

# BUSINESS & FRANCHISE LAW REPORT



THE INTERNICOLA LAW FIRM<sup>PC</sup>  
BUSINESS AND FRANCHISE LAWYERS

1-800-976-4904

## INTERSECTION OF BUSINESS & LAW

### Some Perspective for 2013...

In this edition of the Business and Franchise Law Report I discuss some exciting news that I would like to share with you. This news relates to my participation (as an owner and officer) in the acquisition of a franchise system and our efforts to redevelop and improve the franchise system and brand. For me, as a business and franchise lawyer, this is something that I am certain will add a new perspective and enhance the legal services and programs that we provide to our clients.

In preparing this report I am reminded of one important point: "THE PRIMARY PURPOSE OF A SUCCESSFUL BUSINESS IS TO SERVE AND ENHANCE THE LIVES OF THE BUSINESS OWNER, HIS OR HER FAMILY AND DEDICATED EMPLOYEES". This important point is one that, many times, is overlooked and sometimes lost. That is, sometimes our work overwhelms our lives and we lose perspective as to "why we are doing what we do".

So, as we enter a new year, now is a good time to refocus and recalibrate our "business perspectives". To that end, I would like to thank each of you for your support over the years, to thank you and, most of all:

BEST WISHES IN 2013!

### ABOUT THE PUBLISHER



Charles N. Internicola is a recognized authority in business and franchise law. Mr. Internicola represents closely-held companies, franchisors, distributors and

individual entrepreneurs in business and franchise transactions, licensing, general counseling and business litigation involving issues of unfair competition, trademark infringement, franchise disputes and partnership disputes.

Email: [cni@businessandfranchiselaw.com](mailto:cni@businessandfranchiselaw.com)

Telephone: 800.976.4904

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### BUSINESS LAW

Law

+

Entrepreneurship

?

**[CAUTION: IF YOU ARE A BUSINESS OWNER, ENTREPRENEUR OR FRANCHISOR, I MAY HAVE SOME QUESTIONS FOR YOU AND THEY HAVE NOTHING TO DO WITH LAW OR LEGAL ISSUES (More Below) (Also, see image above)]**

When originally planning The Business & Franchise Law Report, my goal was (and remains) to produce a monthly publication that focuses on issues and articles that have "real world business value" and application for our clients. That is, not just some newsletter that is "all about the law", but, rather, articles and information that advance a dialogue with our clients about improving their businesses and business systems.

That was my goal and, as I will discuss below, maybe there was a lot of foreshadowing as to my own desire to combine my passion for both the law and entrepreneurship. **The photo above is an actual photo taken from our office. The photo partially shows a delivery crate with approximately 20 of the 60 boxes of product mistakenly delivered to our office.** You see, a few months ago, myself and a group of competent executives acquired a franchise company with the goal of rebuilding a brand and franchise system. Like many things in life, this was not something that I was looking for but, ironically, was probably something I have been preparing for over the course of many years. So, on August 1, 2012, my company "Thoughts Are Things Franchising, LLC" acquired the ECOMAIDS brand and franchise system (Ecomaid is an innovative residential maid cleaning service). By the way, my commitment to the business and franchise law services that I offer and that my firm offers is not only stronger than ever but – due to my new additional role as business owner and franchisor – has been enhanced with an added perspective. I continue to practice law (full time) and a management team has been put into place for our new franchise company.

SO, WHY DO I MENTION THIS TO YOU – IN A LAW FIRM NEWS LETTER? To continue the dialogue that I have been so fortunate to share with many of you and to continue *Continued >*

[www.BusinessandFranchiseLaw.com](http://www.BusinessandFranchiseLaw.com)

# BUSINESS & FRANCHISE LAW REPORT

*Continued from page 1* the process of developing an environment where we assist one another, learn from one another and, collectively, “raise the bar”. In terms of our law firm I am excited about the enhanced (“value added”) legal services and programs this acquisition has already inspired. With this new perspective (lawyer + entrepreneur + franchisor) I had a few thoughts/experiences that I wanted to share with you that now, more than ever, I can tell you that I will truly possess an added perspective in understanding.

