

# The Franchisee VOICE



American Association of Franchisees & Dealers  
*The Center for Total Quality Franchising®*

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## ONE FOR THE RECORD BOOKS – REDUX!

### 2007 Franchisee Leadership Summit Even Larger than Last Year's

Dallas May 2007. In what we hope will become a recurring annual message, the largest ever gathering of franchisee groups met in Texas for the 2007 AAFD Annual Meeting and Franchisee Leadership Summit, breaking the record that was set in 2006!

AAFD President Peter Hanson was most pleased with the positive energy generated by the gathering. Said Hanson "Momentum continues to grow for the acceptance of the AAFD's mission of Total Quality Franchising. Our positive message that collaborative relationships deliver superior franchise systems is gaining recognition with franchisee groups and enlightened franchisors, and the AAFD conference is THE place to discover, learn, network and share knowledge about the best practices in franchising relationships."

For the first time, the conference was designed from a franchisee's perspective and kudos to Steve Ellerhorst and Ron Soto, Co-Chairs of the event, for putting together a program that was fast paced and interesting. Congratulations to them also for incorporating elements of interest for all of our stakeholders.

The conference began with spirited meetings of each of the respective stakeholder groups - franchisee associations, seal recipients, suppliers and the LegaLine members, the day before the general session programs. In addition to the general networking opportunities, these sessions proved extremely valuable for the respective groups to share ideas and promote Best Practices among the group.

Day One of the conference proper led off with an extremely entertaining session dedicated to showcasing



AAFD in general session: another record-breaking year!

speakers and how they can contribute to the success of a conference. Based on the feedback we received, they did just that for our conference. Other educational general sessions provided information on human resources, gift card programs and trademark concerns for franchisee associations sandwiched around a terrific market power trade show and ice cream social.

Day Two focused on breakout sessions that provided information on franchise mediation programs, branding and public relations, the AAFD Health Benefits program and exit strategies – Part II, a continuation of one of last year's most popular sessions. Day Two also saw us get down to the serious side of the AAFD's mission – the continuation of the development of Fair Franchising Standards, an ongoing process, and on the lighter side an opportunity to take in the baseball game between the Yankees and the Rangers. Our timing proved to be fortunate, as the next night's game was literally washed out by high rains and tornado watch winds.

The highlight of the AAFD Conference is the opportunity to recognize, honor and reward excellence in franchising – all facets of franchising. "Our goal for

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**STOP  
THE  
PRESS!**

**U.S. Supreme Court  
Modifies Stance on  
Vertical Price Fixing!  
See page 12**

## FTC RULE REVISION BENEFITS INDEPENDENT FRANCHISEE ASSOCIATIONS

by Peter Silverman

As the AAFD announced in our Spring issue of the Franchisee Voice, on January 23 of this year, the FTC released its long-anticipated new Disclosure Rules for Franchising. A number of changes in the amended Rule will affect the strategies and tactics franchisees use in the future, but no change should have a more immediate impact than the new rule requiring a franchisor to disclose con-

tact information for franchisee associations in its franchise offering circular.

This information will give every prospective franchisee the opportunity to hear firsthand what the franchisee association thinks of the franchisor. According to Steve Toporoff, staff attorney and spokesperson for the FTC regarding the new Rule

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## FTC Franchise Rule Revision Benefits Franchisee Associations

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amendments, "The amended Rule includes a provision that enables independent franchisee associations to ask for inclusion in the franchisor's disclosure document. This is another source of information that prospective franchisees may wish to consider when investigating the franchise offering and assessing the state of the relationship between the franchisor and its franchisees."

Several AAFD chapters and affiliated associations have sought counsel from the AAFD on what steps to take to request inclusion in their franchisor's new franchise disclosure document.

The specific rule is found in Section 436.5(t)(8). It requires the franchisor to disclose contact information for any association of its franchisees, regardless of size, if the organization (i) has been created, sponsored or endorsed by the franchisor or (ii) is organized under state law and asks the franchisor to provide the information. According to the official report explaining the new rules, AAFD chapters qualify under the rule.

There are some fine points here. First, the association needs to ask to be included in the franchisor's UFOC no later than 60 days after the end of the franchisor's fiscal year. Second, the rules are voluntary now, and they won't become mandatory until July 1, 2008. Thus fran-

chisors have discretion as to when to phase in the new format.

**ACTION ITEM:** The AAFD is counseling all independent franchisee associations to immediately determine the date on which its franchisor's current fiscal year ends. Within 60 days of that date, send your franchisor a letter by certified mail that states, "Pursuant to 16 CFR 436.5(t)(8), the [name of association] asks to be included in [franchisor's name]'s disclosure document during [franchisor's name]'s next fiscal year." You must renew this request every year.

\* \* \*

This is a welcome development. It gives franchisors another incentive to commit to total quality franchising and good relations with its independent franchisee association. At the very least, it provides an opportunity for franchisee associations to gain acknowledgement of their existence, an important first step to becoming a recognized participant in the ultimate success of your franchise system and brand. The AAFD and our Franchisee LegaLine affiliate attorneys will continue to monitor this valuable new tool, and provide updated reports as the new Rule becomes mandatory in July, 2008.

*Peter Silverman is a LegaLine affiliate and the head of the Franchise Litigation group at Shumaker, Loop & Kendrick. Shumaker regularly provides business, finance and litigation counsel to franchisees and franchise associations. Mr. Silverman may be reached at 419-321-1307 or psilverman@slk-law.com. ■*

## Taking TQF to the Next Level!

Continued from page 3

collaborative franchising model that the AAFD admires, and that our Fair Franchising Seal Recipients represent. Our goal is to introduce a half dozen accredited franchisors by May 1, 2008. Our challenge is to increase our capacity to complete the accreditation process without diminishing the care with which we approach each Seal applicant.

Mostly, our success depends upon support from our constituent associations. We are beginning to see the benefits of joining in common cause. The investment we make together today, will pay huge dividends as the AAFD's influence continues to grow and demand *Total Quality Franchising* from the franchise community and marketplace. ■

*Robert L. Tuning, Jr.*

## LEGALINES: Franchising's Enlightened Compromise...

Continued from page 5

much maligned implied covenant may be the worst possible way to measure contract performance in franchising, *except for everything else* that has been, or could be, tried by the courts.

No lawyer advising a franchisee should ever advise their client to accept a waiver of the implied covenant. To do so would be as irre-

sponsible as advising the franchisee to give the franchisor a blank check and allowing the franchisor to unilaterally decide the amount. Franchisees and their counsel are urged to stand firm on this issue.

Carmen D. Caruso (ccaruso@schwartzcooper.com) is the chair of the Franchise Practice Group at Schwartz Cooper Chartered in Chicago. He is past president of the AAFD LegaLine and Amicus Committee, a past programming chair for the AAFD's Annual Meetings, and previously served on the AAFD's Board of Directors. ■



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