



The American Bar Association Forum on Franchising
31st Annual Forum on Franchising

Deep in the Heart of Franchising



October 15 ~ 17, 2008

The Hilton, Austin, TX

ABA
Defending Liberty
Pursuing Justice

Welcome

Come join us in Austin, Texas, widely known as the “Live Music Capital of the World,” for what promises to be another spectacular Forum. The Hilton Austin is located just blocks from historic Sixth Street and the Warehouse District, known worldwide for their superb live music venues and restaurants. Along with timely and insightful programs and materials and great opportunities for networking and relaxation in Austin’s unique environment, this year’s Forum will include some of the best in live music entertainment.

The Forum will again present a mix of first-rate practical, educational and entertaining programs offering something for everyone, whether you are in-house or outside counsel, counsel to franchisors or franchisees, a litigator or a transactional lawyer, experienced or new to franchise law, or an international practitioner. Three Wednesday “Intensives” will offer full-afternoon programs on the insights gleaned by practitioners and regulators in interpreting and complying with the new disclosure regime imposed by the amended FTC Rule, an in-depth look by some of the country’s foremost franchisor and franchisee litigators, along with a respected evidence professor from the University of Texas Law School, at critical evidentiary and trial issues that often arise in franchise litigation, and the Forum’s perennially popular Fundamentals of Franchising® program. Thursday’s plenary session will be a program on written advocacy and contract drafting given by Bryan Garner, dubbed by The New York Times as “the persnickety stylist for a linguistically challenged profession,” whose latest book on legal argument, co-authored with Justice Antonin Scalia, is scheduled for release this Spring. In addition to the Forum’s signature Annual Developments plenary session on Friday, this year’s Forum will also include a full slate of cutting-edge workshops Thursday and Friday on franchise counseling issues, developments in international franchise law, advanced franchise litigation issues, and ethics issues arising in a multi-jurisdictional franchise practice.

In the evenings, we will enjoy some of Austin’s live music and unique venues. Thursday night’s reception/dinner will be held at the new Bob Bullock Texas State History Museum and will include performances by LZ Love and Carolyn Wonderland. Friday evening will also be truly special, with a casual dinner at Antone’s, one of the true homes of the blues in the United States, followed by an evening of high-energy southern pop and roadhouse blues with nationally renowned singer/pianist Marcia Ball.

On Saturday, you can participate in the Forum’s annual community service event, or enjoy an excursion with guests into the beautiful Texas hill country.

Austin’s roles as the capital of Texas, the home of the University of Texas, and the center of the live music industry combine to create an atmosphere that is one of a kind, and the franchise legal programs at this year’s Forum will again be the most useful and informative anywhere. This Forum will be memorable, and we look forward to seeing you there.

Joseph J. Fittante, Jr.
Program Co-Chair

Peter J. Klarfeld
Program Co-Chair

Leadership



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Program Descriptions

Intensives

I-1 Fundamentals of Franchising®

This program provides a comprehensive overview of franchise law for those who want an introduction to the field, as well as those who would like a refresher on one or more areas of franchise law. Some of the nation's top franchise lawyers will discuss structuring the franchise relationship, disclosure and registration requirements, defining and protecting a franchise system's intellectual property, franchise relationship laws, antitrust considerations and representation of franchisees.

Speakers: Jennifer C. Debrow Harris J. Chernow Steven M. Goldman
Kathryn M. Kotel Leslie Smith-Porter Dennis E. Wiczorek

I-2 Developments Under the Amended FTC Rule – Learning from our Mistakes

When the amended FTC Franchise Rule and Statement of Basis and Purpose were adopted in January 2007, no additional guidelines were issued at the time. Since then, both NASAA and the FTC have worked to clarify some potentially ambiguous provisions of the amended Rule. A panel of veteran franchise lawyers, an experienced franchise paralegal and federal and state regulators will review the development of additional commentary on the amended Rule, including the recently issued FTC Compliance Guide, and provide insight on issues clarified as well as those left unresolved. In addition, with the mandatory compliance date for disclosure under the amended Rule having passed, the panel will discuss lessons learned to date. This workshop will also draw on the experiences of state regulators who will describe issues they are encountering in the registration process, and the panelists will discuss best practices in addressing them. Finally, the panelists will identify the states that have not changed their laws to mirror the amended Rule's delivery or disclosure requirements, and will address special challenges in those states.

Speakers: Victoria T. Blackwell Dale Cantone Anne Connelly
Lois C. Greisman (FTC) Susan Grueneberg Kevin P. Hein
Janet L. Reyes

I-3 Evidentiary and Trial Issues in Franchise Cases

In this advanced program, experienced franchisor and franchisee trial counsel, together with a highly respected evidence professor from the University of Texas Law School, will explore critical evidentiary and ethical issues that often arise in the trial or arbitration of franchise disputes. The panelists will offer practical suggestions with respect to introducing or objecting to key evidence and will consider the strategic implications of evidence issues that must be considered in trial planning. The issues the panel will discuss include whether evidence of dealings with other franchisees can be introduced in a franchisee's trial; whether outside franchisor counsel who signed a termination letter (or drafted the franchise agreement) should be disqualified from acting as trial counsel; whether trial counsel can interview the other side's present or former employees without going through opposing counsel; whether a disclosure document is "extrinsic evidence;" what type of evidence is relevant to proving or disproving an alleged breach of the implied covenant of good faith performance; and whether "expert" testimony on "the nature of franchising" or what is "normal in franchise arrangements" should be admitted into evidence. The panel will also consider cutting edge issues relating to the use and admissibility of electronic evidence, including Internet postings, instant messaging, and historic web pages. This program will be interactive with audience participation encouraged.

