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Is the Franchise Model Under Attack?

New York Law Journal

September 6, 2019

Sadly, I submit this column on franchising for the late Rupert Barkoff, my mentor in franchising, and the author of this column for the New York Law Journal for many years. For the last six years I had the privilege to work with and learn franchise law from Rupert, and we periodically debated the merits of franchising, and whether, as the title of this article asks, franchising was the best way for brand owners to do business.

Rupert was a true believer in franchising and its benefits, and indeed before he passed became involved in several restaurant ventures that I am sure he hoped would eventually franchise. But, in Rupert's Nov. 17, 2017 NYLJ article titled "*Joint Employer Liability in the United States and Australia*," Rupert discussed several recent impediments to the franchise model including the unexpected rise of joint employer liability and misclassification actions for franchisors, and new state laws, e.g., CA-AB5 California, that appeared to target franchising and conspire to reduce or eliminate franchise activity. Notably, at the end of Rupert's 2017 article he posed whether "it may be time to reflect on the franchise model and ask if there is a better way to do business." It is now 2019, and I am confident Rupert would deem this inquiry very appropriate in light of the current state of affairs in franchising.