

Understanding the UFOC

How “Protected” is Your Territory?

By

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In the UFOC, the franchisor is required to disclose whether the franchisee will receive an exclusive or protected territory for its franchised business. It is extremely important to review this disclosure item carefully to determine the extent of the “protection” granted.

A franchisor is not required to offer a protected territory to a franchisee. Even without the grant of an exclusive territory it may be possible for a franchisee to make a claim that a franchisor has “encroached” by establishing other competing units nearby. However, if a protected territory is given, the franchisor is required to make several important disclosures which the prospective franchisee must carefully review.

The franchisor must disclose with respect to the protected territory:

- whether it can establish another franchisee using its Marks;
- whether it can establish a company owned unit;
- whether it’s parent or affiliates can establish other franchises using different marks but selling the same type of product or service; and
- whether continuation of the protected territory is dependent on a certain level of sales or other contingency.

Of those disclosures listed above, perhaps the most important is whether and to what extent the franchisor can compete with its own franchisee in the franchisee’s territory by offering goods and services through “alternate methods of distribution”. An example would be an ice cream franchise that sells prepared items in a supermarket located within the territory, or the sale of goods over the internet. In order to reserve those rights, it must be disclosed in the UFOC with corresponding provisions in the franchise agreement.

An experienced franchise attorney can help you understand the true significance of the UFOC disclosures and how they may affect the franchise you purchase.