

## Fall 2014 Franchise Business Network Meeting

November 5, 2014

11:30 a.m. – 1:00 p.m. CST

12:30 p.m. – 2:00 p.m. EST

### Agenda

#### **Welcome and Introductions**

**Joel Buckberg, Shareholder**

*Baker Donelson*

#### **Managing International Growth**

**Joe Lewis, Vice President and General Counsel**

*Smoothie King*

#### **Exporting Your Brand – and How USCS Can Help**

**Brie Knox, Director, Nashville U.S. Export Assistance Center**

*U.S. Commercial Service*

#### **Protecting Your Intellectual Property Internationally**

**Micheline Johnson, Co-Chair, Trademarks and Branding Group**

*Baker Donelson*



**Joe Lewis**  
**Vice President & General Counsel**  
**Smoothie King Franchises, Inc.**

### **BIO**

Joe Lewis has been Smoothie King's Vice President and General Counsel since January of 2013 and has over 20 years of business and legal experience in franchising and the food and beverage industry. Before joining Smoothie King, Mr. Lewis was President & CEO of Sicily's Italian Buffet from March 2001 until January 2013. Mr. Lewis also served on the Board of Directors and as President & CEO of Smoothie King from June 1997 to August 2000 and Vice President and General Counsel from March 1994 to June of 1997. Mr. Lewis has achieved the Certified Franchise Executive (CFE) designation from the International Franchise Association (IFA), and has served on the IFA Franchise Relations and Corporate Counsel committees. Prior to his corporate franchisor positions, Mr. Lewis was a practicing attorney with a concentration in franchising and business law. He obtained his Juris Doctor degree from Louisiana State University (LSU) Law School. He began his undergraduate studies at the University of Washington in Seattle, and obtained his degree from the University of Southwestern Louisiana, graduating cum laude, with a Bachelor's of Science degree in Business Administration, majoring in Finance.



# SMOOTHIE KING INTERNATIONAL PRESENTATION

IFA-FBN MEETING  
November 5, 2014



Smoothies with a Purpose.

## AGENDA

- ❖ OVERVIEW
- ❖ GETTING STARTED INTERNATIONALLY
- ❖ CHALLENGES IN KOREA
- ❖ HOW WE PROGRESSED AFTER KOREA
- ❖ OUR CURRENT STATUS
- ❖ KEY LEARNINGS



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## OVERVIEW

- Headquartered in New Orleans, LA
- Founders were Steve & Cindy Kuhnau
- Started Franchising in 1989 ... Steady Growth
- Sold Master Franchise Rights To S. Korea in 2003
- Smoothie King U.S. (Franchisor) Acquired by Wan Kim, our South Korean Master Franchisee in 2012
- Currently over 700 Stores
- 582 Domestic & 121 International
- 110 in Korea; 9 in Singapore; 2 in Cayman Islands



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## INTERNATIONAL EXPANSION ... GETTING STARTED

- Not In the Plan - Focus Was on Domestic Expansion
- First approached by a broker for Master Franchise Rights in South Korea
- Master Rights Ultimately Obtained By Wan Kim
- Wan Had Obtained His Undergrad & MBA in U.S.
- Wan Was Interested in Bringing Health Concept Back to Korea
- Expansion in South Korea began in 2003



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## CHALLENGES IN KOREA

- **What Do We Sell?**
  - Adapted our core smoothie menu
  - Changed the sizes of our drinks
  - Dropped our vitamins & supplements; added food
- **How Do We Get Our Fruit?**
  - Purchasing & Distribution issues & structure
  - What is the cost?
- **Where do we locate?**
  - Larger higher profile locations
- **How Do We Support & Monitor?**



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## AFTER KOREA

- Focus Remained on Domestic Expansion
- Korea Progressed Well because of Wan Kim
- Sold Cayman Islands Area Development Agreement
  - Good operator & progressing well
- Next Sale was in the Middle East – Didn't Go So Well
  - Sold Master to one person for Egypt & Turkey
  - Egypt has regime change ... we lose our Master
- Unexpected Growth Problems
  - China: Wahaha & denial of Trademark Application
  - Pirate obtains trademark in Indonesia
  - Competitor secures mark in Costa Rica
  - Infringement in Abu Dhabi
  - Extra Costs & Time We Did Not Expect



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## CURRENT STATUS

- Wan Kim Buys Company in 2012
- Step Back & Start Planning Strategically
- Current Focus is Still on Domestic Expansion
- Continue to Build Strategically upon our Int'l Foundation & Increasing Brand Recognition
  - Temptation is still there to be reactive
- Started Developing Company Stores in Singapore
  - Control; Flagship Model to sell Asia
  - Brings own challenges: expensive market; time to develop brand recognition; legal; travel & support; ... costs add up
- Securing Trademarks in Key Countries
- Pursuing Quality Partners in Target Countries



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## KEY LEARNINGS

- **Mistakes Cost More Money & Take Longer to Fix**
- **Planning is Important – It Will Save Money**
- **Evaluate the Cost - Be Ready For The Investment**
  - Due Diligence; Commitment of Infrastructure; Trademarks; Management Time; Legal Docs; Advertising; Travel; R&D; Manuals; Training; Translations; Other ...
- **Get Trademarks Early**
  - Planning w/TM Counsel is Important Because of Use Issues



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## KEY LEARNINGS

- **Make Sure We Know Who Our Partner Is**
  - We were fortunate – Wan Kim had ability & integrity
  - What is their ultimate interest?
  - Who is going to operate & grow the business?
- **How is The Deal Structured?**
  - Consequences of a bad arrangement
  - Master or Area Developer?
  - What is the schedule? Do you tie up multiple countries?
- **What is the economic and political environment?**
  - Does the franchisee have a good chance to succeed?



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## KEY LEARNINGS

- **Know What Our Core Concept Is Going In**
  - Will we have to modify our core concept?
  - What can we adapt to the local market, what is non-negotiable
- **Start Working Early on Products**
  - Can we bring products in or have to source locally?
  - How long will it take?
- **Build in Lead Time Before & After Deal is Done**
- **Build in Time & Money for Unexpected Challenges**
- **Is it the Right Strategy at This Time?**
  - Will it divert our focus and resources from domestic?
- **Be Ready to Make a Long Term Commitment**



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Brie Knox  
Director, Nashville U.S. Export Assistance Center  
U.S. Department of Commerce  
312 Rosa L. Parks Avenue, 26th Floor, Nashville, Tennessee 37243  
Office: (615) 736-2223 | Cell: (615) 852-9850  
E-Mail: [Brie.Knox@trade.gov](mailto:Brie.Knox@trade.gov) | Website: <http://export.gov/tennessee/nashville>

Ms. Brie Knox is the Director of the Nashville U.S. Export Assistance Center for the U.S. Department of Commerce. Ms. Knox works with companies in Middle Tennessee to facilitate their export business and expand their global presence. Ms. Knox previously served in the New Orleans U.S. Export Assistance Center and is also the Team Leader for the Global Environmental Team. In addition to her experience at the New Orleans Export Assistance Center of the U.S. Department of Commerce, she has also worked for FedEx Services, JPMorgan Chase, and PNC Bank. Originally from Portland, Oregon, she holds a Bachelor of Arts, Cum Laude, in International Studies and Spanish from the University of La Verne in California and the Cuauhnahuac Institute in Cuernavaca, Mexico.

**Company profile:** The U.S. & Foreign Commercial Service, Nashville U.S. Export Assistance Center, is an agency of the U.S. Department of Commerce's International Trade Administration, with a global network of international trade specialists in more than 100 U.S. offices and nearly 130 commercial offices located in U.S. Embassies and Consulates in more than 70 countries. The mission of the Commercial Service is to promote the export of U.S. goods and services, particularly by small and medium-sized businesses, and to represent U.S. business interests internationally. The Commercial Service provides market research and counseling, assistance at U.S. and foreign trade events, international partner search and business matchmaking, consulting and advocacy.



# The World is Open for Your Business.

Let the U.S. & Foreign  
Commercial Service  
connect you to a world of  
opportunity.



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## Let Us Help You Export.

The U.S. Department of Commerce is a part of the U.S. Commercial Service under the International Trade Administration.

With offices in more than 100 cities throughout the United States and in U.S. Embassies and Consulates in over 80 countries worldwide, we utilize our global network of trade professionals to connect U.S. companies with international buyers worldwide.



