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Franchise Lawyer

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Franchise Advisory Councils

Q | What is a franchise advisory council (FAC) and how does it work?

JOHN SAYS:

A FAC is established, funded, guided and supported by a franchisor for the benefit of itself and its franchisees. The franchisor retains oversight of the council's activities and decision-making authority. At the outset, the franchisor will usually prepare the council's governing documents, establish a method for member selection (*e.g.* appointment or election according to regions) and require certain conditions for membership (*e.g.* members may not be in default under their franchise agreements). Nearly all FACs, by the way, constitute their membership through election by franchisees, rather than appointment by the franchisor.

FACs have existed since the 1960s and can serve as an effective medium through which to improve communication between a franchisor and its franchisees. A council will typically meet quarterly or semi-annually to address new and existing issues within the franchise system. The topics discussed will vary considerably, but may include goods, services, equipment selection and financing, advertising, promotions and marketing.

Q | How can prospective franchisees ascertain the value of a FAC in the franchise system they are looking to join?

JOHN SAYS:

It can be difficult to calculate the value of a FAC without being part of the franchise system, but reaching out to the franchisor and speaking with existing franchisees can help you get a sense of its effectiveness. You should ask the following questions about characteristics that successful FACs tend to share:

- Are meetings chaired by someone who encourages open and constructive dialogue between his/her fellow council members?
- Is the franchisor's senior management involved with the FAC and has it been willing to take action in response to franchisees' legitimate concerns?

- Are mature, commercially minded franchisees involved in the FAC who respect the rights and responsibilities of the franchisor and are genuinely motivated to enhance the value of the franchise brand?
- Does the FAC communicate messages that align between the franchisees and the franchisor?
- Have recent topics of discussion at meetings been of interest to both parties, as opposed to simply a one-sided agenda?

The lack of any of the above characteristics would suggest the value of a FAC may be diminished.

Q | What are the various benefits and drawbacks of joining the FAC themselves?

JOHN SAYS:

In the right environment, a FAC can be an effective means of advancing the shared interests of franchisor and franchisees. They can serve as a forum for collective bargaining, for example, encouraging the protection of franchisees' rights under franchise agreements.

A FAC can also serve as a forum to advocate for common issues and provide independent research and analysis. When a franchisor's proposals are proofed and/or endorsed by the council, for example, independent scrutiny will make for better decision-making. This can be particularly helpful when considering changes to standard-form franchise agreements.

FACs can also assist in developing an institutional 'memory' within a system, serving as repositories of knowledge that promote the evolution of the brand, marketing, merchandising and best practices.

If a FAC is not effectively managed, however, its consultations between a franchisor and franchisees may end up slowing the decision-making process and inhibit progress. Franchisees can become disappointed or disillusioned if there is an apparent lack of tangible success for the FAC. There may also be disagreement over how much decision-making authority the FAC enjoys and a risk of a form of 'management by committee,' raising the possibility of the system becoming listless and unfocused. **CBF**