State Bar of Georgia

Franchising in the United States and Germany: A Comparative on Recent Legal Developments

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I. European Legal Framework for Franchising

1. **Currently, no pan-European franchise legislation** dealing specifically with franchising
2. **Some EU Member States have passed national franchise laws** (mostly concerning disclosure requirements)
3. **12 September 2017:** European Parliament passes **Resolution on the Functioning of Franchising in Retail** (2016/2244(INI)). → EU Parliament wants franchising regulation to be harmonised across Europe. Resolution has been forwarded to the Commission and the European Council. Issue is now dealt with by Director-General GROW (b2b services) - OPEN
4. **Nevertheless particular aspects of franchising are governed by European law:**
   - **Antitrust** → Art. 101, 102 **T**reaty of **F**unctioning of **E**uropean **U**nion and **Regulation (EU) No 330/2010 of the Commission** (so-called Vertical Block Exemption Rule)
   - **Data Protection** → **G**eneral **D**ata **P**rotection **R**egulation – EU Reg. (EU) No 2016/679
   - **Cross-border contracts** → European private international law principles (i) for contracts → EU Reg. No 593/2008 and (ii) for non-contractual relations, e.g. torts, unjust enrichment → EU Reg. No 846/2007 (Rome-II)
   - **Jurisdiction, recognition and enforcement of judgments of Member States courts in civil and commercial matters** → Brussels Ia Regulation n° 1215/2012 of 12 December 2012
   - **European trademarks: registration with European Union Intellectual Property Office (EUIPO)** (Alicante/Noerr LLP) - Council Reg. 40/94 -
   - **European patents:** registration with European Patent Office based on **E**uropean **P**atent **C**onvention (currently not a unitary right, but a group of essentially independent nationally enforceable patents. **But** soon to come in 2018 – Unitary Patent System)

/ II. Legal Framework for Franchising in Germany

1. **No specific franchise legislation**
   - In 2013, the German Bar Association recommended a specific Franchise Code, especially for pre-contractual disclosure
   - In 2015, submission by the German Federal Ministry of Justice to compare laws concerning statutory provisions on franchising in Europe
2. **"Mixed" framework/skeleton agreements** containing **elements of various agreements** specifically regulated by the **German Civil Code** (*Bürgerliches Gesetzbuch/BGB*) (e.g. service agreements, contract for works)
3. **German commercial agency law** (Sec. 84 et seq. of German Commercial Code – *Handelsgesetzbuch/HGB*) applied by way of analogy (for certain types of franchise agreements)
4. **General civil and commercial and other laws** applied depending on the subject (e.g. Sec. 242 BGB for pre-contractual disclosure, Sec. 433 BGB for sales under the franchise, German unfair competition Act etc.)
5. **Soft law** (various coded of various franchise associations)

Franchise Transactions in the United States

- Highly regulated – Federal Trade Commission (Amended) Rule, 16 CFR 436 plus State Laws
- Franchise Disclosure Document (FDD)
- 14 Franchise Registration States – require separate application for/registration of a franchise in each State – different rules and laws
- 25 Business Opportunity States – may require separate notice filing by franchisors doing business in these States

Item 19 – Financial Performance Representation in the United States

Effective for 2018 renewals in the USA

More balance required in Item 19 disclosures NAASA Commentary:

- Gross sales can be disclosed, alone, but only if there are company owned outlets vs. Gross sales **or** Net Profit if there are <u>both</u> company owned and franchise outlets
- Must include relevant sales and cost data; may merge data if no material differences and data for corporate/franchise outlets are not materially different
- Must disclose material operational/financial differences between the corporate owned vs. franchise outlets
- Average and median disclosures required
- Projections, admonitions, disclaimers

/ III. Impact of GDPR on Franchising (1)

Overview:

1. **25 May 2018**: The General Data Protection Regulation No 2016/679 ("GDPR") took effect
2. **National data protection laws** are still applicable as they supplement partially the GDPR – in Germany: Federal Data Protection Act – *Bundesdatenschutzgesetz* - BDSG
3. **Extraterritorial application of GDPR**: privacy also applies to data controllers outside the EU if **(i)** EU resident's personal data is processed in connection with goods/services offered to him (e.g. offering cloud computing services from the US - it does not matter whether services to EU individuals are paid or for free) or (ii) the behavior of individuals within the EU is monitored (e.g. app gathering location data of EU citizens) (Art. 3 GDPR).
4. **Severe consequences for GDPR breaches**
   - i. **Fines** of up to €20m or 4% of worldwide turnover (whichever is higher) – Art. 83 para 5. GDPR
   - ii. **Compensation for damage (material or non-material) suffered:** individuals who suffer from non-compliance with GDPR by the controller or processor can claim compensation for the damage suffered (risk of class actions) – Art. 82 GDPR
   - iii. **Competitor rights (outside of GDPR): (i)** Non-compliance with data protection laws = unfair competition (sec. 3, 3a of **German Unfair Competition Act** – GWB) → Competitors can claim cease-and-desist orders (sec. 8 UWG) + damages (sec. 9 UWG)

III. Impact of GDPR on Franchising (2)

New challenges in general:

1. New mandatory data protection assessment
2. Extended rights of data subjects (withdrawal of consent)
3. Extend obligations to provide information to data subjects
4. New requirements for agreements on data processing and processing under joint responsibility (joint controlling)
5. Stricter technical and organizational data protection requirements (privacy by design and privacy by default)
6. Extended obligation to report infringements to supervisory authority
7. Extended requirements for data processing record
   i. More detailed data protection declaration (i.e. privacy rules)
   ii. Documented internal data protection guidelines
   iii. Documented guidelines for data protection impact assessment
   iv. Documented storage guidelines
   v. Documented guidelines on handling of data protection breaches

III. Impact of GDPR on Franchising (3)

Impact on Franchising

1. **Data transfer between franchisee and franchisor**: data of customers and/or franchisees required, e.g. for performance reviews, optimization of the franchise concept, marketing purposes, proper information of future franchisee during disclosure
2. **Provision of IT systems by franchisor as a service** (e.g. cloud computing, ERP systems or CMR systems) trigger GDPR as well. It is sufficient for franchisor to have actual access to personal data (of customers, franchisees or employees of the franchisor)
3. **Data transfer/processing/access requires <u>justification</u> → principle of ban with reservation of permit (Art. 6 GDPR)**

   i. **consent of the data subject (**customer/franchisee**)** (Art. 7 GDPR)

      - express + specific consent (no implied consents accepted by GDPR)/all intended purposes have to be described
      - consent provided to franchisee or franchisor for entire franchise system? → Usually, not possible because franchisor and franchisee or other franchisees are separate legal entities (possible exemption: loyalty cards),

   or

   ii. **Reference to legal permissions of Art 6 (1) lit (b) to (f)**, e.g. processing is necessary for contract performance (e.g. delivery of products), compliance with legal obligation (e.g. legal retention periods), or processing is necessary for the purpose of the legitimate interests (direct marketing?). → However, principle of data minimization to be observed: Art. 5 (1) (c) GDPR → aggregation or anonymization of data possible?

4. **Data processing agreement** (Art. 28 GDPR) if franchisee commissions franchisor with data processing.
5. **Joint controlling agreement** required if franchisee and franchisor jointly control the data → (Art. 26 GDPR)

III. Impact of GDPR on Franchising (4)

Impact on Franchising (2)

6. Data protection as a new franchisor service?

- Loss of reputation for entire franchise system if it becomes known to the public that a franchisee breached data protection requirements
- Franchise handbook could contain recommendations with regard to handling with data and customer complaints
- Mutually designated data protection officer? Art. 37: controller and processor must designate data protection officer where personal data of more than 10 data subjects are processed

7. Amendments with regard to the franchise agreement/franchise disclosure documents

- Diligently formulated data protection clauses
- Costs and efforts of data protection requirements as part of pre-contractual disclosure?
- Consent of franchisee for data processing (if necessary) should <u>not</u> be attached to the disclosure document or to a franchise agreement → Art 7 (2) GDPR: consent has to be presented clearly distinguishable from other matters.