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## Our Global Network of Trade Professionals Opens Doors that No One Else Can.



- The U.S. Commercial Service provides U.S. companies unparalleled access to business opportunities around the world.
- As a U.S. Government agency, we have relationships with foreign government officials and business leaders in every key global market.
- Our trade professionals provide expertise across most major industry sectors.
- Every year, we help thousands of U.S. companies export goods and services worth billions of dollars.

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## We Work with You to Connect Your Company with the Right Opportunities Abroad.

Our experienced trade professionals help you enter international markets in the most efficient, targeted way. We assess your export potential, understand your needs, and provide the right mix of capabilities to achieve your exporting goals.

### U.S. Commercial Service Business Approach



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## Our Proven Expertise Makes Doing Business Internationally Easier.

Whether you are looking to make your first export sale or expand to additional international markets, we have the expertise you need to tap into lucrative opportunities and increase your bottom line.

- **Trade Counseling:**  
Get the information and advice you need to succeed.
- **Market Intelligence:**  
Target the best trade opportunities.
- **Business Matchmaking:**  
Connect with the right partners and prospects.
- **Commercial Diplomacy:**  
Ensure your products and services have the best possible prospects for success in international markets.

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## Proven Expertise: Trade Counseling

**Get the information and advice you need to succeed.**

- **Planning and Strategy:**
  - Create a comprehensive international business plan for entry or expansion into targeted markets.
- **Legal and Regulatory Issues:**
  - Determine export licensing needs for shipping products and country specific franchising laws.
  - Understand and comply with global product standards, certification requirements, electricity regulations, and labeling/packaging laws.
  - Avoid intellectual property issues and legal disputes.



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## Proven Expertise: Trade Counseling

Get the information and advice you need to succeed.

- **Documentation and Product Requirements:**

- Learn about export documents, including Electronic Export Information filing, invoices, packing lists, and certificates of origin.
- Verify tariff rates and import fees; determine your product's Schedule B and HS numbers.

- **Trade Problems:**

- Get assistance with customs-related issues.
- Obtain support if your company's exports or foreign bids are adversely affected by a trade barrier.
- Limit the risk of non-payment and receive assistance if problems arise.



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## Proven Expertise: Market Intelligence

Target the best trade opportunities.

- **Country Commercial Guides:**

- Leverage reports, prepared annually by U.S. Embassy staff, containing information on the business and economic situation of foreign countries and the political climate as it affects U.S. business and investments.

- **Industry Specific Market Research:**

- Leverage market research reports on specific sectors in key foreign countries.

- **Customized Market Research:**

- Get specific answers to your specific international business questions (*fee based service*).



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## Proven Expertise: Market Intelligence

Target the best trade opportunities.

- **Background Reports on Potential Partners:**

- Request an International Company Profile (ICP) report to learn about potential partners from our trade professionals working in your target markets.
- Get detailed credit reports covering sales, profit figures, potential, liabilities, and other financial information (*fee based service*).

- **Trade Data and Analysis:**

- Obtain the latest annual and quarterly trade data by country, state, commodity, and year.
- Find industry-specific trade data and analysis.
- Get country-specific tariff and trade agreement information.



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## Proven Expertise: Business Matchmaking

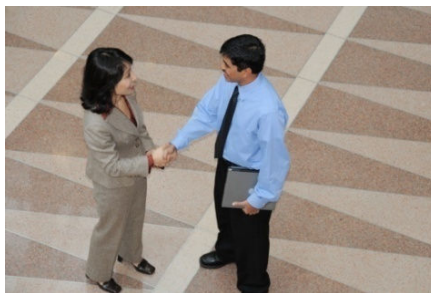
Connect with the right partners and prospects.

- **Gold Key Matchmaking Service:**

- Schedule private business meetings with pre-screened Franchise Partners, Master Developers, or Area Developers in their local market through our “Gold Key” program (*fee based service*).

- **International Partner Search:**

- Receive a detailed report on pre-screened partners in your selected market who have expressed interest in working with your company (*fee based service*).



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## Proven Expertise: Business Matchmaking

Connect with the right partners and prospects.

- **Trade Missions:**

- Participate in business development missions to key countries to meet with franchise partners, developers, government and industry officials, and U.S. Embassy officials (*fee based service*).

- **Future Trade Missions:**

- **Central American Trade Mission**  
Spring or Summer 2015
- **Nordic Trade Mission**  
Summer 2015
- **South China Trade Mission**  
Fall 2015



The Mexican Franchise Trade Mission with IFT and FT in October 2014

## Proven Expertise: Business Matchmaking

Connect with the right partners and prospects.

- **Scheduled Trade Missions:**

- **Franchise Trade Mission to India**  
New Delhi, Mumbai, and Bangalore, India  
December 8-12, 2014

Organized by the International Franchise Association and Franchise Times and certified by the U.S. & Foreign Commercial Service.



## Proven Expertise: Business Matchmaking

Connect with the right partners and prospects.

### Recent Trade Mission Participants Include:

- Applebee's
- Auntie Anne's Pretzels
- BannaStrows
- Billboard Connection
- Bright Star Care
- Carl's Jr.
- Carvel Ice Cream
- Carvel
- Cinnabon
- Crestcom
- Denny's
- Embroidme
- Great American Cookies
- Hertz
- Home Instead Senior Care
- Jani King
- Johnny Rockets
- Maggie Moo's
- Marble Slab Creamery
- McAlister's Deli
- Moe's Southwest Grill
- Molly Maid
- Pollo Tropical
- Popeye's
- Pretzelmaker
- RadioShack
- Rita's Italian Ice
- Round Table Pizza
- Seattle's Best Coffee
- Schlotzsky's
- Sports Clips
- Titanic
- The Melting Pot
- The Vitamin Shoppe
- Tutor Doctor
- Wendy's
- Which Wich
- Wing Zone

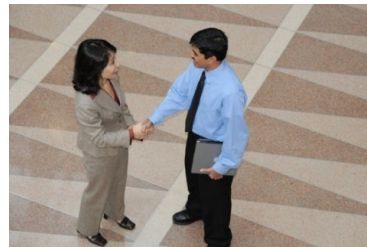
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## Proven Expertise: Business Matchmaking

Connect with the right partners and prospects.

### Trade Shows:

- Meet pre-screened buyers at major trade shows.
- Schedule counseling appointments with Commercial Specialists from around the world at shows.
- Exhibit in the U.S. Pavilion or Literature Center at trade shows overseas.



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## Proven Expertise: Business Matchmaking

Connect with the right partners and prospects.

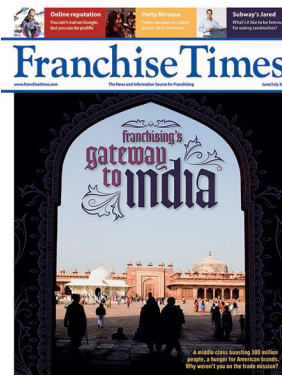
- **Upcoming Trade Shows and Events:**

- **Franchise Day**  
November 13, 2014, Prague, Czech Republic
- **Discover Franchise Opportunities in UAE**  
November 18-19, 2014, Abu Dhabi, UAE
- **Turkey Franchising Seminar**  
December 4, 2014, Istanbul, Turkey
- **International Franchise Association's Annual Convention**  
February 15-18, 2015, Las Vegas, Nevada
- **British and International Franchise Expo**  
March 13-14, 2015, London, UK
- **Paris Franchise Expo**  
March 22-25, 2015, Paris, France
- **International Franchise Expo**  
June 18-20, 2015, New York, New York

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## Work with Our Partners

- **The Export-Import Bank**  
The Ex-Im Bank enables franchisees to obtain loans to buy capital equipment and services at lower interest rates and longer payment terms.
- **The International Franchise Association**  
Participate in franchise trade events and trade missions in partnership with the International Franchise Association and the U.S. & Foreign Commercial Service.
- **The Franchise Times**  
Read valuable articles on international franchising.



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## The Franchise Times

“Five things to know before expanding your brand into Mexico”

“The feminine side of the Mexico Franchise Trade Mission”

“Where in the world are franchises going?”

