

BY KENNETH R. COSTELLO

Top 5 2012 Resolutions

As we enter 2012 sharing traditional best wishes for a healthy, happy, and prosperous New Year, we offer a “Top 5” list of resolutions for your consideration. While few of the 10 downturns in the last 70 years lasted even a full year, we are entering the fifth, and hopefully last, year of the current stubborn recession. While most would think that franchisors have exhausted all of the good ideas for responding to this downturn, there may still be a few ideas worth considering.

1. Spit shine your FDD. Although the FDD is a legal document with specific disclosure and formatting requirements, the law does not require a dry, technical, and verbose tome. With a little effort, the FDD can be dressed up and become a better sales tool. What might pass as legally adequate may not be fully effective in this environment. Consider cleaning up and simplifying your FDD.

Item 1 can be embellished to better distinguish what separates your franchise offering from the pack. Can you do better than “We franchise restaurants that feature hamburgers, fries, and beverages”?

Item 2, while requiring a five-year employment history of your key executives, allows additional relevant details on their backgrounds.

Item 7 permits you to use footnotes to better explain the range of a franchisee’s estimated initial investment and how their costs might be controlled.

Consider adding (or restructuring) an Item 19 Financial Performance Representation. What is more important to a prospect in this economy than to know which franchise opportunity offers the best chance for success? If you have a good story to tell, shout it out! Also consider using a supplemental FPR for a particular location or variation.

2. Review and rethink your franchise agreement. This may be a little more controversial, but a growing num-

ber of franchisors have announced special incentives to help sell franchises and strengthen their franchisees’ competitive position for success in the recession. To cite just a few examples, Popeyes has offered to waive its initial franchise fee for new franchisees and reduce the first year’s royalty rate from 5 to 2 percent; and Papa John’s and Denny’s are establishing lending programs, cutting back royalty fees, and offering franchisees other assistance to grow new markets and help those in difficulty. Even if it hurts earnings in the short term, consider the long-term possibilities.

3. “Like” social media. Facebook and other social media are all the rage these days. But it takes time and effort to develop and implement a coherent strategy to make it work to your advantage. Don’t abdicate all control and responsibility to your franchisees. You should establish protocols and policies to manage their use and ownership of Facebook, Twitter, and other social media subdomains and subaccounts; also, monitor third-party postings and gripe sites, customer comments, and other content.

Add appropriate provisions in your franchise agreement and develop a social media policy for your operations manual. Understand the applicable laws, including the FTC Rule on Endorsements and Testimonials in Advertising (don’t post a fake positive rating to counter a customer’s bad rating); the Children’s Online Privacy Protection Act (ask Mrs. Fields about its \$100,000 FTC fine); and learn how to avail yourself of the protections afforded social media platforms by the Digital Millennium Copyright Act and Communications Decency Act. Instruct your franchisees on how to properly engage in social media advertising, and plan how you will react to negative postings and those that threaten to go viral.

4. Travel the world. International franchising is exploding from Asia to the

Middle East. Despite the global recession there are exciting growth opportunities in many foreign markets. But do it wisely. Dozens of countries now require pre-sale disclosure and even government registration before you may sell franchises and which regulate franchise relationships. There are many business and legal issues and nuances you must understand and address to successfully franchise internationally. First and foremost is to protect your intellectual property. Once your growth and success are blasted over the Internet, IP pirates are standing at the ready to grab your trademarks and your country-specific domain names. So be proactive, even if you’re not quite ready to go global.

5. Don’t use “Olympics.” Every time the Olympics Games roll around, there is a temptation to run some special advertising or marketing campaign to take advantage of the excitement of the upcoming events. However, federal law gives the International Olympic Committee (IOC) the exclusive right to the commercial use of the five interlocking rings emblem and the words Olympic, Olympiad, Citius Altius Fortius, and similar words tending to cause confusion, or to falsely suggest a connection with IOC—and the IOC is ready to pounce on offenders.

Also worth noting is that in today’s economy, many (if not most) of the new franchised locations opening in the U.S. appear to be taking advantage of sites where other concepts have been unable to weather the storm. That is, growth is not incremental, but opportunistic. So we wish you well and hope that this new year offers a rising tide lifting all of our boats. Happy 2012! ■

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