Speakers: Carmen D. Caruso Jon P. Christiansen Michael Garner
Steven Goode Robin M. Spencer



Plenary Sessions

P-1 Making the Pen Mightier than the Sword

Written advocacy and contract drafting are critical to the role of franchise counsel, but when was the last time you really thought about and refined those skills? In this plenary session, Bryan A. Garner, co-author with Justice Antonin Scalia of the recent book "Making Your Case: The Art of Persuading Judges," will help you do just that. Mr. Garner will focus on writing and drafting techniques that result in more effective and persuasive legal documents. At the end of this session, you will be better able to frame issues in a way that will get the judge's attention; achieve a leaner style of writing; and draft clearer and more precise contracts. Join "America's foremost scholar on the language of the law" to learn how to write more clearly and powerfully.

Speaker: Bryan A. Garner

P-2 Annual Developments

This is the Forum's signature event. Join us for a lively, thoughtful and comprehensive review of the year's key judicial and legislative developments affecting franchising and distribution.

Speakers: David A. Beyer Natalma M. McKnew

Workshops

W-1 Advanced Disclosure Issues Under the Amended FTC Rule

This advanced program is a must if your practice involves franchise registration and disclosure work. The panel will review the recently issued FTC Compliance Guide, the issues clarified by the Guide, and those left unresolved. The presenters will also identify and address state-specific disclosure issues still outstanding after adoption by some registration states of the amended FTC Rule. Finally, the presenters will discuss e-disclosure issues and share practice tips on thorny disclosure issues created by the amended Rule.

Speakers: Dale Cantone Lee J. Plave Craig Tregillus(FTC)
William K. Woods

W-2 A Basic Overview of Franchise and Consumer Advertising Standards

This program focuses not only on franchisee solicitation materials but also on consumer advertising at the unit level. The program will discuss the different types of advertising being used to solicit franchisees, what constitutes franchise advertising under various state laws, which states require the filing of advertising, timing of state approval, exemptions or exclusions from state law for certain types of advertising, and unique state requirements with respect to advertising. With respect to consumer advertising, the panel will discuss FTC guidelines on representations in advertisements, consumer or competitor false advertising claims, copyright infringement issues, and what constitutes mere "puffery".

Speakers: Carol Anne Been Sarah J. Yatchak

W-3 Calculating and Proving Damages in Franchise Termination Cases

How do you prove damages in a franchise termination case? Can the franchisor recover lost future royalties if the termination is found justified? Can the franchisee recover lost future profits if the termination is found unjustified? Are liquidated damages provisions desirable and enforceable? Can punitive damages be awarded for a bad faith wrongful termination? This program will cover the theory of contract damages and its development under the laws of different states in franchise cases. It will also address use of expert witnesses in valuing a franchised business whose franchise agreement has allegedly been wrongfully terminated. Franchisor and franchisee counsel and an experienced damages expert will discuss these issues.

Speakers: Christopher P. Bussert Robert M. Einhorn Christopher A. Martinez

W-4 Recent Changes and Trends in International Franchise Laws

The international regulation of franchising grows every year as new countries introduce or amend their franchise laws. This round-up session will summarize the most significant international franchise developments in the past three years. The speakers will discuss the recent adoption of franchise sales laws in Belgium, Sweden, Viet Nam, and an additional Canadian province, and review significant changes to the franchise laws in Australia, China, Indonesia, Mexico, South Korea, and Spain.

Speakers: Andrew P. Loewinger John Pratt

W-5 Determining the Rules of Engagement in Litigation Here and Abroad

“The Rules of Engagement” in litigation are the initial procedural decisions regarding personal and subject matter jurisdiction, venue and transfer, and the applicable law. The Rules of Engagement were reported in last year’s Annual Developments program to be the subject most commonly addressed in reported franchise decisions. Moreover, these initial skirmishes often promote early settlement, either because there is a ruling that the case will proceed in a venue that is considered inhospitable or because the law found to apply is considered unfavorable to one party. This program will provide an overview of the current domestic and international law on these issues as they are presented in franchise litigation, discuss the extent to which these issues can be controlled contractually, and highlight tactical opportunities.

Speakers: Kirk W. Reilly Robert F. Salkowski Geoffrey B. Shaw

W-6 Operating Manuals – The Devil is in the Details

This program will include an overview of franchise Operating Manuals, and discuss the timing, process and purpose of writing the Operating Manual, what information should be covered in it and the various forms that the Operating Manual may take. The panelists will also discuss techniques for drafting franchise agreement provisions relating to the Operating Manual; limitations on and risks relating to effecting system change through the Operating Manual; and vicarious liability and joint employer issues arising out of the Operating Manual.

Speakers: Amy Cheng Craig Dietz David W. Oppenheim

W-7 Anatomy of the Sale of a Brand

As evidenced by the recent high profile sales of some large franchise companies, merger and acquisition activity in the franchise sector has heated up. This program is a must for any practitioner who may be involved in the acquisition or sale of a franchise company. The panel will discuss due diligence, disclosure, and encroachment issues, challenges in integrating multiple brands when each retains its prior identity, conversion issues when franchisees of one brand convert to the other brand, and the complexities associated with operating multiple brands post-sale. The program will also explore the common provisions found in an acquisition agreement.

