1995 of 20 percent to 25 percent.

Brazil enacted its own Franchising Law at about the same time as Mexico, requiring franchising companies in Brazil to deliver to a prospective franchise buyer an offering circular describing in detail various aspects of the business. As in Mexico, the buyer has 10 days to review the information and make a decision regarding the franchise purchase.

The Brazilian Franchise Offering Circular includes these key disclosures:

- ♦the background of the franchise company

- ♦the company's balance sheets and financial statements

- ♦a list of franchisees in the system

- ♦a list of any pending lawsuits involving the franchisor

- ♦a detailed description of the franchise program

- ♦the obligations and business activities required of the franchisee

- ♦specifications of territorial rights

- ♦relationships with suppliers

- ♦the status of the franchisor's trademarks at the National Institute of Industrial Property

- ♦a profile of the "ideal" franchisee

- ♦the degree of the franchisee's involvement in the business

- ♦the investment of funds necessary

- ♦the franchisor's obligations

- ♦the consequences of termination of the Franchise Agreement

The offering circular will also contain a copy of the standard Franchise Agreement. If you buy a franchise in Brazil without receiving these disclosures, the law gives you the right to claim contract annulment and demand a refund of the money you paid to the franchisor, plus a reimbursement of any losses and damages.

NEW PROTECTION

While neither Brazil nor Mexico regulates the franchise relationship as such, the Brazilian Franchise Association has a Franchising Self-Regulation Code and a Code of Ethics that specify basic principles of behavior for franchisors and franchisees. The group has also formed an Ethics Committee to examine complaints between franchisors and franchisees.

The areas of technology transfer and trademark protection are of vital importance to the growth of franchising in Latin America, and government policies in these countries have changed in many ways to accommodate foreign investment and business expansion.

Franchising has a strong presence in these markets, and the advent of franchise investor protection laws is bringing a measure of stability to the sale of franchises. Take notice, franchisors and investors: By any measure, franchising in Mexico and Brazil has a virtually unlimited future. □

Andrew A. Caffey is a practicing attorney in the Washington, DC, area; the former General Counsel of the International Franchise Association; and an internationally recognized specialist in franchise and business opportunity law. He can be reached by e-mail at 73023.2461@compuserve.com.

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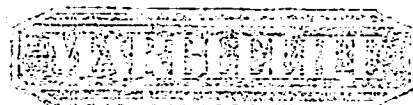
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