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Considerations for Email Domains

Franchisors understandably prioritize uniformity and brand consistency in consumer-facing displays, store fronts, and marketing material. Consistent use of the trademark builds goodwill and recognition with the consuming public. The need for consistent use of the trade name and trademarks can extend to a branded email domain for franchisees—that is email@yourbrand.com. What risks do these email domains carry? And how can you address them? This Alert highlights some key points.

Electronic Communications Policy

Franchisors choosing to use branded domains for franchisees should consider implementing a direct, unambiguous policy regarding electronic communications. A policy stating the standards for electronic communication—including the use of trademarks in email signatures, personal use, ownership of the communications, and inappropriate uses—can set expectations and prevent problems before they arise. This policy should take into account the information discussed below, and clearly outline a franchisee's obligations and limitations when it comes to the use of a franchisor's email domain.

Vicarious and Joint Employer Liability

Franchisors should also take steps to minimize the risk of potential liability for acts of franchisees through the email domain. For example, a franchisor might include a disclaimer in its electronic communications policy that the franchisor does not have an obligation to monitor the emails of franchisees or their employees but that, if it chooses to access those emails, it does so for its own benefit only and not to assist the franchisees with their operations.

Additionally, not unlike the "independent business" signs many franchisors require franchisees to display at their locations, franchisors might require that franchisee emails contain a disclosure at the bottom of every message, such as with the signature block,

notifying recipients that the franchisee is an independent business operator and separate from the franchisor. An alternate approach is for the franchisor to create a franchisee-specific email domain. For example, if the franchisor's email domain is "@brand.com," the franchisee-specific domain might be "@brandfranchisees.com." Whichever route the franchisor chooses, these measures might prove valuable should someone seek to hold the franchisor liable for the content of a franchisee's emails.

Expectations of Privacy & Data Ownership

If a franchisor intends to (or wants to maintain the right to) access or search the emails of franchisees, it should inform the franchisees that they have no expectation of privacy whatsoever in the communications sent or received through the email domain. This is most commonly done through the electronic communications policy or operations manual. By notifying franchisees ahead of time, a franchisor can avoid some potential complications arising from privacy laws and regulations and also preserve the ability to access and protect important data in the event of a termination. Likewise, if a franchisor is claiming ownership of all emails sent to or received from the domain, the ownership claim should be clearly stated.

Branding and Use

Similar to restrictions on the use of trademarks generally provided to franchisees, franchisors should provide guidelines regarding the use of the franchisor's name, logos, slogans, and trademarks in electronic communications. These guidelines might include restrictions on the use of multiple logos in emails or out-of-date slogans. They can also list inappropriate uses of email by franchisees such as communicating offensive messages, misrepresenting themselves, revealing confidential information, conducting or soliciting illegal activities, or misrepresenting their own opinions as those of the franchisor.

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Technology continues to evolve at a rapid pace, and properly addressing its legal ramifications is essential to maintaining a strong brand and reducing liability. Franchisors should frequently review and update their policies regarding franchisees' uses of technology, including email, to ensure appropriate actions are taken to address new developments.

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