Franchise Law Alert: GPM Lawyers Argue Against Adding Summary and 12 New Disclosures to FDDs

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In 2007, when the FTC last revised its franchise disclosure requirements, the FTC announced that it would evaluate the FDD again in 10 years (2017). As the FTC staff was preparing to undertake its review, President Trump issued an executive order freezing all proposed new regulations. The FTC interpreted that as a freeze on its review of the Franchise Rule. In February 2017, President Trump issued a new executive order requiring all agencies to review all regulations that they administer to determine whether they should be repealed, replaced, or amended. So, one way or the other, franchise disclosure requirements are undergoing a review.

Possibly in anticipation of the FTC's previously announced Rule review, incoming ABA Forum on Franchising Chair, Eric Karp and his partner, Ari Stern, argued in a Spring 2016 *Franchise Law Journal* article for amending FDD requirements to add a "Summary" disclosure to existing FDDs. The Summary is, in effect, a table of mostly new disclosures primarily focused on first year performance of franchisees. In the Winter 2017 issue of the Franchise Law Journal, GPM lawyers Carl Zwisler, John McNutt, and Frank Sciremammano argue against the proposal, explaining that it would add eighteen new disclosure requirements, many of which could not be satisfied by most franchisors. The Gray Plant Mooty attorneys explain that the purported basis for the Summary -- that prospective franchisees don't read FDDs -- is contradicted by the studies Karp and Stern cite to support their arguments. Moreover, Mr. Zwisler and his colleagues argue that the proposed Summary, which would not allow footnotes or explanations, would be inherently misleading. The additional requirements would also make FDDs longer and more confusing for prospective franchisees.

The GPM attorneys also analyze each of the eighteen proposed new disclosures and describe the problems they would cause for franchisors and for prospective franchisees. Finally, they comment about how the franchise sales process has changed since the original FTC Franchise Rule became effective in 1979. With abundant resources available through the Internet, prospective franchisees can easily analyze and study most franchises they would consider before they would ever receive an FDD. Today, FDDs are reviewed by franchise rating companies as a basis for their rankings. Lenders also scrutinize FDDs to determine whether to lend to franchisees of a franchisor. Franchise rating companies and lenders distill their analysis into either rankings or decisions about extending credit. Regardless of the extent to which prospective franchisees read

and understand FDDs (Karp and Stern cite sources showing that 82% of franchisees responding to a survey read the FDD and franchise agreement before signing it, and 76% had consulted with a lawyer, accountant or franchise consultant before acquiring their franchises) these new "gatekeepers" provide a further layer of protection for prospective franchisees.

Zwisler explained that it is very important for the FTC and potential legislators and regulators to understand the dangers of the Karp and Stern proposal, lest it be seriously considered. "Whether the issues are taken up by the FTC in its review of the Franchise Rule, by the NASAA Franchise Committee, or by state legislatures, someone needed to refute the assumptions, misconceptions and proposed remedies for them in the Karp and Stern proposal."

Click here to view the full *Franchise Law Journal* article.