Akerman proves the value of having a high-quality legal partner

Experienced legal counsel provides so much more than legal advice

Kevin Hein

Karyn Koiffman

Experience gained from years and hundreds of deals made can open doors that were once closed, explains Kevin Hein, co-chair of the franchising and licensing sector team and Karyn Koiffman, partner, corporate, M&A and private equity at Akerman LLP.

What have been some of the main areas of activity for your team, when it comes to the legal side of franchising?

KH: We're doing a lot of mergers and acquisitions work. Right now, we're seeing a lot of what we call refranchising and defranchising. There are some systems that have decided that they're going to sell off corporate units to franchisees, and we're working on one project with a company that is looking to sell over 500 corporate units into the franchise world. Also, franchisors are taking advantage of the fallout of the pandemic and they're starting to reacquire franchise units.

KK: As part of our M&A work, we do a lot of work for private equity funds and family offices. Recently, I've completed three transactions in that space, one for a private equity fund and two for a family office in which they bought franchisors in the healthy food and home renovation sectors.

I do a lot of work with Latin America and Brazil, especially Brazil with it being the second largest franchise market. There is a lot of interest now, with Brazilian brands wanting to franchise in the U.S.

What has been the most common source of disagreement between franchisors and franchisees since the pandemic began?

KH: We've gotten through the pandemic, and there is now some tension between some franchisors and franchisees about responsibility, asking whether or not franchisor should have been more prepared.

We're seeing this ghost kitchen concept take off, and now we're seeing it play out in ways that are starting to create some issues with their franchisees. Franchisees are afforded a geographic protection, maybe two miles from the front door.

The concept of territory that's written into most franchise agreements is not as relevant under the new world order. I suspect there will be franchise owners that may not like the idea that there are ghost kitchens offering the same services, that are utilizing the same delivery apps.

The last area that I think there's real tension around is the supply chain. Franchisors build very robust supply chains. But, when you have something like a black swan event, like the pandemic, you can end up without having safety valves.

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Has securing property and capital been more problematic for brands in these last two years?

KK: Yes. At the beginning of the pandemic, with uncertainty, we felt like there was a shortage of capital for private equity firms, franchisors, franchisees, everybody in the market.

We're now seeing a lot of capital available from various sources. In general, the market has been fine. First, we had the Small Business Administration (SBA) pour some money into small businesses. Banks, venture capital, private equity firms, and specialized financial services firms soon followed.

KH: There was a slow down when the SBA decided it was going to get directly into the lending business, in the form of what we call Economic Injury Distaster Loans (EIDL). Normally, the SBA doesn't do anything but guarantee loans that banks issue. But, because the SBA stepped in and became the direct lender, it consumed a lot of SBA resources. Lenders couldn't get deals approved through the SBA because there was nobody to approve them.

What we're seeing is a trend, which is, you get these lenders that decide that they're going to provide committed capital to a specific number of brands and these are not generally non-bank lenders. They may only make capital available to franchisors with more than 100 units, or franchisors and specific market sectors, but they become the lender of first resort for those franchisors.

FSOs (franchise sale organizations) make their money by selling franchises, they too are looking at ways to create pools of capital to make it easier to finance franchise prospects. Franchisors are trying to be more direct in the way that they offer financing through these programmes, which shortens the financing cycle and gets people through the loan process faster.

Do you feel like your role has changed over the last few years from the perspective of your franchisor clients?

KK: Before the pandemic I had been working with a lot of international clients coming into the U.S. You'd really serve as a trusted adviser and an outside counsel, and as the point person for all the areas or everything that the client needs in the U.S.

Knowing the landscape in Brazil and the U.S., I think they look to me to bridge that gap. It's scary for Brazilian and Latin American clients to come to the U.S. It's a completely different legal and business environment for them.

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KH: Franchisors can become focused on what's going on in their brand but they don't see the bigger picture. There are a lot of common themes about the franchise business model that translates from industry to industry. Because we have a very large practice, we get to be the eyes and ears of franchising for our clients. To give you a little bit of an idea, we currently represent nearly 150 franchisor brands.

All together, we touch roughly 200 brands a year. So that gives us a very big picture of what's going on in franchising.

What are the downsides to not having an expert legal partner that you can call on?

KK: As Kevin mentioned, the franchising world is very regulated. If you wait too long to get legal counsel, you may take your business in a direction that is not legally feasible. Legal counsel from the outside of your business is essential. Having counsel that understands the legal terms in the market and business by doing so many transactions is essential. By doing as many deals as we do, we know what's going on in the market.

KH: I have nine franchise lawyers that are dedicated to serving nothing but the franchise community. And then I've got another 20 people like Karyn, who don't do the regulatory work, but work with franchisors and get the business. I think there are a lot of emerging brands that want to go with the smaller lawyer or the smaller firm because they're worried about cost.

You get what you pay for, right? Yes, you may save some dollars on your legal fees, but you miss all the other opportunities and other connections that a bigger firm and a more experienced counsel can bring to the relationship.

At a Glance
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