

July 2001

AFA Writes Letter to Congress

Turn Up the Volume

Getting to Know Your Public Official

Bringing Out the Best in People-

And Keeping Them



Representing the interests
of small business
franchisees nationally.

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AFA Writes Letter to Congress

The following letter was sent to all 535 members of Congress last month. An article that appeared in *Franchising World*, a franchisor trade publication, prompted the letter. The article stated what franchisees have known for years—that franchise contracts are written with the intent of controlling the franchisee. While some degree of control is necessary for a healthy franchise system many franchisors arbitrarily deny certain franchisees the expected financial benefits of owning a franchise. The AFA wanted to reiterate this point to members of Congress. The entire text of the letter follows:

Dear Senator:

"For franchising to work, there must be imbalance in the contract."

Those startlingly candid words were written by Tom Murphy, the founder and publisher of the *Continental Franchise Review*, in the April 2001 issue of the magazine, *Franchising World*.

In a dramatically titled article, "Federal Legislation Could be Demise of Franchising," Tom Murphy, long known as a supporter of corporate franchisors, makes his case against the establishment of minimum standards governing the contractual relationship of franchisors and franchisees. In addition to the above, Tom Murphy, also writes:

"Didn't anybody tell these lawmakers that franchising is built on control?"

"There cannot be equal bargaining power in a franchise

"When nothing seems to help, I go and look at a stonecutter hammering away at his rock perhaps a hundred times without as much as a crack showing in it. Yet at the hundred and first blow it will split in two and I know it was not that blow that did it—but all that had gone before."

Jacob Riis

contract. ... This means a one-sided contract."

Tom is right.

The American Franchisee Association (AFA) has been saying this for years. By way of background, the AFA is the national voice for small business franchisees. We are a relatively young trade association and our membership of small business franchise owners has grown rapidly just as the franchising segment of the U.S. economy has expanded.

The AFA's mission is to protect the vested interests of our fellow entrepreneurs when jeopardized. Hundreds of thousands of franchise

businesses dot the American landscape employing millions of workers in seventy-five different industries. In short, franchisees are the engine that has propelled the growth of small business--the cornerstone of the American economy.

It is due to this overwhelming imbalance of both legal and financial power and resources that the American Franchisee Association (AFA), has actively solicited support for the establishment by law of baseline standards of conduct as proposed in the Small Business Franchise Act (SBFA), HR 3308, and introduced in the 106th Congress. Corporate franchisors deny they even have an obligation to operate in good faith with their franchisees. In fact, at a June 1999 hearing before the U.S. House of Representatives' Committee on the Judiciary's Subcommittee on Commercial and Administrative Law, franchisor representatives said it would cause them "irreparable harm" if they were required by law to





AFA Writes Letter to Congress cont.

deal in good faith with their franchisees. What does this say about the health and vitality of franchising? Or of the integrity of many franchisors?

Contracts between the parties to a franchise are intentionally designed to exploit the superior bargaining position of one of the parties to the contract—the corporate franchisors and their skilled lawyers. There is no freedom of contract when one party holds all of the cards. And there is no federal law that requires a reciprocal duty of good faith when dealing with contracts predicated on unequal bargaining power.

Further, as documented by a recent study of the major pizza franchises, of the top 8 franchisors that control more than 1/3 of the \$32+ billion market for ready-to-eat pizza, all offer nearly identical contract terms. Because there is no competition, you must enter into an unfair and unreasonable one-sided contract to be a franchisee. The same is true whether your goal is to sell hamburgers, eyeglasses, tax return preparation or any other product that is sold in a franchised business.

In other words, an entrepreneur wishing to enter or advance within an industry has two choices: join a franchise system, or go it alone and compete with franchise systems, which possess an overwhelming advantage. However, in determining which system to join, franchise agreements are substantively so alike that there is no real choice to be made. These agreements strip the prospective franchisee of any of the protections one would assume to be built-in to any normal business relationship.

In years past, Congress has had the wisdom to establish fundamental fair dealing ground rules for other classes of franchises and small business people. Congress enacted baseline standards of conduct for automobile dealers via the Automobile Dealers Day in Court Act and for the petroleum dealers via the Petroleum Marketing Practices Act. These laws both include a duty to deal in good faith but they don't apply to the most vulnerable class of franchisee, the small business franchisee.

