

## CROSS-BORDER FRANCHISING ALERT™

*A Newsletter Dedicated to U.S. - Canada Franchising Issues*



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### ARE U.S. FRANCHISORS COMPLYING WITH ONTARIO'S FRANCHISE DISCLOSURE REQUIREMENTS?

#### CONTINUOUS DISCLOSURE OF ALL MATERIAL FACTS

Under the *Arthur Wishart Act (Franchise Disclosure), 2000*, Ontario's franchise disclosure statute, a franchisor is required to provide a prospective franchisee with a disclosure document containing **all material facts** regarding the franchise to be sold to the franchisee. Even after a disclosure document has been provided to a prospective franchisee, a franchisor is required to issue a "material change statement" to the prospect if a material change has occurred since the time of disclosure and before the date on which the prospect has signed any document or paid any amount to the franchisor. In other words, the disclosure document must be current at all times, up to the earlier of the execution date of any franchise agreement and the payment by the franchisee to the franchisor of any funds.

#### ISSUE

The question of material change and the currency of the disclosure document are critical to managing an effective disclosure practice. Failure to provide prospective franchisees with an up-to-date and accurate disclosure document may have grave consequences, as it may provide franchisees with a statutory right of rescission and a cause of action for misrepresentation as against the franchisor, its associates and its directors etc. While franchisors are obligated to provide continuous and up-to-date disclosure, many U.S. franchisors simply ignore this obligation and only update their documents on an annual, quarterly or other less periodic basis. They often do so to make the timing of such amendments coincide with their UFOC filings and to otherwise reduce costs.

#### RECOMMENDATIONS

U.S. Franchisors are urged to regularly review their documents for accuracy and to update them as facts and circumstances change. Some of the matters typically addressed when updating a disclosure document include the following:

1. Has the organizational structure of the franchisor and its affiliated entities changed?
2. Has there been a change in the number or identity and contact information of franchisees operating as of the date of disclosure?
3. Has there been a change in the directors or officers of the franchisor or in the description of their prior relevant business experience?
4. Have there been any violations of laws or any litigation (past and present, whether settled or not) or bankruptcies?
5. Have the costs associated with the establishment of the franchise changed or are earnings projections now being provided?
6. Has the franchisor added or deleted any trade-marks from its list of trade-marks associated with the system?
7. Have financial statements for the recently completed fiscal year been prepared and have they been prepared in accordance with the Regulations?
8. Has there been any change in the percentage of the funds spent on national campaigns and local advertising in the two fiscal years immediately preceding the date of the disclosure document?
9. Have there been any changes to the projections of advertising funds to be spent and to be retained by the franchisor for the current fiscal year?
10. Have there been any terminations, cancellations, non-renewals or repurchases by the franchisor within the three fiscal years immediately preceding the date of the disclosure document?

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*This does not constitute legal advice. Please consult your lawyer. Joseph invites you to visit [www.hofferadler.com](http://www.hofferadler.com) and [www.intelligentfranchising.com](http://www.intelligentfranchising.com) or to call him at the number below.*