IV. Brexit Implications on Existing and Future Franchise Contracts

What happened so far:

- 23 June 2016 – **UK referendum** - 52% vote for exit from the EU
- 29 March 2017 – **Exit declaration** by Prime Minister May according to Art. 50 of the TEU + Start of 2-year period for negotiations about the withdrawal
- **Withdrawal Agreement**: Mutually negotiated draft of the withdrawal agreement is available – but it is work in progress
  - 75% of the content is agreed
  - Issue: treatment regarding border between Ireland and Northern Ireland (belonging to UK) and outstanding debts (€60bn)
  - Transitional Period which shall start from 30 March 2019 and last until 31 December 2020. During the transitional period: UK is guaranteed access to the Common Market and Tariff Union
  - However, such guarantees for the transitional period shall only become effective if the UK and the EU agree on the entire withdrawal agreement
  - Signing goal: October 2018 in order to ensure ratification by 29 March 2019 by the European Parliament and the EU External Relations Council. However, the European Counsel can (in agreement with the UK) extend the negotiation period
- **Future Relationship between the EU and UK:** needs to be negotiated separately (various scenarios conceivable)

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/ IV Brexit - Impact on Franchising / Commercial Contracts

Changes:

- **Legal regime for cross border agreements** between EU companies and UK companies/customers will change. Depending on the Scenario either harmonized EU law will entirely or at least partially not apply anymore after beginning from 30 March 2019 (or a later point of time if negotiation period would be prolonged), e.g.

  i. EU law on acknowledgment and enforcement of European courts judgments
  ii. EU Regulation on service of court documents,
  iii. EU Regulation on taking evidence,
  iv. Rom-I and Rom-II Regulation concerning international private law principles,
  v. EU-insolvency regulation
  vi. EU law concerning merchantability of goods (CE-marks, harmonized product safety requirements)

- **Costs for cross border supplies will increase** (even if EU and UK agree on customs tariffs → higher costs because of border control, customs formalities, customs, currency control issues)
- **Higher insolvency risk** with regard to UK suppliers and franchisees

/ IV. Brexit: Impact on Franchise Agreements

Recommendations::

- **Preparation to Brexit:** Franchisor and Franchisee have to prepare for Brexit if they have contact with UK undertakings or customers (e.g. via internet). Supply chain risks have to be evaluated again.
- **Future franchise agreements**:
  - Stipulation of adaptation rights or termination right by way of “Brexit clauses”
  - Right to renegotiate/adapt the franchise agreement with regard to prices, delivery terms, merchantability of products and distribution of future financial burdens or
  - Right to terminate the franchise agreement for good cause if Brexit takes place.
- **Existing franchise agreements**:
  - Conclusion of additional /addendum to franchise agreement in order to regulate potential challenges of the franchise relationship.
  - Redefinition of “territory of EU” because UK will soon no longer be member of the EU
  - Introducing price adaptation mechanism, adapting delivery terms, regulating costs for merchantability of products in the event that UK should introduce own conditions for merchantability
  - Distribution of other future financial burdens borne because of Brexit

IV. Brexit: Impact on Franchise Agreements

Challenges:

- **No statutory right to adaptation of Franchise Agreement (disputed)**: According to predominant opinion in the literature, the mere change of the legal environment or the increase of costs for cross-border supplies of goods and services in principle does not entitle a party to adapt the franchise agreement, neither in the UK (based on the theory of frustration of contracts → would require a "surprising" event) nor in Germany (based on the concept of subsequent change of circumstances and deal basis (*Wegfall der Geschäftsgrundlage* - Sec. 313 German Civil Code – BGB). Under German law, impediments to performance are part of a debtor's risk taking . Debtor bears the upside risk ("*Beschaffungsrisiko*")
- **No statutory termination right**: Brexit does not constitute a reason to terminate a franchise agreement (sec. 314 German Civil Code - BGB, sec. 89a of the German Commercial Code - HGB)
- **Recommendation for future franchise agreements**:
  - Stipulation of adaptation rights or termination right by way of "Brexit clauses"
  - Right to renegotiate/adapt the franchise agreement with regard to prices, delivery terms, merchantability of products and distribution of future financial burdens or
  - Right to terminate the franchise agreement for good cause if Brexit takes place.
- **Recommendation with regard to existing franchise agreements**: Additional /addendum to franchise agreement

/ Brexit Implications on Existing and Future Franchise Contracts (2)

IP rights – according to the draft of withdrawal agreement:

- Registered rights (EUTMs and EU designs) automatically and at no cost give rise to equivalent UK registered rights as of 1 January 2021;
- Pending applications will have a period of 9 months from that date for the applicants to file for equivalent rights in the UK (subject to potentially new examination, publication etc).
- EUIPO proceedings based on UK rights/grounds for refusal only should fall away after 1 January 2021, though an EUTM filed before then is still considered to have at one stage covered the UK and so if acquired distinctiveness is required, evidence for the UK will be required too.
- Where EU rights have been challenged before 1 January 2021, and the proceedings are still pending, the resulting UK rights will also be vulnerable based on that challenge.
- Court proceedings brought before 1 January 2021 will have the existing jurisdiction and enforcement rules (e.g. pan-EU injunctions), regardless of when they are concluded

V. Anti-Trust (Restriction of Competition – Cartel law) (1)

1. **Anti-trust law (in Europe: cartel law):**
   i. **European law:** Art. 101 **Treaty on Functioning of European Union** (TFEU) (prohibition of competition restriction by agreement and concerted actions) + Art. 102 TFEU: prohibition of abuse of dominant market power
   ii. **National law:** § 1 of German Act against Restriction of Competition (*Gesetz gegen Wettbewerbsbeschränkungen* – GWB) concerning prohibition of competition restriction by agreement or concerted actions and §§ 18 to 21 GWB (concerning abuse of dominant market power)
   iii. **Primacy of European antitrust law** for cross border agreements/only pure national matters governed national law
   iv. **Exterritorial application of EU anti-trust law**: **European** anti-trust law applicable if business has a negative effect on competition within the EU market
2. **Art. 101 TEUF: ban on agreements between undertakings, decisions by associations of undertakings, concerted actions between two companies which may affect trade between the Member States and which have as their object or effect the prevention, restriction or distortion of competition.**
3. **Exemptions from the ban for small and mid-sized companies are possible (but not for "hardcore" restrictions)**

V. Anti-Trust (Restriction of Competition – Cartel law) (2)

4. **Further exemption from the ban is possible** if legally provided for by applicable law

   i. For vertical agreements (e.g. dealership and franchising): European Regulation No 330/2010 that generally determines for vertical agreements ("block exemption"):

      - **competition restrictions that are permitted if the market threshold of 30% is not exceeded** (rule of reason, e.g. for territorial restrictions, customer restrictions, competition clauses, post-contractual competition)
      - **restrictions that are basically prohibited independent of market share** (e.g. price binding) (per se violation or hardcore restriction) (exemptions possible)

   ii. If market shares of franchisor or franchisee exceed 30% → Possibility of individual exemptions according to Art. 101 (3) TFEU if the agreement contributes improvement to production or distribution of goods or allows consumers a fair share of the resulting benefit → by way of self assessment of undertaking