Speakers: Charles S. Modell Mark A. Robertson

W-8 Franchising in Unique Venues

What issues are presented when a franchisor allows a second franchise to be operated within a host brand (for example, a branded restaurant within a hotel) or grants franchises in venues such as military bases, airports, sporting facilities and similar locations? This program will explore the legal issues that arise in these types of situations. The program will also address how to negotiate and contract with governmental and quasi-governmental agencies that operate or bid out concessions to be operated on government property and how to deal with Requests for Proposals (RFPs) and set-asides for local, minority or small/disadvantaged ownership.

Speakers: Adam Ekberg Jeffrey A. Brimer Scott P. Weber

W-9 Consumer Class Actions and Actions by State Attorneys General

From suits under the federal Fair and Accurate Credit Transactions Act (FACTA) to deceptive advertising claims, franchisors and franchisees are increasingly being sued in class actions filed by consumers and in actions filed by state attorneys general to vindicate perceived consumer rights. Those suits present difficult strategic decisions for counsel, whether a franchisor, a franchisee or both are named as defendants. This program will discuss the nature of the current wave of claims; how potential vicarious liability theories, indemnity obligations and other tensions in the franchisor-franchisee relationship can complicate the defense; how insurance coverage issues can affect the choice and role of counsel; strategies for resisting class certification; and strategic and ethical considerations involved in settlement of class claims.

Speakers: Paula J. Morency Cynthia W. Scherb

W-10 Vicarious Liability

When a franchisee breaches a legal duty to a customer or an employee, is the franchisor also liable? What are the practical issues that arise in defending cases where both the franchisor and franchisee are sued based on actions by the franchisee? This program will focus on key areas in which franchisors have been subjected to claims of vicarious liability and discuss the law governing such claims. It will also examine the practical considerations that arise in defending claims brought by injured third parties, including the extent to which the franchisor's and franchisee's interests are aligned, the desirability of a joint defense, the role of insurance coverage in structuring the defense, and juror preconceptions regarding the control exercised by a franchisor over a franchisee operating under its marks.

Speakers: Cynthia M. Klaus Jason M. Murray Heather L. Smedstad

W-11 Navigating the Exemption/Exclusion Maze under the Amended FTC Rule and State Laws

This program will analyze the exemptions to, and exclusions from, the amended FTC Rule, highlighting unresolved issues relating to qualification for and use of these exemptions and exclusions. The presenters will also compare the exemptions and exclusions at the federal level with those found at the state level and discuss the differences between the regulatory schemes. The program will analyze state-specific differences in exemptions and discuss the effect of state business opportunity laws on exemption usage in non-registration states. Finally, the program will touch on what it means to be "exempt" and identify state peculiarities in qualifying for an exemption.

Speakers: Earsa Jackson Karen B. Satterlee

W-12 Cost Containment Strategies for Franchise Disputes

This program will explore the challenges of managing the expense of franchise litigation from the perspectives of both franchisor and franchisee. What strategies can be utilized to monitor and manage costs of disputes between franchisors and franchisees? What techniques work and why are some more successful than others? What are the pros and cons of engaging in alternate dispute resolution? How can you manage franchise litigation and arbitration efficiently, and spend less, without compromising the ability to present your case effectively? The panel will bring the benefit of experience and insight to these difficult and important questions.

Speakers: Marcus A. Banks James A. Goniea Michael Einbinder

W-13 New Media Threats - Responding to Cyber-Attacks

Many companies have had to confront what to do when a disappointed customer vents his or her complaints over the Internet. Franchisors face additional problems since unhappy franchisees may also take to the Web to air their grievances and, in so doing, may disclose confidential or proprietary franchisor information. This program will review some of the steps a franchisor might take when dealing with complaints that appear on the Internet. The presenters will review the myriad ways that an unhappy person can communicate potentially harmful views electronically. They will also discuss the increasing tension between trademark law on one hand and principles of free speech and fair use on the other, as reflected in such matters as fights over Internet domain names and third parties' use of marks in communications critical of the mark owner. The presenters will also provide a basic overview of trade libel laws and address franchise agreement language that can be used to address these issues.

Speakers: Priscilla L. Dunckel Michael K. Lindsey

W-14 Litigating a Claim Under the PMPA

This program will address the procedural and strategic aspects of litigating a wrongful franchise termination claim under the Petroleum Marketing Practices Act ("PMPA"). It will examine from the franchisor and franchisee perspectives the issues encountered at the preliminary injunction stage, the summary judgment stage and at trial on the merits. The presenters will pay particular attention to common evidentiary issues and pitfalls, expert witness strategies, and damages claims. They also will discuss strategies for the presentation of evidence, arguments of counsel, and jury instructions. The program will also explore the extent to which the PMPA may preempt state common law and statutory claims.

Speakers: Albert J. Barr Michael J. Lockerby David M. Harris

W-15 Depositions in Franchise Cases

Preparation of witnesses for depositions in franchise disputes can make or break a case. This program will discuss strategic and privilege issues that must be addressed in preparing franchisor and franchisee officers, employees and expert witnesses to be deposed. It will also explore the issues presented by requests to depose franchisor and franchisee corporate representatives. When the deposition of a corporate representative is required, is it desirable to designate someone who was involved in the events that are the subject of the litigation, and if so, can the deposition go beyond the topics listed in the deposition notice? What does it mean to say the franchisor or franchisee is "bound" by the testimony of a designee, and what are the obligations of the designated witness to gather information known to the organization? These and other deposition issues will be discussed by a panel of veteran litigators.

Speakers: Jeffrey S. Haff Dennis R. LaFiura

W-16 Financial Performance Representations – Shield or Sword?