With that said, here are a few thoughts:

**1. [MY FIRST EXPERIENCE AS A LAW CLIENT]** I had my first experience as a “franchisor client” negotiating with an opposing attorney who was threatening litigation. Interesting how – as

an entrepreneur – I now perceive many (but not all) threats of lawsuits and litigation as a waste of “capital” and an unnecessary distraction from focused efforts on business development and expansion;

**2. [LAWYERS WHO ANNOY ME]** Lawyers who get involved in business deals without having an understanding of the underlying business and business goals, now bother me more than ever;

**3. [I WAS RIGHT]** As a lawyer, I am now even more committed to a proactive approach to preventing unnecessary litigation. Critical preventative efforts that remain abundantly clear and important to me include (a) a consistent (monthly) evaluation to protect intellectual property, including trademark and patent

filings and renewals; (b) redevelopment and improvement of license agreements, commission agreements, non-competition agreements and franchise agreement are critical; (c) regulatory compliance – whether it be CPSC for product labeling, FTC for Franchise Disclosure Document development, DOT for product shipments, etc... are important preventative measures that avoid wasted penalties and legal fees; and

**4. [ANY THOUGHTS]** If you have any comments, please let me know. Even better if you would like to share a viewpoint about law, business, let me know, the staff would be glad to include in our next publication. To share your comments email [vg@businessandfranchiselaw.com](mailto:vg@businessandfranchiselaw.com).

BUSINESS AND FRANCHISE LAW

## ALERT

### “Green Marketing” Outrageous FTC Regulations You Need To Be Aware Of

If you are a business owner or marketer, the Federal Trade Commission’s (“FTC”) recently revised “Green Guide” will affect your business. In today’s marketplace, most businesses are cognizant of the fact that consumers are increasingly concerned about the environmental impact a product or service has and will make purchasing decisions based on certain environmental impacting concerns. The revised “Green Guide” is the FTC’s attempt at regulating marketing claims on a product, package or service (which includes environmental claims in labeling, advertising, promotional materials and all other forms of advertising) in an attempt to thwart unfair or deceptive environmental claims made

by organizations. To comply, organizations must ensure that all reasonable interpretations of their environmental claims are truthful, not misleading and supported by a reasonable basis before the claims are made.

#### Who is Affected?

Essentially, every business that makes any claim or impression of its product or service having a beneficial environmental impact is subject to these new guidelines. Even if your business sells exclusively to other businesses, your environmental claims will be scrutinized by the FTC.

#### What is an Unfair or Deceptive Environmental Claim?

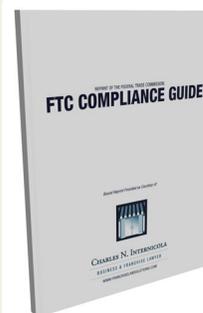
When the FTC reviews an environmental claim to determine whether the claim is deceptive, it looks to the “net impression” the claim presents. Organizations must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims.

#### The Five Most Common Environmental Claims Traps for Businesses

(i) Not Specifying What the Claim Refers To – unless it is absolutely clear, an environmental claim should specify whether the claim refers to the product, the product’s packaging or service.

For example, if a product’s packing contains the recycling symbol alone, the organization must make sure that the packaging and the product itself is 100% recyclable. If the recycling symbol only referred to the product’s packaging and this fact is not specified, it would be considered a violation under the FTC’s new guidelines. If the recycling symbol had been qualified with a statement such as “Packaging is 100% recyclable”, it would not be deemed deceptive (assuming that the packaging is 100% recyclable).

(ii) Overstating Environmental Benefits – an environmental claim should never overstate the environmental benefits the product has. For example, if a claim is made that a product is produced using 50% less plastic, but *Continued >*



#### FTC COMPLIANCE GUIDE:

Complimentary copies of our FTC Compliance Guide are available to start-up and established franchisors.