V. Antitrust (Restriction of Competition – Cartel law) (3)

Anti-trust privileges for franchising

- Certain clauses are *a priori* considered to be **not a competitive restriction** if they are **essential and indispensable to protect the know-how of the franchisor** (e.g. clauses prohibiting franchisee to run competing business) or to **protect the identity and reputation of the franchise system** (obligation to apply franchisor know-how, sales only permitted in franchise outlets that are equipped according to the system requirements in the handbook, or prohibition to move the franchise outlet (European Court of Justice (ECJ) decision 1 January 1986 - "**Pronuptia**")
- **New decision of the European Court of Justice**("**Coty" – ECJ decision 6 December 2017 – C 230/16**): **contractual prohibition to sell products on the e-commerce platform (Amazon) permitted** for franchise systems organized in form of a selective distribution system, provided that the following conditions are met:

i. agreement does not prohibit internet sales entirely (EJC decision of 13 October 2011 – "*Pierre Fabre*")

ii. product to be sold requires franchisees that are chosen by franchisor based on qualitative (and *not* quantitative) criteria because of the products' high quality, technical development or luxury aura

iii. criteria for selection are objective and refer to quality aspects only (and not to aspects of quantity)

iv. selective criteria have to be applied by franchisor in an non-discriminatory way to all franchisees

v. selective criteria are necessary to safeguard the luxury aura of product

Avoiding Anti-trust Issues in the United States: Maximizing IP Value through Transactions

The problems:

IP can lose value due to market failures, consumer whims, and poor choices in licensing/franchising/JV partners

Antitrust and unfair competition laws apply to intellectual property transactions, i.e., Brand/IP owners cannot dictate pricing…

What can Franchise IP owners do to maintain value/pricing?

Permitted Pricing Controls to Maintain Value in the USA

- Mandate publication of Suggested Retail Price – Quality Control
- Provide range of Suggested Retail Pricing
- Set higher Royalty Rates
- Exercise Audit rights

Territorial Restrictions To Maintain Value

- Limiting the territory in which the license deal has effect
- Frequently found in franchise and other trademark licensing deals
- Not immune from anticompetitive scrutiny
- Cannot be a market allocation/division scheme – must have some quality control purpose

VI. Termination Issues – The Goodwill Compensation Claim of Franchisees (1)

1. **Financial burden for franchisors** when terminating a contract beside other financial obligations of franchisor, e.g. buy-back obligation concerning franchisee's stock + compensation payment for franchisee's post-contractual non-competition obligation (if post-contractual non-competition has been agreed).
2. **Even if the agreement becomes normally terminated** (e.g. expiration of agreement or ordinary termination with prior notice)
3. **Legal basis: § 89b of the German Commercial Code (HGB)**. This rule actually exists for commercial agents.
4. **Decision of German Federal Supreme Court** (BGH) – 05 February 2015 – Az VII ZR 109/13: § 89b HGB applies by way of **analogy** also to franchise agreements (since 1950 the BGH has already applied § 89b HGB analogously to dealerships).
5. **But two conditions must be met**:
   i. **Franchisee has to be integrated into the sales system of the franchisor** like a commercial agent (e.g. agreement contains rights which ensure franchisor strong influence on how franchisee carries out the franchise business, e.g. through strong report obligations, powers of control)
   ii. **Expressed or implied contractual/legal obligation to transfer customer data (names and addresses) to the franchisor** (either during the term of the franchise agreement or at the end of the franchise agreement). Pure factual continuity of customers due to their purchase habits is not sufficient.
6. **Amount:** § 89b HGB does not define the amount to be paid. But established case law has developed a method for calculation of compensation amount. **Worst case** according to § 89b para 2 HGB: **Maximum amount** is the average of one year margin based on the margins earned in the five years before termination (or a shorter period, if the agreement was shorter than 5 years)

VI. Termination Issues – The Goodwill Compensation Claims of Franchisees (2)

6. **What can be done by agreement**?
   i. Compensation claim *cannot* be excluded by way of stipulation in a franchise agreement, because § 89b (4) sentence 1 HGB prohibits any stipulation which excludes or reduces the compensation claim in advance
   ii. By way of settlement agreement, however, the compensation claim can be excluded or terminated. However, the agreement should be drafted in a way that the termination becomes effective the same day the agreement is executed.
7. **Franchisee's loss of compensation claim** - § 89b (3) HGB, if
   i. franchisee itself terminates the franchise agreement, or
   ii. franchisor terminates the franchise agreement for good cause/important reason (infringements or contract breaches by franchisee) (§ 89a HGB)
   iii. franchisee and franchisor agree that a third party takes over the franchise agreement as a new franchisee replacing the former franchisee (however such agreement cannot be made before the franchise agreement was terminated)

United States: Immediate Termination for “default” - curable or incurable?