This program will address the effect of the amended FTC Franchise Rule on financial performance representations, including a discussion of what types of information constitute financial performance representations, the different types of financial performance representations permitted by the amended Rule and the minimum information required to be included in the representation. It will also discuss the effect of state laws on these representations and recent case law in this area. The presenters will seek to identify approaches franchisors can use to provide franchisees with useful earnings information in a manner consistent with the amended Rule.

Speakers: Anne Connelly Brian B. Schnell Andrew C. Selden

W-17 Ethics Issues in a Multi-Jurisdictional Franchise Practice

Our clients, franchisors and franchisees alike, are often located in many parts of the country. Most of us, however, are licensed to practice law in only one or two jurisdictions. If we are not licensed to practice law in a particular state, may we: litigate, arbitrate or mediate there; counsel or draft documents for clients who are located there; file franchise or business opportunity registration applications and deal with franchise regulators there; or advertise that we have a “national franchise practice?” What are the consequences of engaging in the unauthorized practice of law? Do communications that would otherwise be privileged lose their protection if unauthorized practice is found? This program will explore these and other ethical issues that regularly confront lawyers engaged in a multi-jurisdictional franchise practice.

Speakers: John R. Baer Rupert M. Barkoff

W-18 Franchising in the BRIC Markets (Brazil, Russia, India and China)

This program will look at the hottest international markets that franchisors are currently entering, namely Brazil, Russia, India, and China (BRIC), which Goldman Sachs has predicted could, in less than 40 years, together be larger than the G6 in US dollar terms. Although these countries present franchisors with great opportunity, there are substantial legal and business issues that must be resolved. For example, in China and India finding the right local partner can be challenging. IP piracy is a major problem in China and Russia. There are basic operational issues, as well as specific formalities that must be carefully addressed, in India and Brazil. This program will help franchisors identify the legal and practical hurdles to future overseas development.

Speakers: Mark Abell Daniela C. Brito Paul D. Jones

W-19 When Franchisors Compete – Understanding the Boundaries between Healthy and Unfair Competition for Franchisees

What are the rules when one franchisor seeks to increase its market presence by wooing away franchisees of a competing franchise system? This program will explore the current state of the law on tortious interference with contract and prospective business relations, and address other claims franchisor competitors may make against one another. It will also address remedies available to franchisors when a competitor makes false or disparaging comparisons. The panel will discuss what communications, if any, a franchisor may have with current franchisees of a competitive system and best practices for avoiding potential liability for tortious interference and other competition claims. The program will also provide franchise agreement drafting tips that can influence the outcome of these issues and assess the issues that can arise in reporting competitors to regulatory agencies.

Speakers: Robin C. Gipson Edward Wood Dunham

W-20 Litigating Disclosure Claims

The panel will discuss issues peculiar to litigating claims based on alleged deficiencies in franchise disclosure documents. What are the available claims and possible defenses in litigation arising under the federal and state franchise registration and disclosure laws? What is a “material omission”? Is “reliance” necessary to succeed on a claim, and, if so, may reliance be presumed? If the language of the franchise agreement is clear but the description of a party's rights in the disclosure document is contradictory, does the disclosure document modify the contract or is it only a disclosure violation? Does an integration clause in the contract effectively insulate the contract from the disclosure document? What if the relevant state statute forbids waiver of disclosure claims? What are the relevant statutes of limitations and what remedies are available to an aggrieved party? This program will attempt to sort out these and other thorny issues that arise in this area.

Speakers: David M. Byers Deborah S. Coldwell John D. Holland

W-21 Controlling Franchisee Pricing After *Leegin*

A panel of franchise antitrust experts will address the effect of the United States Supreme Court's 2007 *Leegin* decision on franchisor restriction of franchisee pricing freedom, and how that decision has been applied, limited and used. The program will also address the effect of *Leegin* on price control provisions contained in state antitrust statutes and existing franchise agreements, the practical considerations franchisors face in exercising this newly granted power, and proposed federal legislation designed to cut it back.

Speakers: Kay Lynn Brumbaugh Arthur I. Cantor Steven M. Goldman

W-22 Inside a Franchise Arbitration

What exactly happens in arbitration, and how do you decide whether arbitration is something you should recommend to your client? With all the recent discussion regarding the enforceability of franchise arbitration provisions, a basic understanding of what is involved in arbitration sometimes falls by the wayside. This program will present a window into how franchise arbitrations generally work and what it is like to be part of the arbitration process. The panel will discuss how arbitrators are chosen to decide a particular case, how the pleadings in arbitration differ from those in litigation, the type of discovery that is likely to be allowed, how the arbitration hearings are conducted, how long the case might take and how much the process will cost. The program will also consider whether the arbitration process can accommodate itself to cases presenting issues of different levels of complexity, what powers an arbitrator has with respect to third party witnesses, and to what extent an arbitrator's decision can be reviewed by a court.

Speakers: Bethany L. Appleby Richard L. Rosen David L. Steinberg

W-23 Representing and Dealing with Multi-Unit Franchisees - Does Size Really Matter?

Do the size and sophistication of multi-unit franchisees translate into greater bargaining power when dealing with the franchisor, whether before the sale or during the franchise relationship? How can multi-unit franchisees leverage size to obtain bargaining power? Are the needs and interests of multi-unit franchisees always consistent with those of the franchisor and other franchisees? This program will also address issues common among multi-unit franchisees, such as corporate structure, the use of holding companies and operating companies, development schedules, personal guarantees and unit managerial responsibility. From the franchisor's perspective, it will offer tips for drafting to deal with multi-unit ownership issues and discuss steps franchisors can take to protect their interests.