To receive a complimentary copy visit our website or contact Victoria Gracia at [vg@businessandfranchiselaw.com](mailto:vg@businessandfranchiselaw.com)



*"No government ever voluntarily reduces itself in size. Government programs, once launched, never disappear. Actually, a government bureau is the nearest thing to eternal life we'll ever see on this earth!" - Ronald Reagan*

*Continued from page 2* uses an alternative component that is equally or more harmful to the environment than plastic, this claim would be considered deceptive.

iii) Comparative Claims – when comparing your product or product packaging to another company’s product or your own organization’s predecessor product, the environmental claim must specifically state the comparison. An example of a violating environmental claim is one that only states “40% More Recycled Content”. A non-violating claim would be one that states “40% More Recycled Content Than Our Previous Products”.

(iv) Product Names/Logos – even if no particular “claim” is made, the FTC will consider it a violation if a product or company name has the “net impression” of having an environmental benefit when it does not. For example, a company or product by the name of “Earth Friendly” would probably be in violation, according to the FTC, if the product or services offered by the company were not, in some way, beneficial to the environment. Similarly, a logo for a company or product that gives the impression of an environmentally friendly product would be under the same scrutiny.

(v) Environmental Endorsements and Certifications – many organizations will use certifications or seals to promote their environmental superiority. The FTC will consider it a violation if the certification or seal is not legitimate or is false as to its environmental benefit for one reason or another.

**Keys to Avoiding Misrepresented Environmental Claims**

(i) Substantiate All Claims – the most

important thing an organization can do is to maintain a record that will substantiate any environmental claims made. The substantiating documentation must be considered “competent and reliable scientific evidence” of the claim.

(ii) Assume the Claim is Being Interpreted by a 5 Year Old – as discussed above, the claims are subject to all reasonable interpretations as to whether they are deceptive or not. When making or reviewing an environmental claim, you must keep this in mind and assume that consumers with less than average intelligence are going to read it and you have to read the claim and interpret it as those people would.

(iii) Be Conscious of What Constitutes a Claim – even if you are not making a specific environmental claim, you must understand that any inference to the environment, whether it be a name or logo, could be considered an environmental claim and subject to the FTC’s scrutiny.

When dealing with environmental claim issues, the most difficult thing to overcome is the lack of common sense associated with FTC’s rules. It is frustrating for myself, as well as my clients. Unfortunately, the term “common sense” did not make it to the revised Green Guide and it is something that we are stuck with. While it is understandable to have certain guidelines to protect consumers, I believe accounting for all reasonable interpretations of a claim is truly unreasonable and an overreaching burden on our businesses by our government. That being said, there are ways to structure your environmental claims so that you can avoid our government’s reprimand. Prior to finalizing your product, labels, packing or advertising materials, you should have your legal counsel review any potential environmental claims to ensure the claim would not be deceptive or misleading in the eyes of the FTC.

**BUSINESS AND FRANCHISE LAW  
BEST PRACTICES**

**Q: What are environmental marketing claims?**

**A:** According to the FTC an environmental marketing claim relates to and includes “an expressed or implied claim that presents an objective assertion about the environmental attribute of a product, package or service”.

**Q: Why should you care about environmental marketing claims?**

**A:** Because the FTC has interpreted existing rules and regulations to apply to environmental marketing claims. The FTC has issued guidelines that prohibit a broad range of “environmental representations” claimed by the FTC to constitute unlawful deceptive acts and practices.

**Q: What do the FTC guidelines apply to?**

**A:** Environmental claims included in labeling, advertising, promotional materials and all other forms of marketing whether asserted directly or by implication.

**Q: What about making a comparative claim dealing with my product?**

**A:** When making an environmental claim that offers a comparison to other products or prior product versions to the claim itself must be sufficiently clear to avoid deception. Also, you must maintain evidence to substantiate this claim. For example, according to the FTC it is deceptive to simply state that a product “contains 20% more recycled content”, where no additional comparative reference is provided as to what this claim is based on, i.e. 20% more than a competitor’s product? 20% more than prior packaging?

# BUSINESS & FRANCHISE LAW REPORT

## NEWS



### Excellent Resource Recommendation



In this report I discuss the acquisition of a franchise system and brand. To the left is the old logo and to the right is the revised logo. For the logo redesign our management team used [www.99Designs.com](http://www.99Designs.com). 99 Designs is a cost effective service if you are looking for graphic and logo designs.



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1000 South Avenue - Suite 104  
Staten Island, NY 10314  
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