“The Vanity of Going International”

“Rocking Franchising in Mexico”

“Doing Business in Canada”

“Name brands attract China’s rising middle class”

“Trade Mission moves to Nigeria, where  
The classic greeting is ‘You are welcome’”



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## Real Results: Johnny Rockets

Johnny Rockets began working with the U.S. Commercial Service in 2008. At the time, Johnny Rockets had 5 international restaurants in Mexico, Canada and the Middle East. Today, they have 100 international restaurants in over 25 markets around the world.

“We can point to the Commercial Service direct assistance in helping us to establish our business in 12 new international markets that brought in excess of \$4 Million dollars of revenue to Johnny Rockets over those years and we have commitments from those 12 markets for almost 200 future international restaurant openings and those openings will bring in a projected \$10 Million dollars annually to Johnny Rockets.”

Check out the video at: <https://www.youtube.com/watch?v=zfhr7Ki7inY>

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Contact us today to connect with  
a world of opportunity.



**U.S. Department of Commerce  
Nashville U.S. Export Assistance Center  
U.S. Department of Commerce  
U.S. & Foreign Commercial Service  
Brie Knox, Director  
312 Rosa L. Parks Avenue, 26th Floor  
Nashville, Tennessee 37243  
Main: (615) 736-2222  
Direct: (615) 736-2223  
Email: [Brie.Knox@trade.gov](mailto:Brie.Knox@trade.gov)**



# U.S. Department of Commerce Turkey Franchising Seminar

## The U.S. Commercial Service Global Franchise Team Leads U.S. Franchising Delegation

Turkey & Regional Franchising Seminar will introduce U.S. companies to Turkish business partners and master franchisees where you will learn about opportunities in the Turkish franchising market. Take advantage of this opportunity to be introduced to investors in a promising market like Turkey that has a fast growing consumer class. Here are just a few of this trade event's benefits:

- First-hand opportunity to assess the culture, political climate and the market's potential for your brand.
- Chance to present your brand in front of a distinguished crowd of Turkish investors and have one-on-one meetings with potential partners to be held at Consul General's residence.
- Attend a reception at Consul General's residence for networking with Turkish investors and regional representatives and investors from neighboring countries.

### Why Turkey? Why now?

Turkey is a vibrant economy with a highly developed entrepreneurial spirit. The country has a population of 76 million whose median age is only 29 with a growing purchasing power that demands well known global brands and quality service. Turkey is Europe's leading country in terms of franchising chain numbers. There are currently 1,470 franchisors in the country, 24% of them being foreign brands. Total number of franchisors has tripled over the last 5 years. Number of branches of franchisors / dealers has reached 47,000. This attractive market remains competitive with many Turkish, American and European brands and continues to offer great opportunities for those U.S. franchisors who haven't entered the market yet.

## GET MORE INFORMATION AND APPLY - SPACE IS LIMITED.

<http://www.export.gov/turkey/tradeevents/trademissions/index.asp>

Date: December 4, 2014

### Venue: Istanbul

Deadline for application: October 15, 2014

### Cost:

The participation fee is \$ 1,750. Each participant is responsible for personal expenses for lodging, meals, incidentals and international air travel.

### Featured:

Closing Reception at Consul General's Residence

### For more information:

W. Eric Johnson  
Senior International Trade Specialist  
U.S. Export Assistance Center  
Atlanta, GA 30308  
Tel: 404-815-1750  
Eric.Johnson@trade.gov  
[www.export.gov/georgia](http://www.export.gov/georgia)

Gorkem Yavilioglu  
Commercial Specialist  
U.S. Commercial Service Turkey  
Istanbul  
Tel: +90-212-335-9372  
Gorkem.Yavilioglu@trade.gov  
[www.export.gov/turkey](http://www.export.gov/turkey)

**U.S. Commercial Service—Connecting you to global markets.**

The U.S. Commercial Service supports the President's National Export Initiative.



0910-00-42-02

# Discover Franchise Opportunities in the U.A.E.

## The 2<sup>nd</sup> International Franchise Conference & Franchise Catalogue Show

November 18 - 19, Abu Dhabi, United Arab Emirates

The Commercial Section of the American Embassy in Abu Dhabi, in cooperation with the Abu Dhabi Chamber of Commerce & Industry (ADCCI), is organizing "The 2<sup>nd</sup> International Franchise Conference" in the UAE to be held on **November 18 & 19, 2014** at Jumeirah at Etihad Towers in Abu Dhabi. The objective of the conference is to establish franchise awareness among Emirati firms; offer a broad range of U.S. franchising opportunities; assist in the development of new UAE commercial opportunities; and introduce the latest technology and worldwide franchising standards.

Among the conference speakers will be **Dr. John Hayes**, the author of the Franchise Pre-Investment Checklist and Franchising, **Mr. Michael Isakson**, Chairman of the International Franchise Association's International Committee, **Mr. Josh Merin**, Director of International Affairs of the International Franchise Association (IFA), and other renowned franchise speakers from the British Franchise Association (BFA), Egyptian Franchise Development Association (EFDA), French Franchise Federation (FFF), Franchising and Licensing Association (Singapore), and the broader Middle East region.

In conjunction with the conference, we plan to hold "The 2<sup>nd</sup> Franchise Catalogue Show" to the UAE targeting but not exclusive to, the following franchises:

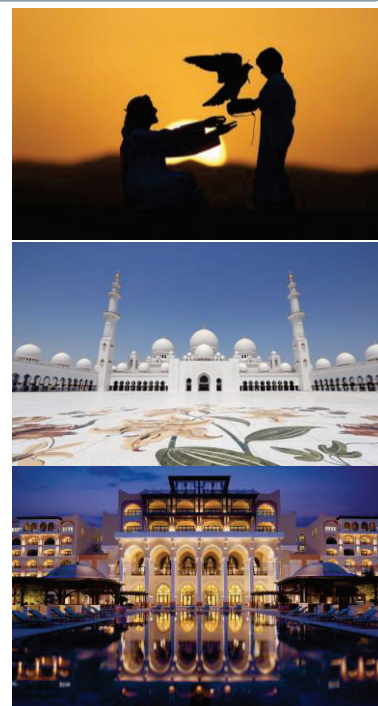
- Automotive Products & Services
- Educational & Training Products & Services
- Food: Casual Dining, Fast Food & Restaurants
- Healthcare & Childcare Services
- Laundry & Dry Cleaning Services

**United Arab Emirates (UAE) in Brief** – The UAE represents a major market for U.S. exports and an important regional hub for American companies conducting business throughout the Middle East. In 2013, U.S. exports to the UAE totaled \$25 billion compared to \$16 billion in 2011, an increase of 36%. Although the UAE's population is of relatively modest size, about 9 million, 60% of whom are between 25-54 years, it is a major tourist destination and regional business center, attracting millions of international visitors annually. Abu Dhabi is the capital and the second largest city in the UAE in terms of population.

There is great demand for U.S. franchises in the UAE market in the food and non-food sectors. Among existing brands are: Shake Shack, Elevation Burger, Wendy's, The Butcher's House, Lemonade, BOA Steakhouse, KFC, Texas Chicken, Popeyes, Pizza Hut, Naked Pizza, Pizza Express, Papa John's, Chili's, TGI Fridays, Subway, Baskin Robbins, Starbucks, Costa Coffee, The Coffee Bean, Tim Hortons, and Café to Go. There are fifteen major malls in Dubai and five in Abu Dhabi, all of which feature numerous international franchisees. The largest mall in the UAE, the Dubai Mall, is the world's most visited shopping and leisure destination, attracting more than 65 million visitors in 2012. Bloomingdale's first store outside the U.S. opened in 2010 in Dubai Mall, the UK's Marks & Spencer (M&S) and Sweden's IKEA are also present. Fortnum & Mason, the upmarket London department store will open its first shop in Downtown Dubai.

**Click to register:**

<https://emenuapps.ita.doc.gov/ePublic/newRegistration.jsp?SmartCode=5K1Y>



### LOCATION

Jumeirah at Etihad Towers  
Abu Dhabi, U.A.E.

### FEE

**US Participation Fee: \$500**  
**No. of Brochures: 200**

### MAILING ADDRESS

U.S. Embassy  
Commercial Service  
Airport Road – Embassies  
District Area, Abu Dhabi, U.A.E.