Speakers: Brian H. Cole L. Seth Stadfeld

W-24 I've Got a Secret (Don't I?) — Maintaining the Confidentiality of Settlement Discussions, Mediations, and Arbitrations

Can you count on what you say during settlement discussions, mediations, and arbitrations being shielded from use at trial and from discovery? While Rule 408 of the Federal Rules of Evidence and many state law counterparts provide some protection for settlement communications, those rules are not as broad as commonly assumed. Other rules may apply specifically to mediation, but not to arbitration. This program will discuss the often-misunderstood scope of the protection afforded communications made in settlement negotiations, mediation and arbitration, and will present suggestions for franchisors and franchisees to protect (or discover) information disclosed in those settings.

Speakers: Ronald K. Gardner Tacie H. Yoon



Special Events

WEDNESDAY, OCTOBER 15

Welcome Reception Hilton – 6th Floor Foyer

5:00 p.m. – 6:30 p.m.

The Welcome Reception is our first social gathering. Enjoy hors d'oeuvres, cocktails and conversation in a relaxed atmosphere. Take this opportunity to connect with old friends, make new ones and hear The Doug Moreland Band – one of Austin's best acoustic Texas swing bands. **Complimentary for attendees and their guests.**

Newcomers' Networking Night Warehouse District

6:45 p.m. – 10:00 p.m.

Start your evenings in Austin off right by joining us at two premier nightlife destinations. This is a "Don't Miss It" tradition for young lawyers (those under the age of 36 or who have been admitted to practice for less than 5 years) and first and second time attendees of the Forum. We'll head to the modern and eclectic Belmont for cocktails and a buffet dinner. Then, it's off to the Speakeasy, one of Austin's most famous spots, for drinks and entertainment. **Additional fee for attendees and guests.**

THURSDAY, OCTOBER 16

Women's Caucus Breakfast

7:00 a.m. – 8:30 a.m.

Work/Life Balance - how does she do it? This year the Women's Caucus Breakfast welcomes a special guest to share her thoughts about what inspires her. Justice Harriet O'Neill of the Texas Supreme Court is an award-winning author and speaker. Twice named as Justice of the Year by the Texas Association of Civil Trial and Appellate Specialists, she serves on the National Advisory Council on Violence Against Women, is the Texas Supreme Court's liaison to the Task Force on Foster Care, and is an active member of the Texas Access to Justice Commission. She also participates in the sports and school activities of her three children. Please join us to explore how you can create a work/life balance that works for you. **Additional fee for attendees.**

Spouse/Guest Cooking Class Central Market Cooking School

9:30 a.m. – 1:30 p.m.

Transportation provided

Under the guidance of Central Market Cooking School's expert chefs, guests will create an eclectic menu of Austin favorites, then relax and enjoy their masterpieces. Recipes will include: Beef Enchiladas with Spanish Rice and Marinated Grilled Chicken with Roasted Garlic Mashed Potatoes. **Additional fee for guests.**

Litigation And Dispute Resolution (LADR) Reception

5:00 p.m. – 6:15 p.m.

LADR, the Forum's committee for issues concerning litigation and ADR, is pleased to invite all Forum members to its annual reception on Thursday afternoon to enjoy cocktails and appetizers while mingling with your colleagues. **Complimentary for attendees.**

Corporate Counsel Reception

5:00 p.m. – 6:15 p.m.

The Corporate Counsel Committee will host a cocktail party for this year's member event. This will be a great chance to visit with colleagues in a relaxed environment and share ideas about the in-house practice of franchise law over cocktails and light hors d'oeuvres. This event is exclusively for in-house counsel, so bring your ticket for entry. **Additional fee for attendees.**

Annual Reception/Dinner – The Bob Bullock Texas History Museum

6:45 p.m. – 10:00 p.m.

Transportation provided

Come and learn the "Story of Texas" at the Bob Bullock Texas State History Museum in downtown Austin. A 35-foot-tall bronze Lone Star sculpture will greet you in front of the Museum, and a colorful terrazzo floor in the Museum's award-winning rotunda featuring enduring themes from Texas's past will amaze you. With three floors of interactive exhibits, a special effects show, and two of Austin's best artists, LZ Love and Carolyn Wonderland performing, you won't want this evening to end! **Additional fee for guests only.**

FRIDAY, OCTOBER 17

International Franchise and Distribution Division (IFDI) Breakfast

7:30 a.m. – 9:00 a.m.

The Forum's International Division provides a forum for education, networking, and the exchange of ideas concerning international franchising. At this first ever International Division breakfast, meet with franchise lawyers from the U.S. and around the world who have an interest in international franchising. Also joining us this year will be a panel of speakers who will bring valuable insight on the practice of franchise law across borders. **Additional fee for attendees.**



Solo and Small Firm Breakfast

7:30 a.m. – 9:00 a.m.

The Solo and Small Firm Network is open to attorneys who are members of or employed by law firms of ten or fewer attorneys. This dynamic group will meet over breakfast to network and exchange ideas. We will focus on how to leverage knowledge, technology and networking to level the playing field—in litigation, in transactional work, in client development and in Forum leadership. Learn what your peers are doing in roundtable discussions designed to help you build a more successful and efficient practice. **Additional fee for attendees.**

Spouse/Guest Shopping Excursion

9:00 a.m. – 4:45 p.m.

