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FRANCHISE RECRUITERS LTD.℠ Newsletter

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1996 Franchising Trends

Technology in a Graying Market

Paying for Comestibles

By Jerry Wilkerson

Tight real estate, labor shortage and the graying of the baby boomers will have a major impact on franchising in 1996. You tell us this, our clients and friends in the franchise community. This column reflects those and other trends across all industries in franchising.

Beginning with the first of this year a boomer turns 50 every seven and a half seconds for the next 10 years. Over 76 million baby boomers were born between 1946 and 1964. They will have a major impact on franchise development, location, products, investment, market share, service, quality, advertising, and value. This is a much more sophisticated consumer than we have ever seen before, and they will alter their buying habits often.

The vast boomer market leads all other demographic groups per-capita spending and will warrant close and constant attention to remain competitive. New business concepts offering products and services will spring up around this aging group and flourish. Others, who do not track and respond to such a massive movement, will slow or could even fail. Franchising is squarely in the hunt.

Franchisors, long attracted to each others locations, continue to push real estate prices up in competitive bidding. At the

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Inside

Annual Franchise Survey

Growth Up for '96

Franchise unit growth nation wide is expected to experience a modest increase over last year, according to the annual business development survey conducted by Franchise Recruiters Ltd. Total unit expansion is projected to be between 12 and 14 percent across all industries in franchising. That figure is up from 10 to 12 percent the previous year.

Franchise companies surveyed in this study represent the U.S.. franchisor community in geographic regions, gross revenues, projected unit expansion and selected industries across the nation. Chosen for this survey were 100 of the projected top growth corporations in franchising.

The survey data indicates there are more buyers for franchises of all types than there are acceptable locations available in some markets. The cost of lease space and improvements is also increasing as a form of bidding war takes hold between real estate developers and franchisors.

Labor is another circumstance to consider when planning development and growth. As noted in this newsletter, labor shortages will dictate locations in the future and could have a dilatory affect on franchising through the decade.

Once again the survey reports that larger, more established franchisors will see greater growth due to the power of their advertising and tested procedures. Non franchised and independent chains will feel the crunch of franchise growth in their market areas. Some small chains and single unit independents may cease to continue business at the cost of franchise development in their community.

This is much like the Wal-Mart syndrome. Once they open in a market, some older competitors withdraw. However, in this case, franchisors are negotiating with Wal-Mart for satellite locations within the store, primarily the food franchise industry to begin with. Franchisors are mindful of potential

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Franchise Legal Roundup

Franchise Regulation Shakes, Rattles, and Rolls

by Andrew A. Caffey

The franchise community entered a new era of legal regulation on January 1, 1996. As of that date, after a two year phase in period, the new format of Uniform Franchise Offering Circular became mandatory under the Federal Trade Commission's Franchise Rule for all franchises sold in the United States.

It has not been an easy transition for franchisors. Far from it. Last spring was the first renewal season in the registration states, and franchisors saw their legal bills spike as lawyers and regulators sorted out the practical application of the newly designed disclosure rules. The plain English standards in the hands of state bureaucrats caused enormous problems in complex offerings. Some states seemed determined to curb the impulse of franchisors to borrow from their prior offering documents; and the Guinness Book of World Records is still sifting through the contestants to select the record holders for the most comments generated in a form letter by a state administrator from a standing start.

The most serious change? Litigation disclosure now requires franchisors to disclose the financial terms of any settlement of claims asserted in litigation or arbitration. This will make the threat of litigation loom larger for franchisors, and any incentive for them to settle, once the case is filed, will shrink. Not only will this discourage the settlement of court cases, but it will ultimately hurt precisely the players the regulators set out to protect: franchise owners.

The new litigation disclosure rules are only one of the reasons that mediation and peer review programs have become so popu-

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Nation's Restaurant News

OPINION

Make tough decisions - and stand by them

by Jerry Wilkerson

I recently told my restaurant franchisor client to "make a decision, damn it! Come to a conclusion for God's sake." Fortunately, he also was a good friend. Still, I wasn't kidding.

He suffered from an affliction I call Decision Avoidance Disorder, or DAD. its symptoms include uncertainty, delay, self-doubt, fear, ambiguity, vagueness, procrastination. The list goes on and on.

Ours is a country overcome by DAD. Government leaders, business executives, managers, line employees, the employed and the unemployed, at home or on the job, can't make a decision. Decisions both big and little stall us out.