### CONTACT

**Manal El Masry**  
Commercial Specialist – Abu Dhabi  
Tel: +971 2 414 2217  
[Manal.elmasry@trade.gov](mailto:Manal.elmasry@trade.gov)

### Jennifer Loffredo

Franchising Team Leader  
Tel: +248 452 2254  
[Jennifer.loffredo@trade.gov](mailto:Jennifer.loffredo@trade.gov)

### DEADLINE

**Supported By:**



**Franchising**  
Building local businesses,  
one opportunity at a time.

**DO NOT MISS THE OPPORTUNITY!**

## Global Protection and Enforcement of Trademarks

**Micheline Kelly Johnson**

1800 Republic Centre  
633 Chestnut Street  
Chattanooga, TN 37450  
423.209.4103

[mjohnson@bakerdonelson.com](mailto:mjohnson@bakerdonelson.com)

**BAKER DONELSON**

EXPAND YOUR EXPECTATIONS<sup>®</sup>

## Develop a Trademark Registration Program

**A Trademark Registration Program has four purposes:**

- 1 To obtain maximum control over use of the mark
- 2 To provide the best basis for challenging infringers
- 3 To prevent third parties from registering the mark
- 4 To lessen financial risks

## Selecting an Appropriate Trademark

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### Two Common Errors:

Selecting weak marks for adoption and use

Failing to “clear” marks for adoption and use

## Selecting an Appropriate Trademark (continued)

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### The Strongest Marks

- Fanciful, arbitrary or suggestive marks, such as KODAK, EXXON or COPPERTONE for sun tanning oil



### The Weakest Marks

- Merely descriptive, geographic or personal name marks such as RAISIN-BRAN for cereals, CHICAGO for pizza and SMITH for carpentry services

## Clearance of the Mark – WHY?

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To determine if  
prior conflicting  
rights exist

To reduce the  
likelihood of  
infringement

To gauge the  
likely  
distinctiveness  
of the mark

## Select Appropriate Territories for Registration

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Trademark rights are territorial

Some regional registration systems exist

- Community Trade Mark (Europe)
- ARIPO (Africa)
- Madrid Protocol and Madrid Agreement – International filing systems, but registration still depends on registration approval at the national level by the member countries

## Select Territories for Registration

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Select registration in those countries in which the company will make use of the mark directly or by licensing the mark to a third party

In the U.S., there are very favorable presumptions that are obtained through federal registration, including the exclusive right to use the mark

## Register the Trademark

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A majority of countries have first-to-file vs. first-to-use trademark priority systems

Some countries with a first-to-file for registration system are:

- China
- France
- Germany
- Japan
- Spain

A first-to-file for registration system means registration is a necessity



## Register the Trademark (continued)

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United State –  
trademark rights are  
fundamentally  
based on actual use

Know your country's  
laws

## Register the Appropriate Form of the Trademark?

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Composite  
Marks

- Register the entire composite mark?
- Register the word portion of the mark alone?
- Register the design element?

## Register the Appropriate Form of the Trademark?

(continued)

Word  
Marks

- Register in Roman script and in foreign scripts (e.g., Hangul, Cyrillic, Arabic)
- Register the proper translation or transliteration in Asian languages

## Use a Trademark Properly

Presentation of the trademark must always be consistent

- Never as a noun
- Never as a verb
- No variants (never in a possessive form)

Misused trademarks may become generic  
e.g., Escalator, Kerosene, Cellophane, Dry Ice

## Policing Third-Party Use of a Trademark

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Use by trademark licensees

Use of confusingly similar or counterfeit marks by unaffiliated parties

## The Importance of Having an Ongoing Enforcement Program

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- To establish a benchmark for monitoring infringement
- To be consistent in enforcement efforts
- To put infringers on notice
- To prevent loss of trademark rights

## Tools for Monitoring and Protection of Trademarks

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### Country-specific or worldwide trademark watching

- Watch for publications of trademark registration applications around the world
- Most watch providers offer electronic reporting of watch notices for easier and quicker review

### Common law watching for publications of trademarks in sources such as newspapers, magazines, journals, company name registries, etc.

## Tools for Monitoring and Protection: Online Focus

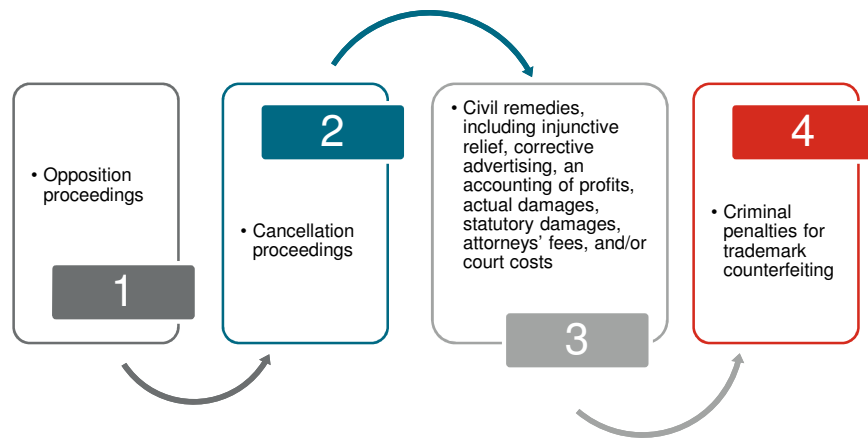
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Monitoring of activity on auction sites, blogs and other websites, as well as in domain name registries, to identify misuse of a company's trademarks

Defensive domain name and Internet keyword registrations and participation in "Sunrise" programs

## Types of Relief Available

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## Relief for Unregistered Trademarks

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Based on common law rights in common law countries

In the U.S., Section 43(a) of the U.S. Trademark (Lanham) Act

Tort actions for "Unfair Competition," "Passing Off," "Palming Off," "False Designation of Origin," if consumers would be misled or confused

Use of Copyright Law

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## Paris Convention Protection for Well-Known Marks

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“Well-known in that country”

Registration not necessary

Article 6bis of Paris Convention for the Protection of Industrial Property used in addition to other legal remedies

## Protection of Famous or Well-Known Trademarks

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In some countries, there is a register for famous mark protection

Well-known status is based on the following factors:\*

- Degree of recognition in relevant sector of public
- Degree of inherent or acquired distinctiveness
- Duration, extent of use and geographical area
- Duration and extent of advertising and publicity
- Duration and area of registrations or applications
- Record of successful enforcement
- Value associated with the mark
- Nature and extent of use of the same or similar marks by third parties

*\* Based on WIPO resolution supported by INTA*

## Anti-Dilution Statutes for Famous Trademarks

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Anti-dilution laws protect “famous” trademarks

### Dilution Theory

- Identical or highly similar mark use lessens the capacity of the famous mark to identify and distinguish its goods/services
- Tarnishes the reputation of the mark

Need not show likelihood of confusion or even competition

## Additional Protective Measures

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Record marks with an appropriate Customs authority

Customs authority will seize imported counterfeit merchandise

Burden of proving that use of a mark is legitimate may be shifted to the importer

## Conclusions/Recommendations

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## Micheline Kelly Johnson

Of Counsel  
Chattanooga  
Phone: 423.209.4103  
Fax: 423.752.9548  
mjohanson@bakerdonelson.com

Micheline Kelly Johnson, a registered patent attorney and of counsel in the Chattanooga office, concentrates her practice in intellectual property. Ms. Johnson's practice leads the Firm in trademark portfolio management with responsibility for over 2,200 U.S. and international trademark applications and registrations, helping propel Baker Donelson to the number 58 ranking on the "Top 100 Trademark Firms" as noted in the May 2010 issue of *Intellectual Property Today*. Ms. Johnson has obtained trademark protection for both product configurations and market-leading brands, and has negotiated and structured critical international co-existence agreements designed to protect brand strength while embracing business opportunities.

Ms. Johnson assists clients in identifying, protecting, and capitalizing on intellectual property assets. She also performs due diligence evaluations of portfolios in connection with public financings and acquisitions and counsels clients in transactional matters involving intellectual property, including preparing transactional documents for license agreements, joint ventures, mergers and acquisitions, and divestitures. Ms. Johnson's portfolio management includes enforcing clients' intellectual property rights in federal courts and before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

Ms. Johnson has prepared and prosecuted domestic and international patents relating to a range of technologies, including chemicals, manufacturing equipment, toys, computer-based business methods, and general mechanics. In addition, Ms. Johnson evaluates patents and drafts license agreements, freedom-to-operate opinions, validity/invalidity opinions, patentability opinions, and non-infringement opinions.