Transportation provided

For some, it's all about the shopping! Guests will visit unique specialty shops in the quaint downtown district of Gruene, Texas. Shoppers will then stop for lunch at the historic Grist Mill Restaurant. Once refueled, it's off to the San Marcos Prime Outlet Mall. With over 100 shops and restaurants, it is the place to shop in Central Texas. Stores include Neiman Marcus Last Call Clearance Center, Michael Kors, Restoration Hardware, Tommy Bahama, and many more. Comfortable walking shoes are a must! **Additional fee for guests.**

Diversity Committee Wine and Cheese Networking Reception

4:00 p.m. – 5:00 p.m.

All attendees of the Forum are invited to a networking reception hosted by the ABA Forum on Franchising Diversity Committee. The Diversity Committee is devoted to increasing the involvement of members of diverse ethnic and racial groups in Forum activities and leadership roles. Please join the Diversity Committee at the reception to network and consider how we all can help to further the goal of making the Forum a more diverse and inclusive organization. **Complimentary for all attendees.**

Dinner and Concert at Antone's Nightclub

7:00 p.m. – 10:00 p.m.

Clifford Antone's blues club has brought the best musicians from around the country to Austin. The club has regularly featured such legends as Muddy Waters, B.B. King, Buddy Guy and the patron saint of Austin blues, Stevie Ray Vaughan. It is regarded as one of the premier places on the Third Coast to see live music. We invite you to join us at Antone's for a casual dinner and a private performance by nationally renowned singer/pianist Marcia Ball, with her infectious, intelligent and emotional brand of southern boogie, rollicking roadhouse blues and heartfelt ballads. This is an evening you will remember for years to come. **Additional fee for attendees.**

SATURDAY, OCTOBER 18

Community Service Event

8:00 a.m. – 1:00 p.m.

Transportation provided

This year we will support LifeWorks, a non-profit organization whose mission is to transition youth and families from crisis to safety and success. Lifeworks provides a comprehensive safety net of support to more than 10,000 youth and families each year in the Austin area. Forum members can participate in a fall clean-up project consisting of gardening, landscaping and general yard work at one or two LifeWorks sites, with an option to do indoor work in the event of rain. Our work will help make the LifeWorks site more welcoming and inviting to the community it serves. No experience is necessary, just a desire to donate a few hours to help a worthy organization. If you would like to make a monetary donation, please see if your company or firm will match your gift. Checks can be made out to LifeWorks and mailed to the attention of Abigail Nersesian, Volunteer Coordinator, LifeWorks, 3700 S. 1st Street, Austin, TX 78704 (with the notation "ABA Forum-Community Service Event") or dropped off at the ABA Registration Desk during the Forum.

Texas Hill Country Tour

9:00 a.m. – 4:30 p.m.

Transportation provided

Leave the city for the rolling hills of Texas. Our first stop will be a tour and wine tasting at the Mandola Estate Winery located in scenic Driftwood, Texas, followed by lunch at Trattoria Lisinia, a Tuscan restaurant overlooking the Winery's vineyards and picturesque gardens. Then we'll visit Wimberley, Texas, voted one of America's Best Small Towns, with its cool, shady pools beneath towering cypress trees, frothy cascades on the Blanco River and sparkling Cypress Creek. You'll be on your own to visit the specialty shops, town square, art galleries, and cafes or just sit and enjoy the atmosphere. For those who like to walk and see the sites, Wimberley is full of beautiful views and rich history. A pause at the bridge over Cypress Creek or, for the more vigorous, a walk up the steps to the top of Old Baldy is well worth the effort. **Additional fee for all.**

Program Schedule

WEDNESDAY, OCTOBER 15, 2008

8:15 AM – 4:15 AM

Developments in Petroleum Marketing Law — 2008 Roundtable

Sponsored by the ABA Section of Environment, Energy and Resources Petroleum Marketing Committee (Separate registration required)

10:00 AM – 5:30 PM

Forum Registration

11:30 AM – 12:30 PM

Box Lunch Pick-up

12:30 PM – 5:00 PM

Forum Intensive Programs

- I-1 Fundamentals of Franchising®
- I-2 Developments Under the Amended FTC Rule – Learning from our Mistakes
- I-3 Evidentiary and Trial Issues in Franchise Cases

5:00 PM – 6:30 PM

Welcome Reception

6:45 PM – 10:00 PM

Newcomers Networking Night (ticketed)

THURSDAY, OCTOBER 16, 2008

7:00 AM – 5:30 PM

Forum Registration

7:00 AM – 8:30 AM

Women's Caucus Breakfast (ticketed)

7:00 AM – 8:30 AM

Continental Breakfast

8:30AM – 10:15 AM

Plenary Session

8:30 AM – 8:50 AM

Welcome and Forum Business Meeting

8:50 AM – 10:15 AM

Making the Pen Mightier Than the Sword

9:30 AM – 1:30 PM

Spouse/Guest Cooking Class (ticketed)

10:15 AM – 10:30 AM

Break

10:30 AM – 11:45 AM

Concurrent Workshops

- W-1 Advanced Disclosure Issues Under the Amended FTC Rule
- W-2 A Basic Overview of Franchise and Consumer Advertising Standards
- W-3 Calculating and Proving Damages in Franchise Termination Cases
- W-4 Recent Changes and Trends in International Franchise Laws
- W-5 Determining the Rules of Engagement in Litigation Here And Abroad
- W-6 Operating Manuals – The Devil is in the Details
- W-7 Anatomy of the Sale of a Brand

11:45 AM – 12:45 PM

Networking Lunch (Stubbs Barbecue Buffet)