- Check your local State statutes -
  - Usually must show (a) factual predicate; (b) not subject to waiver, laches/estoppel, wrongful termination/frustration of purpose, unconscionability
- State laws - many protect franchisees -
  - require strict notice and cure periods
  - require good cause - e.g., California - good cause + 60 days notice, except in 9 specific situations (relating to crime, bankruptcy, etc.)
  - common law - even if no contract provision - e.g., Pennsylvania - allows if breach goes to the “essence” of the contract - irreparable damage

“Good Faith” in Franchise Relationships – Required for Termination in the United States?

- Generally, no - but the obligation for good faith may be implied

- Conn. and Delaware - statutes mandate good faith for termination - usually determined by Franchisor conduct toward franchisee

- HA, WA, NJ and several others - general implied good faith and fair dealing - may be extended to termination —
    - NJ has no statutory lingo - but courts have considered the issue - assess injury to franchisee vs. Franchisor
        - BUT - recent NJ cases indicate no good faith needed - 3rd Circuit — 7 Eleven case - “motivation” defense (racism) rejected

VII. Joint Employer Liability

1. **In general no joint employment**, if the franchisee employs his own personnel, neither the franchisee nor his personnel qualifies as employee of the franchisor.
2. **Exemptions from this principle conceivable**:
   i. **Franchisor leases personnel of and from Franchisee:**
      - ▷ Subject to specific requirements of German employee lending law (*Arbeitnehmerüberlassungsgesetz – AÜG*).
      - ▷ Franchisee would need a specific license for lending employees, otherwise lending would be illegal
      - ▷ In the event of illegal employee lending, the Franchisor would be jointly liable vis-à-vis employees of the Franchisee

   ii. **Franchisor and Franchisee arbitrarily conclude together an labour agreement** with personnel working in a franchise outlet

   iii. **Employee works for two employers and both relationships have a close connection**. In this case, the employers would be jointly liable to the employee. **However, no German labor court has proceeded on the basis that the relationship between franchisor, franchisee and franchisee's personnel should be considered as joint employment.**

Joint Employer / Vicarious Liability in the United States

NLRB: *Browning-Ferris Industries of Cal., Inc.* (Aug. 27, 2015)

New Definition of "Joint Employer"

- Workers supplied by staffing agency
- "Joint employer" if *could* exercise direct *or indirect* control over workers – so staffing company employees were *also* employees of BFI
- ***Reversed*** on February 27, 2018**, BUT**…
- Save Local Business Act (HR 3441) – would establish *direct control* as the standard

Joint Employer Analysis

US Law Factors:

- Matters *directly* relating to employment relationship: hiring, firing, discipline, supervision, direction
- Dictating staffing/number of workers
- Controlling (*directly or indirectly*) worker scheduling, seniority, overtime
- Controlling the manner and method of work performed
- Controlling (*directly or indirectly*) employee compensation

Considerations When Drafting

Retain control in order to protect the integrity of Trademarks:

- retain rights to enforce quality standards; inspection/audits
- Reserve the right to terminate the agreement for failure to meet standards
- Mandate franchisees to undergo certain training
- Retain rights of approval or disapproval

DON'T:

- Provide employee handbooks
- Get involved with employee hiring, firing, scheduling, training, uniforms
- Co-mingle operations with franchisee – pricing, inventory, insurance

