Message

Letter of Comment No: 1
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Stacey Sutay

Subject: FW: File Reference No. 1082-300

-----Original Message-----
From: Steven D Wiener [mailto:wienerlaw@juno.com]
Sent: Thursday, November 06, 2003 1:44 PM
To: Director - FASB
Cc: johng@franchise.org
Subject: File Reference No. 1082-300

Dear Director:

I am commenting on FIN 46, which is still open for comment. This new standard is a big mistake, factually and legally unsupportable, and should be rejected.

I am an attorney. I have practiced franchise law for 27 years almost exclusively. I am a litigator, representing primarily franchisors in their business disputes.

The essence of the franchisor-franchisee contract is the independent contractor relationship. Essentially, this arms-length relationship means that the franchised businesses are independently owned and operated by independent business persons. Their profitability (or lack thereof) is not attributable to the franchisor, the franchisor is insulated from liability for injurious acts committed by the franchisee, and there is no unity of interest in their businesses.

The franchisee pays a royalty for the use of the trademark (or service mark) and the system. In the event of a default, the franchisor may try to declare the contract in default, but the franchisor can not step in, control the business or otherwise take affirmative actions in the franchised business. The franchisor can not hire or fire the franchisee's employees. They are not one business.

Please reject this new standard.

Steven D. Wiener

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