12:45 PM – 2:00 PM

Concurrent Workshops

- W-8 Franchising in Unique Venues
- W-9 Consumer Class Actions and Actions by State Attorneys General
- W-10 Vicarious Liability
- W-11 Navigating the Exemption/Exclusion Maze under the Amended FTC Rule and State Laws
- W-12 Cost Containment Strategies for Franchise Disputes
- W-13 New Media Threats - Responding to Cyber-Attacks
- W-14 Litigating a Claim under the PMPA

2:00 PM – 2:15 PM

Break

2:15 PM – 3:30 PM

Concurrent Workshops

- W-15 Depositions in Franchise Cases
- W-16 Financial Performance Representations – Shield or Sword?
- W-17 Ethics Issues in a Multi-Jurisdictional Franchise Practice (Ethics Credit)
- W-18 Franchising in the BRIC Markets (Brazil, Russia, India and China)
- W-19 When Franchisors Compete – Understanding the Boundaries between Healthy and Unfair Competition for Franchisees
- W-20 Litigating Disclosure Claims
- W-7 Anatomy of the Sale of a Brand

3:30 PM – 3:45 PM

Break

3:45 PM – 5:00 PM

Concurrent Workshops

- W-21 Controlling Franchisee Pricing After *Leegin*
- W-22 Inside a Franchise Arbitration
- W-23 Representing and Dealing with Multi-Unit Franchisees – Does Size Really Matter?
- W-24 I've Got a Secret (Don't I?) – Maintaining the Confidentiality of Settlement Discussions, Mediations, and Arbitrations
- W-2 A Basic Overview of Franchise and Consumer Advertising Standards
- W-5 Determining the Rules of Engagement in Litigation Here and Abroad
- W-6 Operating Manuals – The Devil is in the Details

5:00 PM – 6:15 PM

LADR Reception

Corporate Counsel Reception (ticketed)

6:45 PM – 10:00 PM

Annual Reception/Dinner

Bob Bullock Texas History Museum

FRIDAY, OCTOBER 17, 2008

7:00 AM – 4:30 PM

Forum Registration

7:30 AM – 9:00 AM

Continental Breakfast

Franchise Professors' Open House

IFDI Breakfast (ticketed)

Paralegal/Franchise Administrator Open House

Solo/Small Firm Breakfast (ticketed)

9:00 AM – 4:45 PM

Spouse/Guest Shopping Excursion (ticketed)

9:15 AM – 10:30 AM

Concurrent Workshops

- W-8 Franchising in Unique Venues
- W-10 Vicarious Liability
- W-11 Navigating the Exemption/Exclusion Maze under the Amended FTC Rule and State Laws
- W-13 New Media Threats - Responding to Cyber-Attacks
- W-15 Depositions in Franchise Cases
- W-19 When Franchisors Compete – Understanding the Boundaries between Healthy and Unfair Competition for Franchisees
- W-20 Litigating Disclosure Claims

10:30 AM – 10:45 AM

Break

10:45 AM – 12:15 PM

Annual Developments

12:15 PM – 1:15 PM

Networking Box Lunch

1:15 PM – 2:30 PM

Concurrent Workshops

- W-1 Advanced Disclosure Issues under the Amended FTC Rule
- W-3 Calculating and Proving Damages in Franchise Termination Cases
- W-14 Litigating a Claim Under the PMPA
- W-18 Franchising in the BRIC Markets (Brazil, Russia, India and China)
- W-21 Controlling Franchisee Pricing After *Leegin*
- W-22 Inside a Franchise Arbitration
- W-23 Representing and Dealing with Multi-Unit Franchisees – Does Size Really Matter?

2:30 PM – 2:45 PM

Break

2:45 PM – 4:00 PM

Concurrent Workshops

- W-4 Recent Changes and Trends in International Franchise Laws
- W-9 Consumer Class Actions and Actions by State Attorneys General
- W-12 Cost Containment Strategies for Franchise Disputes
- W-16 Financial Performance Representations – Shield or Sword?
- W-17 Ethics Issues in A Multi-Jurisdictional Franchise Practice (Ethics Credit)
- W-24 I've Got a Secret (Don't I?) – Maintaining the Confidentiality of Settlement Discussions, Mediations, and Arbitrations

4:00 PM – 5:00 PM

Diversity Committee Wine and Cheese Networking Reception

7:00 PM – 10:00 PM

Dinner/Concert at Antone's Nightclub (ticketed)

SATURDAY, OCTOBER 18, 2008

8:00 AM – 1:30 p.m.

Community Service Event

9:00 AM – 4:30 PM

Texas Hill Country Tour (ticketed)

Speaker List

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New Haven, CT

JOHN R. BAER

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Conference Information

1. Hotel Information:

The conference will be held at the Hilton Austin, 500 East 4th Street, Austin, Texas 78701. Phone 512/482-8000 - Guest Fax 512/469-0078. Arrangements for childcare can be made by contacting the hotel's concierge. Visit the hotel's website at www.austin.hilton.com for further information.

2. Hotel Reservations:

The Forum on Franchising has negotiated a special room rate of \$190 per single/double room at the Hilton. A 15% sales tax will also apply per night. To make your hotel reservations, please follow the instructions on the registration form. We have reserved a limited block of rooms through **September 22, 2008**. **You must register for the conference prior to making your hotel reservation.** After this date, the Hotel Reservation Office will assign rooms on a space available basis. All changes and cancellations to hotel reservations must be received within 72 hours of arrival to avoid a one night's cancellation charge.