Ms. Johnson also has experience in copyright protection and enforcement, and Internet, eCommerce, and domain name matters. She has served as an expert in patent litigation and is the former Chair of the Firm's Intellectual Property Group, and currently serves as the Co-Chair of the Firm's Trademark and Branding section.

Ms. Johnson holds the highest rating for ability and ethics, the AV® rating from Martindale-Hubbell, based on anonymous surveys of lawyers and judges.

### Recent Speaking Engagements

- ["The New China and Your Company's Intellectual Property,"](#) Baker Donelson Intellectual Property Alert (July 9, 2014)

- "Intellectual Property Simplified for the CPG Executive," Consumer Products Goods (CPG) Executives (July 25, 2013)
- "Branding in the Digital Age: New Media, New Models," International Franchise Association's Franchise Business Network (July 21, 2013)
- "Hot Topics in Trademarks," International Biotech Audience, Washington, D.C. (July 11, 2013)

### Professional Honors & Activities

- AV<sup>®</sup> Preeminent<sup>™</sup> Peer Review Rated by Martindale-Hubbell
- Listed in *The Best Lawyers in America*<sup>®</sup> in Trademark Law (2012 – 2015)
- Named *Best Lawyers'* 2014 Chattanooga Trademark Law "Lawyer of the Year"
- Listed in *Mid-South Super Lawyers* in Intellectual Property (2013)
- Volunteer – Pro Bono Attorney in the Chattanooga legal aid program
- Volunteer – Pro Bono Attorney in the Atlanta legal aid program
- Member – Tennessee (Patent, Trademark and Copyright Sections) Bar Association
- Member – Georgia (Patent, Trademark and Copyright Sections) Bar Association
- Member – American Bar Association
- Member – International Trademark Association
- Member – Fédération Internationale des Conseils en Propriété Industrielle (FICPI)
- Member – Association Internationale pour la Protection de la Propriété Intellectuelle (AIPPI)
- Member – American Chemical Society

### Community Leadership & Activities

- Vice President, Family Promise of Chattanooga (fka Interfaith Homeless Network)
- Past Board Member – The Junior League of Chattanooga
- Past Chairman – Corporate Partnership for Lookout Mountain Elementary School
- Past Board Member – St. Jude Home and School Association
- Past Member – Girls' Preparatory School Auction Committee
- Baylor International Students Host Family, 2009 – present
- Secretary of Parish Council, lector and former Sunday School teacher, Our Lady of the Mount Catholic Church

### Admissions

- Tennessee, 1989
- District of Columbia, 1988
- U.S. Patent and Trademark Office, 1988
- Georgia, 1986

## Education

- Vanderbilt University, J.D.
  - Student Writing Editor – *Vanderbilt Journal of Transnational Law*
- Vanderbilt University, M.B.A. (Finance) 1986
  - Owen Merit Scholar
- Spring Hill College, B.S. (Chemistry), cum laude
  - Miller-LeJeune Memorial Scholar



# The Role of Mentoring to Improve Franchise Relationships

By Barbara Moran

Today franchise systems are looking more and more at the role of mentoring and its affect on their overall system. Mentoring is not just for those individuals seeking to improve in their careers and personal lives. It has found its way into the franchising sector as an effective franchisee-support tool. Just one of the positive results of implementing this type of program is to have improved relationships between the franchisor and franchisees within their system.

## Positive Reinforcement

How is it that a mentoring program can affect the relationships that a franchise company has with its franchisees in such a positive manner? Based on conversations with both franchisees and franchisors that have mentorship programs in place, they state it is about communication.

There is never-ending talk about communication and the need to improve one's skills in communicating. Franchise systems continuously look for new and alternative ways to improve the effectiveness of their communication with franchisees. The reason for this focus on communication with franchisees is because it is a known fact that communication between each other is critical to creating positive relationships. If one were to reflect back on his personal relationships, he would see that those they have the best communications skills with are the same people he has positive personal relationships with. In order to have effective, positive relationships there needs to be effective communication. A mentorship program can be one of the tools a franchise organization has to use in delivering communications effectively.

## Beginning the process

What are franchisees first impressions when they begin their journey in a franchise system? Many times when new franchisees come into a franchise system they know virtually no one and have no idea to whom they can turn to other than the franchise company for advice, confirmation and empathy. They want and need to build relationships within the franchise system with their peers and eventually they will develop those relationships, be they positive or negative. This is where having a structured mentorship program in place offers help to new franchisees in guiding them to positive relationships with their peers. A mentorship program helps generate positive interaction between franchisees that can mature and build into positive peer relationship that offer support.

A mentorship program will increase communication, as well as build a team-oriented franchisor-franchisee relationship that will help to solidify the foundation of the franchise system and strengthen the brands. With this in mind, the franchise organization needs to be willing to facilitate the development of the relationships with fellow franchisees. By doing so the franchisee not only has additional support tools that enhance the relationships that they build with their peers, but as Rissy Sutherland, vice president of operations for Moran Industries has stated, "When franchisees find that experienced franchisees work hand-in-hand with the franchisor it shows how strong the camaraderie is within the system." The value added in the support of the franchise system is not only shown through a

mentorship program but also in its effects on the open communication it creates.

### **Mentorship Program Benefits**

The key benefits of a mentorship program include:

- Creating open communication.
- Generating positive interaction among franchisees.
- Establishing camaraderie within the franchise system.

When looking to create a mentorship program within a system, franchisee involvement is imperative to its success. Therefore, including the system's franchise advisory council in the development process is imperative. In addition to the inclusion of the FAC, a successful mentorship program will focus not only on mentoring new franchisees coming into a system, but all franchisees in need within a system. Linda and Bob Kaplan, franchisees of Money Mailer and participants in the establishment of the Money Mailer Mentoring Second program have said, "In order to have an effective mentorship program the franchisor must not only sanction the program, but also encourage it. Having an established mentorship program in place reflects positively on the franchisor and leads to open communication within the system and that's a win-win for everyone."

### **Mentorship Program Structure**

The basic structure of the program must include criteria that establish those franchisees that have the ability to act as mentors. The manner in which a potential mentor operates within the franchise system needs to be examined and become the basis to the criteria that is set to be a mentor. Those mentors need to have continuous communication with the franchise organization, not only from the perspective of the protégé, but also with what the franchisor system's objectives and goals are for the system. As the mentor begins the relationship with the franchisor at this level, the mentor feels a level of involvement and accountability within the system. The mentor has an opportunity to share in the same concerns that the franchise system has for a franchisee. Mentors begin to see that developing and supporting a franchisee is more involved than once thought. The mentor shares in the belief of the system and the programs that the franchisor has developed for the franchisee. In all reality, the mentor becomes a conduit in positive communication of the beliefs and culture of the franchisor.

Overall the benefits to a mentoring program established within a franchise system enhance the relationship between the participants. It allows for protégés in a system to have additional resources to tap into without feeling as though they are in it alone. Franchisees realize that the franchise system genuinely cares about their success and is providing the most effective support tools possible.

Barbara Moran is president of Moran Industries, Inc. She can be reached at 708-389-5922 or [bmoran@moranindustries.com](mailto:bmoran@moranindustries.com).



# Franchisee Support Models: Does One Size Fit All?

Franchising World June 2013

BY BOBBY HARRIS

IN A FRANCHISE PROSPECT'S ideal world, franchise opportunities would be custom fitted to suit one's individual needs. Franchisors would offer customized training programs geared to their level of experience and knowledge in the given industry, and their franchise fee would be adjusted accordingly.

The very foundation of franchising is to create a system and model that is easily duplicated. However, not all franchise prospects are the same. Some may have come from an entirely different field or industry, but still have some basic experience in operating a business. Other franchise prospects, however, may have the opposite scenario. Some may have extensive experience and knowledge in both business management and operations and the given industry.

Most restaurant brands tend to attract those with foodservice experience, but those same franchisees typically have little to no experience in business operations, marketing or human resources. More often, however, franchisors tend to attract people with an entrepreneurial spirit who come from families who operated their own businesses and have desires to do the same, but they may know little or nothing about the specific industry.

Take, for example, John Doe, who managed his father's auto shop for 20 years. John clearly knows how to run a business, but he's tired of the automotive industry. He looks into franchise opportunities in the fitness, health care and business services industries. In his new endeavor, John will need less support with business operations and more training on the industry, including but not limited to its history, current trends, target demographics and specific jargon.