The Uniform Commercial Code (which is in force throughout the 50 states and governs contracts for the sale of goods) also requires minimum standards of conduct and good faith in the

performance of these contracts. It can hardly be argued that the adoption of the UCC has caused "irreparable harm" to the sale of goods throughout our nation. Unfortunately the UCC does not apply to franchise relationships.

Currently, franchise relationships are governed by two mechanisms: (1) the Federal Trade Commission's (FTC) Rule regarding mandatory pre-sale disclosure, and (2) piecemeal and inconsistent state acts which are reconciled and interpreted only after costly litigation. Although the FTC Rule is designed to promote adequate pre-sale disclosure, the FTC has been totally ineffective in promoting fairness and free competition in franchising. The FTC does not review any of the representations contained in the Uniform Franchise Offering Circular, and it investigates less than 6% of the complaints alleging substantive violations of the Rule.

Furthermore, the FTC Rule has no bearing on post-sale activities within franchising. There is a great need for fair, universal standards for franchising. Federal relationship legislation will alleviate the inconsistent treatment currently suffered by the application of piecemeal state law. Federal relationship legislation will also ensure that the basic tenets of fairness and responsible business practices are a part of franchising. These results should encourage domestic investment within franchising, an institution which plays such a vital role in our national economy.

Tom Murphy is right. There is imbalance in the franchise contract. There is no equal bargaining power. This means a one-sided contract. Our membership believes it is high time that legislation is enacted to keep pace with industry changes and address the concerns of rank and file small business franchise owners.

The American Franchisee Association (AFA) is working now with your colleagues to introduce franchise legislation in the Senate. We ask for your support of small business franchisees by cosponsoring this important franchise legislation when it is introduced later this year.

Sincerely,
Susan P. Kezios
President





Turn Up the Volume

If you agree with our letter to Congress—that legislation is needed to balance the relationship between franchisors and franchisees—then you need to "turn up the volume" and send your own letter. Log on to AFA's website at www.franchisee.org and click on "Legislative Action." There are sample letters you can send to your Congressperson and Senator. You don't have to mail the letters...you can e-mail them directly from AFA's website (provided your Congressperson and Senator accepts e-mails).

Turn up the noise and you'll see franchisors becoming more reasonable and fair. Fail to do so and franchisors will continue to make arbitrary and unilateral decisions that may negatively affect your financial future.

Getting to Know Your Public Official

It is not difficult to meet and talk with your elected officials. You might want to invite your Congressperson or Senator to a grand opening or to a special event at your location. In your letter of invitation clearly outline photo opportunities and the number of constituents that will be in attendance. Another idea is to join a parade! It doesn't matter whether it's Labor Day or St. Patrick's Day, any parade will do. Walk and talk, or meet them at the beginning or the end of the festivities. Let them know that you appreciate their efforts and wish them well. Ask to meet with them on another day and call their office as a quick follow-up to get on their calendar. Always ask to be put on a cancellation list, too. If someone cancels an appointment with your Congressperson or Senator, let the scheduler know that you can fill in at the last minute.

A politician is a person; they have a dream of unifying people. They believe they can make a difference. In the end, it is to the people that they must make good on their promises. They are approachable, at different levels, depending upon position and power. And they will listen—if you are persistent in being heard.

(Adopted from an article written by Michael Samachson, Association for Fundraising Professionals (AFP), Chicago Chapter, Government Relations Committee Member.)

The Mission of the American Franchisee Association (AFA) is

- 1) To represent franchisees in all industries in the development of franchising;
- 2) To educate franchisees, the government, the business community and the public as to the needs and requirements of franchisees;
- 3) To improve and promote the business conditions for franchising generally; and
- 4) To protect and enhance the economic investment of franchisees.

Bring Out the Best in People- And Keep Them!

Looking for a speaker for your next event? Contact Ron Jasniowski at Integrity Training Institute and learn how his one-hour, half-day or full-day seminars can show you how to cut employee turnover in half, reduce expenses and increase productivity.

Ron also teaches a simple three-step method to give employees the recognition they deserve. His programs are interactive and utilize realistic ways for participants to achieve similar results. For booking details call Ron at 888-515-1776.