Enhanced Value via Corporate Social Responsibility

A 2014 study titled The Nielsen Global Survey of Corporate Social Responsibility examined more than 30,000 consumers in 60 countries worldwide to better understand the impact of CSR on behavior. Of the over 30,000 global consumers surveyed:

- 67% prefer to work for socially responsible companies
- 55% will pay extra for products and services from companies committed to positive social and environmental impact
- 52% made at least one purchase in the past six months from one or more socially responsible companies
- 52% check product packaging to ensure sustainable impact
- 49% volunteer and/or donate to organizations engaged in social and environmental programs

Comparative Litigation

Germany	United States
One stop shop court	State v. federal (ITC, alternative forums)
Limited disclosure	Broad discovery
No Depositions	Depositions Permitted
No *formal* witness or expert preparation However witness preparation not prohibited. However, if judge asks witness has to disclose . Expert nominated by court →Preparation not permitted	Permitted expert or witness preparation
No jury in civil trials	Permitted
Presumption of loser pays principle (fee shifting)	Parties bear their own costs (usually)
No punitive damages	Punitive damages
Limited prospect for class actions (European class action to come)	Class actions widespread

Questions? Please call me or drop me an Email

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Dr. Mansur Pour Rafsendjani has advised international clients for more than 22 years. Before joining Noerr, he was General Counsel of an investment management company and assistant professor at the University of Saarland for securities law and lectured on international contract law at the Saarland University of Applied Sciences. He was head of Noerr's Kiev office for six years. He specializes in Franchising and has published books and articles about international franchising.

Together with his team, he advised more than 600 companies doing business in Germany, United States, Russia and Ukraine. He regularly lectures on various topics in his practice areas for European, German, Ukrainian and Russian law

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Marc is the co-chair of the Retail & Consumer Goods industry team. His practice focuses on intellectual property licensing and franchising in the retail/consumer goods and services areas, fashion/apparel and accessories, food and beverage, and commercial/industrial design, including the drafting, negotiation and enforcement of license and franchise documents and agreements, as well as implementation of branding and commercialization objectives for clients via licensing and franchising. In conjunction with the services above, he counsels clients on creating effective strategies for procuring, protecting and enforcing their global intellectual property assets. Marc has also participated in and used alternative dispute resolution forums such as arbitration and mediation to enforce intellectual property rights. Marc frequently lectures and writes on intellectual property issues for a variety of intellectual property organizations and publications, including International Trademark Association (INTA), New York State Bar Association (NYSBA) Intellectual Property Section, American Bar Association Forum on Franchising, Wharton Business Law Association at the University of Pennsylvania, New York University, Association of the Bar of the City of New York Fashion Law Committee, Licensing Industry Merchandisers' Association (LIMA), *National Law Journal, IP Strategist* and *The New York Law Journal, Practical Law, The Licensing Journal*.

Marc is listed in the 2018 and the seven years immediately preceding editions of *World Trademark Review 1000 – The World's Leading Trademark Professionals*. He was recognized as a New York "Super Lawyer" in Intellectual Property by *Super Lawyers* magazine in 2017 and the seven years immediately preceding, and, for the last six years, he was named a Top 100 New York Metro "Super Lawyer" in Intellectual Property. Marc has been recognized as an "IP Star" in 2017 and the four years immediately preceding by *Managing Intellectual Property* magazine. In 2017, he was recognized by *Who's Who Legal* for Franchising. Marc was named a 2018 Legal Eagle by *Franchise Times.* He was also recommended by *Legal 500 US* in 2015 and 2016 for Copyright. In 2013, Marc received the Lexology *Client Choice Guide - International 2013* Award and is the sole winner in the Intellectual Property: Copyright category for New York. He was also listed in the 2012 and the four years immediately preceding editions of *Chambers USA: America's Leading Lawyers for Business* for Intellectual Property: Trademark & Copyright. Chambers noted that Marc has "tremendous business savvy and is tenacious in his work ethic," according to his clients (2012).