Historically, when it comes to initial and ongoing training support for franchisees, as well as determination of the franchise fee, franchisors have traditionally stuck to a one-size-fits-all approach despite the varying needs and backgrounds of their franchisees. As the economy and marketplace conditions have changed, the time has come for franchisors to consider evolving. The notion of their previous and somewhat rigid approach to training and fees may no longer be relevant. Flexible Solution

What's the answer? While franchisors can't realistically tailor their models for every prospect that inquires about their opportunity, there is a middle ground.

For example, BlueGrace Logistics' franchise model is based on a fluid continuum of three, tiered support levels. With our guidance, franchisees can pick and choose exactly what support and training they need and want from our corporate office. Franchisees can select from minimal support to full service, which includes back-office, customer service, billing, marketing, extensive ongoing training and more. We also allow our franchisees to change their support levels as needed. This way, individuals with little to no shipping and logistics experience can receive full-service support to help them get started and then scale down their support whenever they choose.

Of course, in the mind of a prospective franchisee, what would be the point of selecting a minimal support level if you had to pay the same franchise fee as someone with maximum support? There's not.

Thus, with a flexible support model, also comes a sliding franchise fee, because no one wants to pay for the extra bells and whistles they're not using.

#### Consider This First

Before jumping in, franchisors considering adopting this more flexible tiered approach should think about the following guidelines.

- Analyze your current system. Take a look at the support currently offered to franchisees and determine if your franchisees would benefit from a more flexible model. Are franchisees using the support provided and taking advantage of training opportunities? Are they receiving support that could help make them more successful?
- Be flexible. It is important to remember that flexibility is a key point to making this model work. Support levels in a tiered model do not need to be exclusive as this model works best with a fluid continuum.
- Don't compromise your brand identity. Be customizable, but make sure to keep your original branding and operational systems in place. Customization and flexibility do not equal free reign. The goal is to provide more options to franchisees, within the boundaries of your system.
- Do not over or undertrain anyone. Ensure that franchisees are selecting the correct support level for their needs. Most often, your organization does not want an industry newbie starting a business with minimal support. Doing so could be detrimental to his or her success and the entire system. On the other hand, over supporting and over training seasoned veterans could lead to distrust, feelings of being micromanaged and general dissatisfaction.
- Keep it simple. Too many choices can be overkill and overwhelming.

#### Time for Change?

While this tiered approach may not be suitable for every system, it poses multiple benefits for most and creates a winning situation for both franchisor and franchisee when implemented correctly. Franchisees pay for the support they choose, and franchisors can allocate resources where they are needed most instead of wasting time and energy providing excessive support to people who may not need it.

The ultimate goal of course, is providing your franchise system, no matter what the industry, with the appropriate tools and options to generate franchisee success and satisfaction.

As the old saying goes, "The more things change, they stay the same."

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Bobby Harris is the founder and CEO of BlueGrace Logistics, a logistics, transportation and technology provider that offers complete, customized transportation management solutions to customers throughout the United States. He can be reached at [bharris@bluegracegroup.com](mailto:bharris@bluegracegroup.com) .



# Five Must-Do Franchise Support Tactics

January Franchising World 2011

By Mike Rotondo

A highly successful, energized group of franchisees is critical to the success and growth of any brand. When franchisees are seeing their desired results through the help of an active and engaged franchise support system, their success becomes contagious and begins to create “brand evangelists” to further drive growth in the brand. These brand evangelists promote your brand for you—they assist in selling franchises, driving increases in system-wide sales and in decreasing store closings and transfers. Their attitude becomes infectious, thereby spreading their success throughout the entire system. But this brand enthusiasm is not created overnight. It is developed and nurtured only by providing ongoing, effective franchisee support. The following are the five key components of a first-class franchise support system:

1. Regionalized Support
2. Broadcast on Channel WII-FM
3. Correct Allocation of Time
4. Get in the Trenches
5. Live by the Numbers

Let’s dive into these a little deeper and learn more about these tactics of a first-class franchise support system.

## Regionalized Support

As a franchisor continues to expand, one question it must consider is whether it should provide regionalized franchisee support or continue to attempt to support all franchisees directly from the corporate office. There are many factors to consider in this decision, but the main drivers are: Does the complexity of your brand require more “hands on” training versus virtual training? Where are your locations in relation to the corporate office and how geographically dispersed are they? What level of support are you trying to deliver?

Regionalized franchisee leadership makes it easier and quicker to have immediate and constant insight into your organization. Your regional leadership does not have the day-to-day distractions that a corporate office sometimes has, allowing them to be focused and dedicated to providing support. It will also have lower travel costs and a higher rate of visibility into your franchisee community giving your franchisees a strong sense of support and dependability from corporate. Regionalized franchisee leaders will have a greater sense of being in touch with local franchisees and will therefore be able to react more quickly. Regional leadership also provides a local point of contact for your franchise sales team since its members are embedded in the local community and can provide invaluable information to a prospective franchisee.

Regional leadership has great benefits for a franchised organization, but it also presents challenges. To be successful, it takes strong leadership. It takes a uniquely qualified person to handle the responsibility and communication necessary to ensure the success of this model. Corporate leadership can quickly and easily lose touch with its regional leadership, potentially making their franchisees feel stranded and



without direct goals or clear vision. Corporate leadership also needs to provide the regional leadership with goals, metrics and tools to gauge success and analyze the regions results.

So which model is better for your organization: regionalized versus centralized support? Many factors play into this, but in most cases 10 to 15 franchisees per corporate support staff member is a good start. The next thing to consider is how far away drive time support is from your locations. If you have locations more than five or six hours away from the corporate office, then regional support should be considered. As an organization, you will have to decide which support system is the better fit for your system.

### Broadcast on Channel WII-FM

Franchisors must always be tuned into the only radio station that can get their franchisees off the fence and engaged, namely, WII-FM ... What's In It for Me? It is not enough to just tell franchisees that they have to bring in a new piece of equipment or add new menu item—a great franchise support team needs to present to their franchisees “why” they should embrace a specific change. It is only natural for someone to resist change at first—everyone wants to know the reason for a change. Engaged franchisee support teams can move their franchisees from resistance to commitment. They must help their franchisees examine the benefits of the change and prove the success to gain their trust in the program and in the support system. This is one of the most challenging aspects of leading any team; getting them to make the changes needed for their success in a way that makes them feel like they were a part of the process. Only when you fully grasp the needs of your franchisees will they become more open and receptive to change.

### Correct Allocation of Time

Franchise support teams should spend time with the franchisees across the three main aspects of their business: growing sales, increasing profits and operational excellence. Generally our support teams at Tropical Smoothie Café spend 50 percent of their time on sales, 25 percent on profits and 25 percent on operations. These tactics are beyond the basics of supporting a franchisee system. Ensuring operational excellence is a price of entry for a brand leadership team.

An overview of the operational status of most QSR brands can be determined in about an hour or less. There are certain times (monthly or quarterly) when a full assessment of each location is necessary. This can be an all-day event, but on subsequent visits, for example, a four-hour visit to a location should suffice by spending an hour on operations, an hour reviewing controllables and two hours working on growing sales. Teaching operational procedures, calculating controllable costs and evaluating labor and material usage are fairly easy; however, understanding how to grow the business for most brands is much more difficult to teach and requires extensive follow-up and leadership.

For the most part once you know the operations and how to control costs there aren't many changes. Growing the business for many brands consists of thorough community outreach and relationship building which is tough in itself, this segment of the business is a moving target and the game changes daily with new technologies, new competition and new product developments. If you can't lead this for your system, who will?

### Get in the Trenches

Members of the corporate team need to be able to work side-by-side with their franchisees and show them how it's done. Think back to a time when your leader got along side you when you needed some help. Afterward you had a higher level of respect for the leader because he was in your shoes even if it was only for a short while. That is also how you find out how well your operational programs work. As an example, in the restaurant field, if you want your franchisees making outbound calls to local

businesses to grow catering sales, your support team should have the skills to sit next to their franchisees and make a few calls. For example, we started a “Blitz Marketing program” about a year ago. We had someone from the senior team wearing a gorilla suit and other corporate and regional staff wore banana suits; we were in the trenches with them. Think about how hard it would be for a franchisee to say they wouldn’t get in a banana suit if senior management did it first. This type of approach allows you to be seen as more approachable and gives you a better understanding of what the job of running a success franchise is really like. When we conduct new café openings, our support team gets involved in everything from putting away the initial order to getting in the banana suit.

