

## Trademark Licensing Versus Franchising



### **What are the primary differences between buying a franchise versus Trademark License for a Brand Name?**

1. In general, the primary difference between a license and franchise opportunity is the amount of control that the franchisor or licensor exercises over its franchisees and licensees, respectively. A franchise has to be registered, because the control in making money is like a security so that it has to be registered; i.e. whether or not one makes money on a security is based on the work of a third party (i.e. the company that issues the security) and not the purchaser of the security. In the same manner, a franchisee is much like the purchaser of a security, because the franchisor represents that the franchise plan is the way to profits and the franchisee only has to carry out the franchise plan, and it will be profitable (Here, the franchisee is relying on a third party for profits, but this time it is the franchisor and his plan.). Thus, the government requires disclosure of the risks to the potential franchisees just like the government requires a disclosure of the risks in buying a new stock issue. There are government requirements of registration of both for the same reason; to protect the public and give the public full disclosure of all risks before purchasing. Most importantly, a licensor cannot tell the licensee how to accomplish his goal of making profits after he becomes a licensee, and the reason for this is that the licensee is an independent contractor who can do anything he wants to make the profits. He does not have to follow the rules of a franchisor or a licensor; he can make up his own rules. Thus, the profit is not on us, it is on the licensee and NOT the licensor.

2. The licensor can require the licensee to do certain things that (1) protect the trademark of the licensor where a trademark licensing agreement is involved, and (2) provide reporting to the licensor that would be commonly available in any business contract where one needs information to audit revenues. The long and short of it, if the licensee is truly an independent contractor and can do his work in his licensed business in the manner, time, hours, and use of equipment etc. that he chooses, then he will be a licensee.

3. Purchasing the use of a Trademarked Brand Name allows the Licensee more freedom from the Licensor. The licensee must comply with the trademark license agreement and must maintain the integrity of the Brand, but does so without the day-to-day Franchisor looking over the Franchisee's head. The Licensor has the right to protect the value of the trademark including demand for "Brand continuity" and if the Licensee chooses to violate these provisions or alter the logo in any manner, the Licensee can lose his right to the use of the Trademark.