The Navy showed me how to hurry up and wait. Washington taught me gridlock. Now the barons of business, the lions of direction, the titans of economic tide, franchisors and franchisees, my neighbors and friends, all are jammed up by things that were settled easily and quickly only a few years ago during the late '80s.

Ah, the '80s, when men and women were decisive and options weren't as plentiful. When choices and products were less confusing. When delay meant you were not being resolute or determined, were not showing leadership quality.

It seems apparent today that people can't make decisions on anything from contracts to relationships. Just mention the word "commitment" at a singles party and people run for the exits. Even business is slow to move on minor decisions. Should we hire or fire? Which long-distance phone company should we use? How should we handle insurance and investments? Do we want growth or zero growth? We have problems just selecting the right colors in the morning. Fragrance, fashion, power tie, hair up or down?...There are simply too many signals to send.

Corporations are mired in mapping out their short- and long-range goals. Entire marketing plans await board action. We divert and avert, thereby redirecting our

It seems apparent today that people can't make decisions on anything from contracts to relationships. Just mention the word "commitment" ... and people run for the exits.

attention to something else, hoping that if we put the decision on hold long enough it will be made for us. We live in fear that we will make the wrong decision and meet with some dreadful mortal malady, short-circuiting careers and causing undue harm to ourselves and our companies, families and friends.

My nearly 20 years in franchising have helped me conclude that executives in this industry are no different from any others when it comes to DAD. They may even have led the way in the early '90s when wavering and posturing on corporate decisions regarding direction and growth seemed the classic, waffle two-step shuffle.

I can't, however, decide for sure.

Take a look at the daily meanderings atop Capitol Hill. The congressional Republicans have plans for a number of major projects that will affect each and every one of us almost immediately upon passage. With resolute, uncompromising, firm resolve the Democrats object. Do they offer their own plan as an alternative? No! They can't come to a decision among themselves, so they condemn Republican proposals and offer nothing in their stead. You can't be called wrong that way — right?

We fear making wrong decisions so much that the thought of a mistake holds us back. Evade and it will go away. That uncertainty reflects our fears. Even President Clinton called it a "funk." Of course, he then said he wasn't sure that that was, in fact, the right word and attempted to change his decision. We are still awaiting definition from the White house regarding the "Great Vacillator's" conclusion.

Make up your minds and make a stand. Take the consequences. Be responsible.

Try to deliver a straight answer, a simple, unqualified yes or no. Have lawyers done this to us, or are we victims of our own inability to cope with massive change and high-voltage competition? Are we in a survival mode, or do we just want to slip by, get to the other side, go beyond the day's decisions?

The age of E-mail and the worldwide web has brought with it an avalanche of choices, more information, more data to weigh, more instruments of communication and, thus, more opinions to consider — providing us even more opportunities to make ever-more-egregious mistakes.

Why is DAD a virtual epidemic today? For one thing, baby boomers are getting older, fatter, more content and comfortable. They accept fewer risks and more status quo. The economic escalator has advanced them to a plateau, and many resist continued forward progress. They want less challenge, fewer answers and, of course, if at all possible, postponement of decisions.

We must refine our objectives and focus on direction. A sense of accomplishment comes from achievements. It is important to make plans and decisions even if we decide to change them, so that we know where we are going while receiving satisfaction for the progress we make in our work and lives.

"I get satisfaction of three kinds," stated William F. Buckley. "One is creating something, one is being paid for it and one is the feeling that I haven't been sitting on my ass all afternoon."

I told my client to get off his. We're still friends. ❑

1996 Annual Franchise Survey *continued from page 1*

market share damage to their existing nearby franchisee run units with similar products and services. Encroachment is and will continue to be a legal issue facing franchising for years to come as franchisors wrestle with new distribution expansion programs.

As franchise chains mature, the survey results tell us that you will see more multi-unit buy back agreements completed. The data shows more and more franchisees are preparing for retirement and are pleased to sell their systems back. The sale to the original franchisor is, for the most part, easy and quickly accomplished. Many chains have money and growth plans to take them back.

Competition for management continues to be a major factor in the race for development. More creative incentives and economic packages are surfacing in franchising. Some programs include stock purchase opportunity for ownership in the company based on years with the organization, store profits, and individual goals as well as pure incentive programs.

More franchisors in 1996 plan to go public than last year, according to the survey results. Corporations are keeping a close eye on their debt while building strong cash flow systems which should give them the strength for an initial public offering.