### Live by the Numbers

It is next to impossible to drive results without having the numbers at your finger tips. Everyone needs to be in touch with the numbers and facts constantly. You should have access all the way down to the individual transaction level for every unit in your system. Proper reporting and facts can have a dramatic impact on your system. You should send out reports showing the specific results of tactics you are focused on to drive results. For example, post your top sales locations on a weekly basis, post sales versus last year for the entire system, post top performers in cost control metrics. These facts will motivate your system, pushing those on top to maintain their numbers, while setting a higher bar for others to achieve.

If you want to keep your system engaged in a program or promotion, you have to keep them up-to-date on how that program or promotion is driving results. During a limited-time-offer promotion, provide sales of the LTO items and how they are related to different aspects of overall sales performance. As an example, in our system we would look at an LTO smoothie and see how it performs in the following ways: What are the total number sold per café; what percent of the smoothie category does the item hold; how do total smoothie sales compare to last year or even the few weeks prior to the start of the promotion?

Showing the system the impact the LTO item is having on incremental sales, at units that are executing the promotion to its fullest, will have a positive impact on the entire system. Some franchisees just won’t engage until they see that it actually can be done. All promotions must be evaluated throughout the promotional period as to the level of success it provided the system.

### Action Speaks Louder than Words

This is not meant to be an all encompassing list, but rather a starting point for evaluating some key tactics in providing effective franchisee support. If you take anything away from this article, it should be that action from the leadership team is what will make a difference. People join a franchise to be led. It’s not just from afar; they expect to see action from the ones who are the experts and leaders of the brand. If you are not getting the results you believe are possible in your system, take a hard look in the mirror. Ask yourself and your support team if you’ve put it on the line the same way that you ask your franchisees to do every day. That’s when things really start to happen, when your actions become heard throughout your system.

Mike Rotondo is Chief Operating Officer for Tropical Smoothie Franchise Development Corp. He can be reached at 888-292-2522, Ext. 145 or [mrotondo@tropicalsmoothie.com](mailto:mrotondo@tropicalsmoothie.com).



# Establishing a Strong Corporate Culture to Provide Franchisee Support

Franchising World September 2011

By: Bruce Bloom

One of the challenging responsibilities of a franchisor is how to develop and implement effective franchisee operational support programs. These programs have the added responsibility of meeting, and exceeding, the franchisees support needs in a cost-effective and efficient manner.

This challenge is compounded by the differing needs of franchisees based on the complexity of the concept, their experience and organizations. These circumstances are also impacted by the basic tenant that “one size does not fit all.” The systems composition (i.e. single unit, multi unit, master franchise, and so forth), industry focus, geographic dispersion, franchisee experience level, and more, will affect the specific nature of an effective franchisee support system.

The most effective and efficient franchisee support programs are formulated, executed and evolve based on two important factors: the franchisor’s corporate culture and the structure of the support program itself.

## Corporate Culture

Effective franchisee operational support programs begin with a sense of ownership from all of the disciplines that affect the development and execution of these programs. Senior management must create an environment that establishes support programs as a priority for the organization. The corporate culture must support both a sense of responsibility and accountability in the execution of these support programs.

The organization needs to be focused on the impact of these support programs to the success of the franchisees, the system itself and the brand. How often has one experienced frustration on behalf of the franchisee community regarding the “new” field representative and his lack of knowledge and inexperience in working with a franchisee? The franchisor needs to be prepared to provide the resources and training to those individuals responsible for the day-to-day execution of support programs whether in the field, as part of a help desk organization or whatever method is being utilized.

An environment of open and inclusive dialogue with the franchisee community is imperative. How often do companies survey their customers on their products, marketing, delivery systems and so on? Franchisees are both a customer and partner in the delivery of your brand. Soliciting their input and participation into the type of support that would be most effective for them and their continuing feedback on the effectiveness is essential to creating the appropriate operational support programs. Your franchise advisory committee, key franchisees and others are important sources of information and input.

## Support Program Structure

In today's environment and with multiple industries involved in franchising, there are a number of methods for providing franchisee support. They may include, among others, traditional field support, help desks, intranet sites, regional meetings and mentoring programs. The challenge is to determine which one of these, or what combination, will provide the most effective and cost efficient franchisee operational support program.

As previously noted, "one size does not fit all;" however, the basic premise of any franchisee support program should be protecting and enhancing the brand and assisting the franchisee in being successful. A few of the key issues that should be addressed in setting up a support structure include:

How complex are the operations of your franchised concept? As an example, restaurants tend to be a relatively complex operation; frequent, on-site visits may be essential.

What is the geographic dispersion of your franchised location? If they are not close, a combination of periodic visits and help desk access may be the most viable approach.

What exactly are the field representatives' responsibilities? Do they maintain an operational focus or do they have quality assurance or other responsibilities as well? Setting up clearly defined responsibilities, providing adequate training and support are essential to providing the tools for successful execution of their responsibilities. It is also essential to hold these individuals responsible for the performance of their franchisees.

How is the brand managing and supporting the organization? Has the brand clearly defined its responsibilities both internally and to franchisees? Has the company given them the appropriate discretion and authority to execute their positions? How is the franchise organization evaluating their performance; is it ensuring feedback from the franchisee community?

Feedback and participation are important roles that franchisees should play in this area. The franchisor needs input into what is working or what isn't. What best practices are utilized in the business, whether by an individual or multi-unit franchisee? Can the franchisee participate with the franchisor in testing new methods of support? As a customer and partner, franchisee input is essential to developing the best systems possible.

#### New Versus Established Franchisees

As franchisees evolve in the development of their business, there is a need to adapt the support to continue to add value to those franchisees. As previously discussed, the point at which this occurs will vary by system and the nature of the concept.

To ascertain when those changes need to occur, there are a number of key factors, in addition to those identified previously, including:

- Know your business model inside and out.
- What should your unit-level economics look like? How will they evolve as a franchisee becomes more proficient as an operator?
- What are the key drivers of the business? Who are your customers?

Here are hypothetical examples of the evolution of a franchisee and the potential specific needs that may occur.

The franchisee has just completed the initial weeks of operation.

As a new franchisee, the reality of operating a business can become overwhelming. The support a franchisee has received is not as concentrated, many of the training issues learned are forgotten, and the franchisee begins to operate the business, not manage it. There is a lack of marketing; the franchisee believes a scenario similar to the "Field of Dreams," if you build it they will come.

Increasing the frequency of your contacts during this period is critical. Are franchisees producing operating statements? What type of feedback is the brand receiving from their customers, suppliers and so on? Now is the time to reinforce operating standards and provide that additional support. Having specific field personnel, and a game plan that work with franchisees at this initial stage can be an effective means to address these initial issues before they become long-term problems.

The franchisee is looking to develop additional units.

Many franchisees are not prepared for the operation of another unit. Does the franchise organization have a system internally that ensures they are qualified to do so (i.e. good ULE, adequate capital, internal organization) before consenting to that additional development? How is the franchise business supporting franchisees to prepare for that next unit, organizationally and financially? Is the brand doing it early enough in the process to be beneficial?

The franchisee has reached a point in development he can no longer effectively manage the additional locations on his own. (That level of development will be determined by the type of system.) First, are they qualified to continue this development (i.e. good ULE.)? Has the franchise company assisted the franchisee with developing an organization that can absorb these additional units through both new management levels, staffing levels and so on? This is a good time to begin a train-the-trainer program for the franchisee to ensure he can maintain a solid operating team. On an ancillary issue, has the franchise business assisted the franchisee with potential site and construction support, funding and other resources? The franchisee is beginning to have financial or operational issues.

This is a key time to assess the performance of the existing locations to ensure they are being properly operated and do not begin to create financial issues for the franchisee through diminished performance and its potential impact on your future system growth.

The franchisor has required and obtained financial statements of its franchisees, which it is continually monitoring. Operational reviews are declining, suppliers have noted issues and the support organization is trained to focus on this information. The franchise begins to note a decline in performance.

A proactive approach with frank and open discussions with the franchisee should begin immediately. In conjunction with the franchisee, a game plan should be developed to address those areas of concern that are affecting the performance of the units. Additional training or support may be required; frequent follow up with specific objectives are critical. Mentoring programs can be an excellent resource in assisting the franchisee.