3. Air Travel:

Airfare discounts to ABA meetings are available through ABA Online Travel; the ABA travel agency is Orbitz for Business (OFB). To access ABA Online Travel, go to www.abanet.org, "Member Tools". At ABA Online Travel you will have automatic access to meeting airfare discounts, web fares and web book only airlines. The ABA's toll-free number for Orbitz for Business (OFB) Business is 1-866-321-8403.

Ground Travel: The Hilton Austin is only seven miles from Austin Bergstrom International Airport. Taxis are available at a rate of \$25 each way. Shuttle services and rental car companies are located on the airport premises. On-site parking at the Hilton is \$25.00 per night for valet and self-parking is \$15 per night. ABA attendees will receive a 5% discount on parking fees.

4. Program Registration:

To register for all programs and events described in this brochure, **please submit your completed registration form and payment to: Technical Registration Experts, 13 South Second Street, Geneva, IL 60134. Or fax your form with credit card payment only to 630/262-1520.** Confirmations will be faxed to you within 72 hours of registration receipt. In order to be included in the list of program attendees, you must register by **September 22, 2008**. Guest tickets for special events are available for an additional fee. Please see the registration form for price details.

5. On-Site Check In:

Beginning Wednesday, October 15, 2008 at 10:00 a.m. – 5:30 p.m., attendees may check in at the ABA registration desk to pick up registration packets that contain name badges, conference bags with information kits and course materials.

6. On-Site Registration:

On site registration is available for those persons who missed the registration deadline. If you plan to register at the door, please call Kim Turner at 312/988-5666 on or before Friday, October 10, to confirm that space is still available. Failure to call in advance may preclude admission to a sold out conference. On site registrants must pay the registration fees by check, money order, Visa, MasterCard, or American Express. NO registrations will be accepted without payment.

7. Tuition information:

Tuition for the Wednesday intensive programs is separate from and in addition to the Thursday and Friday program registration fee. Intensive program tuition includes course materials, box lunch, and beverage break. Tuition for the main program includes admission to the two day program, welcome reception, continental breakfasts, beverage breaks, lunches, course materials and the Annual Reception/Dinner.

8. Cancellation Policy:

Registrants who are unable to attend the program will receive a refund less a \$75 administrative fee if written cancellation is received by **September 22, 2008**. Cancellations may be faxed to 630/262-1520, Attn: Technical Registration Experts. **No refunds will be granted after September 22, 2008.** Substitutions are acceptable, or conference materials will be sent in lieu of a refund after the program. The ABA reserves the right to cancel any programs and assumes no responsibility for personal expenses.

9. CLE Credit:

CLE accreditation has been requested for this program from every state with mandatory continuing legal education requirements for lawyers. Each state has its own rules and regulations, including its definition of CLE. Check with your state agency for confirmation of this program's approval. Attorneys seeking to obtain MCLE credit in Louisiana and/or Pennsylvania must pay state accreditation fees directly to these states. Certificates of attendance will be available the last day of the conference at the registration desk. You may contact your respective state(s) for confirmation of the number of CLE credit hours requested by the ABA or credit approved by any particular state.

10. Membership:

To encourage registrants to join the ABA Forum on Franchising, the reduced member's tuition rate will be extended to registrants who join the Forum when they register for the program. Forum membership dues are \$50 for attorneys/associates and \$10 for law students. Membership in the ABA and one Section is a prerequisite to Forum membership. Please include a separate check (payable to the American Bar Association) for membership dues.

11. Additional Course Materials:

Materials for all programs may be available for purchase after the conference by calling the ABA Service Center at 1-800-285-2221.

12. Forum Policy Regarding Self Promotion and Conflicts:

In order to insure a spirit of collegiality at the Annual Forum, please respect the Forum on Franchising's policy that no individual, group or entity (other than the ABA) may engage in any type of self promotion or conflicting activities (such as giving gifts; hosting group functions i.e., more than six guests including meals, parties, sporting events, meetings or seminars; or displaying or distributing advertising, marketing materials, books, articles, case reports or anything of value or scheduling non-Forum sponsored group meetings) at or in connection with the Annual Forum or any Forum sponsored events (i.e., from the time the first event or program starts to the time the last event or program ends), in or near the city where the Forum event is taking place. The 2008 Annual Forum starts at noon, Wednesday, October 15, 2008 and concludes at the end of the Guest Tour on Saturday, October 18th at 5:00 p.m.

13. Tax Deduction for Educational Expenses:

In the United States, an income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals and lodging expenses (see Treas. Reg. Sec. 1.162-2) *Coughlin v. Commissioner*, 203 F.2d 307 (2nd Cir. 1953).

14. Americans with Disabilities Act:

If special arrangements are required for disabled individuals to attend this program, please contact Kelly Rodenberg in writing by September 22, 2008 at the American Bar Association, 321 N. Clark Street, Chicago, Illinois, 60610. Fax: 312/988 5677.

15. Dress:

In keeping with Forum tradition, participants are encouraged to wear business casual attire during the programs and to the special events. Austin is a very walkable city, so please bring comfortable shoes.

16. For the latest program information:

Please visit the Forum on Franchising website: www.abanet.org/forums/franchising. For further information on the city, travel, activities and entertainment options, visit www.austintexas.org.

17. Questions:

If you have questions or require additional conference information, please call 312/988 5666 or 5794. Fax: 312/988 5677; email: turnerk@staff.abanet.org.



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American Bar Association
Forum on Franchising
321 North Clark Street
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www.abanet.org/forums/franchising



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