



Franchise

HeplerBroom's franchise attorneys have broad experience with a wide range of industries, which means we have what it takes to help our clients develop and grow effective and compliant franchise systems and operations.

We work extensively in the areas of franchising and distribution, including:

- developing new franchise systems
- preparing franchise offering circulars
- complying with federal and state requirements
- negotiating contracts
- handling trials and appeals (at all levels of courts)
- representing clients in arbitration proceedings and mediation
- assisting clients in evaluating the impact of these areas on other client operations

We're experienced in working with legislative and regulatory bodies at the federal and state levels, and we keep up to date on relevant court and agency decisions.

We also help clients develop other forms of distribution, including distribution agreements, agency, and sales representative arrangements. (Although franchised businesses are an important economic force, the franchise model for distribution of products and services may not be the right direction for a particular business; careful planning and the advice of seasoned attorneys is vital for success.) We advise on the structure and implementation strategies that best meet the needs of each client's system, and we design compliance policies and procedures to protect a client's brand.

Whether you're a franchisor, manufacturer, supplier, or distributor, our experienced team can help you achieve your objectives.

KEY FRANCHISE SUPPORT AREAS

- **Litigation.** HeplerBroom's attorneys understand that litigation can disrupt a business's day-to-day operations and finances. We do our best to help our clients avoid costly litigation whenever possible (e.g., through informal negotiations or pre-dispute alternative dispute resolution clauses). But when litigation is unavoidable, we are aggressive in the defense of our clients. We appear regularly in federal and state courts, in industry arbitrations, and in state and federal regulatory proceedings.

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Some of the litigation matters we've handled include:

- Fraud and misrepresentation claims related to franchise disclosure documents (FDD)
- Termination or nonrenewal of the franchise relationship
- Enforcement of restrictive covenants
- Vicarious liability claims
- State franchise relationship and disclosure violations
- Defense of advertising/marketing fund claims
- Enforcement of operating standards
- Breach of franchise agreement
- Trademark enforcement
- Employment/independent contractor issues
- Third-party liability claims
- Business torts
- Antitrust and RICO claims
- Information and cybersecurity issues
- Consumer and franchise system class actions
- Insurance coverage

A few of the recent verdicts we've obtained for our clients include:

- Defense verdict in federal court for national franchisor on prospective franchisee fraud claim
 - Summary Judgment affirmed by the Eighth Circuit Court on franchisee RICO class action claims
 - Successful arbitration of pharmaceutical franchisee termination dispute, with recovery of lost profits
 - Enforcement in federal court of a post-term non-competition covenant and confidentiality agreement
- **Compliance with disclosure laws.** Franchises confront a labyrinth of domestic federal and state laws, as well as international regulations. Disclosure requirements vary widely by jurisdiction, and violations can carry harsh penalties. We've handled franchise review and registration matters in many states where prior registration and disclosure is required. We prepare state and FTC disclosure documents, franchise agreements, and ancillary documents necessary for the successful development, operation, and growth of a franchise system.

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- **Franchise relationship issues.** The franchise relationship is primarily contractual in nature, but it does involve specialized relationships. Our attorneys are experienced in dealing with the myriad issues that arise between franchisors and franchisees. We regularly deal with territorial disputes, post-term non-compete and confidentiality matters, employment and labor issues, sales and transfers of franchises, debranding, and protection of intellectual property rights.
- **Trademark and licensing issues.** Trademarks and licensing terms are key elements of the franchise relationship. We are experienced in securing injunctive and other relief under the Lanham Act, the federal Defend Trade Secrets Act of 2016, and relevant state laws. We also handle copyright and patent litigation matters.
- **Franchise/distribution system development.** Our franchise and distribution lawyers assist clients in assessing whether franchising is an appropriate method for distributing goods and services and, if so, what franchise structure is most appropriate (e.g., use of regional franchise brokers, sub-franchising, or area development agreements). We also provide counseling on financing, marketing, and evaluating antitrust considerations.
- **Distribution.** Many of our manufacturing, supplier, and distributor clients deliver a wide range of products and services in traditional distribution arrangements and through e-commerce. We assist them in achieving operating efficiency and avoiding unnecessary disputes by providing experienced advice on distribution contractual arrangements that enhance their operational objectives. HeplerBroom's franchise and distribution lawyers negotiate and draft agreements on behalf of our clients and counsel them about ongoing relationships, including potential termination and antitrust compliance and pricing issues.

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