

# Safeguarding Your System: Trade Dress Protection for Franchisors

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Legal Solutions for Business Objectives.



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# What is “Trade Dress” in a Franchise System?

- Trade dress is the “look and feel” layer of brand protection that sits alongside trademarks
- Typical trade dress in franchise systems:
  - Store layout, buildouts, uniforms, packaging, online and digital brand elements, color schemes, menus, signage, décor
  - Ensures consistency
- Inherent distinctiveness vs. acquired distinctiveness (secondary meaning), and why franchise systems often have a stronger secondary-meaning argument than standalone businesses
- The line between protectable aesthetic choices and functional design elements

# Protecting a Franchise System's Trade Dress

- Trade dress protections generally exist in:
  - Franchise agreements
  - Operations manuals
  - Brand standards
- Design patents as a complementary tool
- State-level trade dress protections

# Enforcement and Risk Management

- Enforcement against a terminated franchisee and against copycat competitors
- Monitoring for third-party infringement: competitors adopting confusingly similar trade dress, former franchisees who rebrand but retain key design elements
- Cease-and-desist considerations and Lanham Act likelihood of confusion claims — the basics of what you need to prove
- Risks of failing to enforce
- Risks of inconsistent franchisee compliance
- Assess own trade dress as a proactive defensive step

# Q&A

# Contact us

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