Compensation for franchisors management will remain somewhat flat except in two categories. Commission or bonus on performance will continue to push up franchise sales representatives income on average to around six figures. Unit managers base salary will increase to keep the individuals within the system while competitors continue to raid neighbors for experienced employees. It will cost more to keep good people.

Franchise Recruiters also surveys for management compensation yearly. The results are shared with clients for internal budget planning and management development on an individual client basis only. This survey results are not for sale or public distribution.

Franchisors point to new sources in the financial arena to help develop franchisee units. Finance approvals will be quicker and easier to achieve with technological advancements in the industry and a competitive attitude among the lenders.

All franchise corporate executives responding in the survey agreed that technological impact on the various industries will affect their development. They predicted great strides in technology from the store level to headquarters. Those that do not keep up with this massive change will lack the competitive power to stay in the market place.

"If you are not continually improving electronically and technologically, you will barely have time to turn out the lights," according to one executive source responding to the survey. ❑

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— a move that could be considered risky.

Throughout the industry's history, several famed companies, including the entrepreneurs who founded McDonald's, Wendy's, Red Lobster, TGI Friday's and even Burger King appreciated the value of bringing in professional executive management.

MBAs, as Taco Bell has learned, may not always have experience or spontaneous creativity, but they possess the skills for modern competition that many entrepreneurial owners do not.

We applaud entrepreneurs.

They are the creative dynamos that give rise to the restaurants that will capture new generations of consumers while stimulating the creative juices of others who follow the paths those creators blaze.

They are not unlike rivers, in fact, whose tributaries can simultaneously enrich culture, commerce and even education.

Successful entrepreneurs create jobs, they reward investors and they give testimony to the American Dream. And like the dreamers who conceived McDonald's, Wendy's, Chili's and dozens of other great restaurant concepts, entrepreneurs stand to gain a kind of immortality when their progeny thrives through decades of boom and bust.

But there comes a time when some entrepreneurs should appreciate that they can't do everything and should let go. ❑

Franchise Legal Roundup *continued from page 1*

lar in many franchise systems. Arbitration has fallen into a distinct disfavor in the franchise bar, it has many of the draw backs of litigation (it can be expensive, prolonged, and settlement terms must be disclosed, after all), and none of the advantages of quick, private mediation.

The next areas of regulatory change (you read it here first):

- Earnings claims may become mandatory. This scary proposition has a lot of regulatory barriers to overcome (just watch the consortium of federal and state regulators as they try to decide what financial information will be required), even though the idea has solid public policy reasoning behind it. The FTC is actively exploring the approach with state authorities.
- The FTC Rule may be bifurcated so that franchises and business opportunity ventures are separately regulated. The FTC may adopt the UFOC disclosure format and drop its own (and who would even notice?). Next, it would change the disclosure required to be delivered by business opportunity sellers to something a bit more manageable than the format now designed to accommodate franchise offerings.

The World of Business Opportunities Rumbles

Business Opportunities, those fast talking, poor cousins to franchising, will simply not go away. (They're family, after all). The state of Illinois has adopted the first new business opportunity law in a decade, and it became effective January 1, 1996. Like most such laws, sellers must register and deliver pre-sale disclosure, a litany familiar to franchisors.

The cops knocked down the door of the business opportunity world last summer with "Operation Telesweep", a federal/state coordinated effort that brought prosecution actions in more than 100 cases. Of particular concern to the enforcement authorities are telemarketing scams, business opportunities sold through boiler room operations. Heads

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Franchise Legal Roundup *continued from page 5*

up if your company advertises for leads in local classified ads with an 800 number. This is precisely the pattern of promotion being used by the telemarketers and those Telesweep cops tracked down their targets by calling the 800 numbers shown in the local ads. The response you receive to your ads could *really* surprise you.

The Nexus Big Thing

Alert your tax departments to new efforts by a number of states to tax royalties paid to your companies by franchise owners. This struggle has been going on for years, of course, but it has picked up new impetus after the Supreme Court (in *Geoffrey Inc. v. South Carolina*; yes, the toy company) let stand a state court decision permitting the state of South Carolina to tax the income of businesses that have no physical presence in the state but license the use of trademarks there.

The first your company will hear from a state will be an innocent looking "nexus form" that is easy to fill out, but deadly in subsequent dealings with state tax authorities. When the form arrives, alert the appropriate tax/legal professions in your organization and get direction *before* you fill it out. It could save you thousands. ❑

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