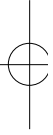


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# **Business Franchise Law**



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# **Business Franchise Law**

## *Cases and Materials*

Jeffrey A. Schneider

Robert J. Nye

CAROLINA ACADEMIC PRESS  
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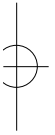
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  - (2) McDonald's Corp., Appellant, and Dax Prop CC First Respondent, The Registrar of Trade Marks, Second Respondent; and
  - (3) McDonald's Corp., Appellant, and Joburgers Drive-Inn Restaurant (Pty.) Limited, First Respondent, Dax Prop CC, Second Respondent, South Africa Supreme Court, Appellate Division (Case No. 547/95, August 27, 1996) Bus. Franchise, Guide (CCH) ¶ 7348—63
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# Preface

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Although franchising has become one of the most common means of operating and expanding businesses, relatively few lawyers are prepared to counsel or represent clients in franchise transactions or disputes. In addition, although most lawyers—and non-lawyers—can identify a number of enterprises as franchises, few lawyers unfamiliar with business franchise laws and regulations realize that those laws and regulations define and cover many other establishments and relationships.

Business franchise law can be divided into two rough categories: (1) statutory regulation of the franchise relationship and sales of franchises, and (2) statutory and common law not specifically created with franchising in mind, but commonly applied to the franchise relationship (and often in special ways). The second category includes areas of trademark law, anti-trust law, consumer protection law, and contract law. For example, franchises almost universally involve the use and licensing of trademarks as an integral part of the franchise relationship. A franchise lawyer must not only maintain a basic knowledge of trademark law, but also an understanding of the unique aspects of “trade dress”, a subset of trademarks commonly associated with franchised businesses.

The relationship between a franchisor and a franchisee is one that is not easily susceptible to traditional contract law analysis. Traditional contract law contemplates an agreement on one or a number of fixed transactions. The franchise relationship (albeit documented by a contract) is necessarily organic and amorphous. The franchisor must be able to grow and adapt its business over time, and to that end cause its franchisees to implement new procedures and provide new products intended to benefit all involved in that franchise system.

This book is primarily a compilation of short stories, most of which include as their protagonists a franchisor or a franchisee. Cases are most often chosen not for their precedential value, but rather for their effective explanation of the law, the policy behind the law, and the stories behind the policy behind the law. Most of the materials in this book are severely edited in an attempt to sharpen the reader’s focus on the subject matter. Because the cases and materials speak well for themselves, there is little need for explanatory text.

This book is designed for a semester course on U.S. business franchise law without any prerequisites. Nevertheless, even students with a background in trademark law, anti-trust, contracts, and civil procedure will find that the chapters on those subjects enhance, rather than review, their earlier studies.

The first two chapters introduce the basic concepts of franchising and the statutory framework governing the sale and operation of franchises. Chapter III discusses trademark law and trademark issues concerning franchised businesses. Chapters IV and V address the various laws governing the relationship between franchisors and fran-

chisees, including statutes specifically targeted to franchises, as well as general contract and common laws as they apply to this special relationship. Chapter VI explores federal and state disclosure and registration requirements involved with the sale of franchise units. Chapters VII and VIII deal with federal and state laws that focus on franchise relationships in specific industries. The final two chapters explore the impact of anti-trust and vicarious liability laws on franchise businesses.



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