The franchisee is an established veteran and potentially reticent to accepting advice and support.

The level of support should not change. However, there are potentially new sources of support areas. Does the franchisee have a succession plan? If it potentially includes family members or associates, are they adequately prepared to assume those responsibilities? Can the franchise organization provide support to those individuals through additional operating and training support to ensure an effective transition? What does the franchisee's estate planning look like? Can the brand leverage that experience as a mentor to keep the franchisee engaged in the program?

The franchisee has become a large operator (more than 10 units).

The areas of opportunity for support will change. While it is still essential to monitor operating statements, balance sheets and their operating standards, a new set of opportunities will present themselves.

Potential support areas may include:

- Organizational development; how do they continue to develop the organization required to maintain their current operations and support future growth?
  - What does their management organization look like?
  - Have they developed sufficient capacity in human resources, finance, procurement, construction and real estate?
  - Is their internal training capacity sufficient? Do they have a strong train-the-trainer program?

- What are their succession and estate plans?
- Do they have new sources of capital; enhancements in their existing capital structure?
- How else can the brand support their future growth? Are there acquisition opportunities?

A master franchisee system has unique issues. In many systems they are responsible for this type of support. The efforts of the franchisor should be focused on providing the support and training that will allow the master franchisee to address these same issues in a similar manner.

These are a few examples of potential opportunities in creating value for your franchisees, at various stages in their development, in your operational support areas. The long-term success of these programs will be based on the franchisor's focus on tracking, evaluating and evolving these programs. Many of these same principles will apply as the organization considers other areas of support including marketing, development and procurement.

The successful program will create value for franchisees ultimately through their success and commitment to the system, while protecting and enhancing your brand. Bruce V. Bloom, CFE, has accumulated more than 40 years experience as an entrepreneur and a senior-level executive in a number of Fortune 500 franchise companies in the restaurant and hospitality industry. Bloom is the president of Bloom & Associates, LLC, which provides a variety of franchise and business consulting support to numerous organizations in the franchise industry. He can be reached at 615-472-1647 or [Bloom-Associates@comcast.net](mailto:Bloom-Associates@comcast.net). He is a member of the Franchise Relations and Information Technology committees. For more perspectives on franchise relations, visit IFA's Web site, [www.franchise.org](http://www.franchise.org), and select "Resources" for franchise relations documents.



# Developing an Effective Support Organization

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By: Jack Pearce

The franchise industry today has grown significantly and now represents such a broad spectrum of business concepts and market segments that it is nearly impossible to define any single strategy or organizational structure best suited for the task of franchisee support. The International Franchise Association alone represents more than 1,100 franchise organizations doing business across a vast array of industries and assorted vertical markets, and all located within a kaleidoscope of geographic and cultural environments. With all this diversity, it is no wonder there is no single answer for the effective delivery of franchise support.

Essentially, no single style of corporate culture, no single field support philosophy, and no single set of support methods will ever cover all of the variations inherent in the franchise industry. The inevitable conclusion for developing a franchise support organization is “one size does not fit all.”

Where Do You Start?

Finding reference material on the subject of building a franchise organization can be a challenge, but one good place to start is with the IFA and its website, [www.franchise.org](http://www.franchise.org). There you can find resources, publications and franchise relations documents offering the reader a comprehensive library of industry-related materials. The subjects there range from franchise law to closing a new unit sale or from the formation of franchise advisory councils to succession planning and franchisee support.

On the latter topic of franchise support, the inherent dilemma in a one-size-does-not-fit-all conclusion is addressed by the IFA's Franchise Relations Committee in its recently published handbook titled *Effective Development of a Franchise Support Organization*. This new document covers topics such as, franchise support principles, components of franchise support, franchise support standards and goals, objectives and measurement.

## Franchise Support Principles

Principles are the basic assumptions, ethical standards, characteristic ingredients and ways of working within a system of thought or within an organization. In the franchise industry this includes how a company's culture affects decision-making and setting policy, as well as how franchise relations are used to perform effective communications. How the organization develops over time and how support resources are allocated are all functions of sound support principles with the goal of developing an effective support organization.

Here is a brief summary of the key principles outlined in the IFA handbook:

- Company culture sets the tone. The “you win, we win” culture allows for strong two-way communications and full collaboration between the franchisor and franchisees.
- Franchise relations is the foundation. Strong relations enable constructive development, build essential elements of trust, facilitate an alignment of goals and create a transparency in the allocation of resources.

- Organizational development is the strategy. This represents the planned and controlled process necessary for the company to adapt and restructure itself to meet the ongoing demands of change inherent in every evolving franchise organization.
- Support techniques are the tools. The diversity and availability of support techniques are matched only by the variety found in the business models and concepts comprising the franchise industry in today's marketplace.

### Components of Franchise Support

The basic elements for providing strong franchise support are not much different from those found in any top quality customer service organization. The culture within the company and the quality of franchise relationships most certainly shape the structure, quality, volume and tone of the support organization. The challenge is to turn attitude into action, channel communications into effective development and maximize the use and application of limited resources.

The IFA handbook summarizes these franchise support components in this way:

- A well-developed organizational structure. This structure utilizes sound management principles and strong collaboration between all company departments and personnel.
- A well-trained and competent support team. It is essential to have knowledgeable and experienced staff who can deliver the business model as designed.
- Effective management of the support organization. This calls for the ability to consistently prioritize and match the franchisee's needs with available financial and human resources.
- Techniques for improving reluctant franchisee relationships. Success comes from building consensus and uniformity and all franchisees need to be included.
- Recruit, train and retain good support personnel. Nowhere is this component more important than in franchising where unique skill sets are invaluable.

### Franchise Support Standards

Given such a wide variety of products and services being delivered by franchise companies within their respective market segments, it is difficult to narrow down the industry support standards into a one-size-fits-all format. For this reason, there tends to not only be a wide variation of standards within similar organizations, but also a tremendous amount of variation among different types of franchise concepts, particularly between service-oriented businesses and retail or product-based organizations. In the end, franchise support "standards" are driven by both the business concept, as well as by the culture adopted by the parent organization. It is very difficult to narrow down actual support standards, but the following is a partial list of some of the most common ones practiced by many successful franchise companies:

#### On-site or Field

- Operations and or marketing manuals.
- Individual support representation assigned to each franchise location.
- Support specialists for specific or highly technical support needs.
- Annual on-site (field) support visit.
- Compliance or certification visits.
- Quality control or product/service training.

#### Home Office

- New franchisee training and orientation.
- Resale franchisee training and orientation.
- "Help Desk" for common inquiries and supplies.
- Distribution center for collateral marketing materials.

#### Online or Internet

- Virtual Private Network or intranet providing bulletin boards, document libraries and other resources.
- Marketing and printing services for "on demand" collateral materials.

### Goals, Objectives and Measurement



Every level of the franchise organization should be constantly setting, following and measuring goals and objectives. The franchisor sets the high-level goals for the entire enterprise so everyone involved understands the focus and vision of the business concept. Franchisees set unit-specific goals first aligned with the franchisor's directives, then to convey their own personal vision, and most importantly to meet the needs of their own business investment. The support team also sets goals aligned with the vision of the enterprise, in addition to those set to meet the needs of the individual franchisees they represent.

Objectives refine those goals into more expedient, manageable and measurable tasks. Measurement of the goals and objectives may take many forms, but should be scheduled, consistent, quantitative and informative. If goals are the destination, then objectives are the landmarks along the way. Measurement is the analysis of whether your organization reached the destination, while the successes enjoyed, the hazards overcome and the lessons learned along the way are there to be applied against the next set of goals and objectives.

Regardless of the type of franchise, every franchisee relies on the strength, depth and breadth of the support services delivered by the parent organization. Strong franchise relations, a well-structured organization, sound application of management principles and a well-qualified support staff are all the essential ingredients required to make it work. For more information about how all these components come together, visit IFA's website, [www.franchise.org](http://www.franchise.org) , and check out the Franchise Relations Committee handbook, Effective Development of a Franchise Support Organization. Jack Pearce, CFE, is executive director of franchise relations at Annex Brands, Inc., a 450-plus unit franchise organization comprised of five unique brands within the mail and parcel, custom packaging and shipping industries. Pearce is a member of the IFA Franchise Relations and Information Technology committees. He can be reached at [jpearce@annexbrands.com](mailto:jpearce@annexbrands.com) .