



F R A N C H I S E L A W  
I N T E R N A T I O N A L T R A D E L A W  
B U S I N E S S L A W

## Franchise Agreement Summary Review

RE: [REDACTED] Franchise Agreement

We have reviewed the Franchise Agreement (the "FA") that you provided. We have not reviewed any other documents. We are pleased to give you the following comments and advice with regard to these documents.

Generally, franchise agreements are one sided and you need to be aware of the rights and remedies that the franchisor has under the agreements that you will sign. With certain important exceptions, we did not find the arrangement to have particularly onerous terms. With those same important exceptions in mind we would say that the arrangement is fairly typical, and it is largely fair to the franchisee in comparison to franchise industry norms. We will point out some of the greatest limitations and most important dangers for a franchisee below.

This summary of some of the high points of this franchise agreement is not a substitute for studying and understanding the entire agreement. Just because we do not mention a term or condition below does not mean it is not important. If you have questions about issues that we do not review below, please discuss them with us.

This summary review is not intended to be delivered to or shown to the franchisor or its employees or agents such as a broker. There is tactical advice concerning negotiation with the franchisor in this summary and showing it to the franchisor would compromise your position in these negotiations. Also, should you ever get into a dispute with the franchisor, this detailed evidence of what counsel you received could be used against you. As long as you do not voluntarily discuss the contents of this letter, you could assert attorney/client privilege to protect it in future litigation.



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### **FDD Notes:**

Item 1: This franchise has been around nearly 10 years which is a good sign. They have likely been through the typical franchise growing pains and have a well developed system. You are also more likely to benefit in a new market from a more mature franchisor but you likely will not have many opportunities to modify the franchise agreement.

Item 5: The initial franchise fee is \$60k for a single unit which is within the typical range but it's a bit higher than the average. Reduced amounts for multiple units which is typical. You are also responsible for additional fees including an initial marketing package of \$5k. This seems a bit high for what you get but as long as you see and agree with the value, I have no objection. Your software license fees will be \$3k upon signing. Under the management program you must pay \$2k/month (with \$4k-\$6k upon signing) and a recruiting fee of \$10k.

Item 6: The royalty fee is 8% of your gross sales, this is a bit on the high end but I expect your margins are better than most retail based franchise systems so a higher royalty is not likely a concern. Note your minimum royalty requirements, starting from \$600/month in your first year and rising to \$1k/month by year 3 and thereafter. I am not a big fan of minimum royalty fees but they are becoming more common these days. You do have a grace period of 90 days after opening which is great sign. Just be aware that in any slow months you will still be required to pay the franchisor even if you do not generate any revenue. Your brand contribution fee is 2%, this is within the usual range I see. You also have a technology fee of \$475/month. You will be required to spend up to 2% (and a minimum of \$500) per month on local advertising, this is typical.

Item 11: The typical time to open is 60 days (required within 90 days), this is very fast. You will want to make sure you have the time to devote to getting your unit (and subsequent units) open in this timeframe which includes the training.



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Item 12: The territory is based on a population of 250k which is a decent size. Since this franchise concept is based around children it may make sense to discuss with the franchisor about how to best capture a good territory. Maybe it makes sense to count only child-bearing population or households with children present. You don't want to end up with a territory with a general population that trends outside of your target demographic. Note that you are not permitted to advertise, solicit, or serve clients outside of your territory.

Item 19: This is the financial performance representations of the system. Note that only 7 units are detailed here in the FPR as the remainder were not open a full year in 2022. This is curious, for a system that has been around so long they have so few franchisees and the vast majority of them only joined in the last year. Some good details here but it is such a small data set I am not sure how relevant it may be for your specific market.

Item 20: This franchise system was very small until last year, interesting for a 10-year franchisor. Exhibit E contains the list of current any former (doesn't appear to be any) franchisees of the system. You should speak with as many current franchisees as you can. Also, if you can talk to franchisees who have left the system, this is a great source of information. If you try to speak to franchisees who have left the system and you are told that they are under a confidentiality agreement, that is a bad sign.

Item 21: The financials of the franchisor are attached as Exhibit D. The franchisor does not have a tremendous amount of cash on hand which may be a concern if they are unable to meet their obligations in the FA. Though they do have significant assets which is a good sign. The franchisor does not yet generate very much from royalties and does operate at a significant loss each year (and growing). This may be something to further inquire with the franchisor about their plan to become profitable.





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### **FA Notes:**

I. The following are issues that we believe require negotiation with the franchisor or some other immediate action on your part:

1. You are required in Section 7.2 of the FA to open your business within 90 days of execution of the Franchise Agreement. There is no financing or other contingency built into this time frame. If you are going to seek financing or have other considerations, you may want to ask for a revision of this section or deal with this issue in a side letter to the franchisor explaining the situation and your needs.



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