

ABOUT THE EDITOR

Kenneth R. Costello is a partner in the Los Angeles office of Bryan Cave, LLP, an international law firm named by *U.S. News & World Report* as Tier 1 nationally in franchising, with 1,000 lawyers and 26 offices globally. He is certified as a specialist in franchise and distribution law by the California State Bar Board of Legal Specialization and focuses his practice on a broad range of U.S. and international franchise, intellectual property licensing, and e-commerce issues, and is a frequent author and speaker on these topics.

Among many other publications, he co-authored *Franchising Law: Practice and Forms*, a leading three-volume treatise, he has been an author and speaker at twelve ABA Annual Forums on Franchising and Annual International Franchise Association Legal Symposia, and a contributing author of chapters in several American Bar Association (ABA) publications (including this publication), as well as the *Franchise Desk Book*, *The FTC Franchise Rule*, and the ABA's law school *Casebook* and accompanying Teacher's Manual.

He has served on the International Franchise Association's Supplier Forum Advisory Board, Legal/Legislative Committee, and Membership Committee, as an articles editor for the *ABA Franchise Law Journal*, and on the Advisory Board of Leader's Franchising Business & Law Alert.

Mr. Costello was named "Los Angeles Franchise Law Lawyer of the Year" by *U.S. News/Best Lawyers* for 2013, and has been recognized by Chambers U.S.A., Chambers Global as "a superb transactional attorney with tremendous business sense," by *International Who's Who of Franchise Lawyers* as one of the "Most Highly Regarded" franchise lawyers globally, by *Best Lawyers in America*, and in *Law & Politics* magazine as a Southern California "Super Lawyer."

He has testified on franchise trade regulation issues before the Federal Trade Commission and has been consulted on franchising issues by the *Wall Street Journal*, *New York Times*, *Los Angeles Times*, *CBS News*, *Forbes*, and *Entrepreneur Magazine*, among other media. For additional information, see <http://franchise-cave.com>.

ABOUT THE AUTHORS

CHAPTER 1

Keith Klein is a partner in Bryan Cave LLP's franchise and distribution practice group. He is certified in franchise and distribution law by the California State Bar and he also has been recognized by *Best Lawyers in America*® for his work in franchising. Keith has authored a number of franchise publications including, most recently, a chapter addressing the California Franchise Relations Act. He is regularly interviewed by franchise publications on social media and Internet issues, and he has participated in local, national, and international panels on these issues. Keith has been recognized as a rising star by Benchmark for his litigation work after leading teams of lawyers handling nationwide dockets of complex litigation and other high profile trials and arbitrations. Keith heads Bryan Cave's Start Up and Emerging Growth program in its Los Angeles office and serves as outside general counsel to multi-channel marketing companies.

Matthew Fojut is general counsel for Just Fabulous, Inc. Before Just Fabulous, Mr. Fojut was General Counsel & Senior Vice-President, Business Affairs of Sling-shot Labs, News Corporation's Web 2.0 incubator; was Vice-President, Business & Legal Affairs of FOX Interactive Media (MySpace); and an associate in the Venture Capital/Emerging Growth Transactions Department of the international law firm O'Melveny & Myers.

CHAPTER 2

Marisa D. Faunce is a partner with the law firm of Plave Koch PLC in Reston, Virginia. Marisa is an Order of the Coif graduate of the Marshall-Wythe School of Law at the College of William and Mary, and she received her undergraduate degree from the University of Virginia. Marisa has been recognized as a "Franchise Times Legal Eagle" by *Best Lawyers in America*® and by the *International Who's Who of Franchise Attorneys*. Marisa counsels franchisors, licensors, and manufacturers on transactional, regulatory, and intellectual property issues involved in their franchise and distribution programs. Marisa has extensive experience in structuring and revamping franchise programs; drafting franchise, license, and area development agreements; and counseling franchisors with regard to regulatory

(FDD) compliance issues. Marisa counsels franchisors with regard to corporate transactions, contract negotiations, master franchise programs, captive market development and all aspects of the franchise relationship, including operational compliance, system standards, default and termination strategies, and franchise workouts. She regularly trains franchisor executives with respect to franchise sales, relationship, and regulatory compliance issues. In addition to assisting franchisors with franchising issues, Marisa is an experienced trademark attorney with a specialized focus in branding, licensing and trademark prosecution at the U.S. Patent and Trademark Office.

Christina M. Noyes is a partner with Gust Rosenfeld, PLC, in Phoenix, Arizona. She has been in private practice since 1996 and was a certified public accountant for three years with Deloitte and Touche, LP before starting her legal career. Christina focuses her transactional practice on franchise and corporate law, as well as handles trademark registrations and renewals. She represents franchisees and franchisors and has been listed in the Franchise Law category of *The Best Lawyers in America*® since 2009. Christina has written articles and has presented materials on franchising, business opportunity issues, and intellectual property issues for the American Bar Association Forum on Franchising, the International Franchise Association and various Arizona business groups. Christina was also the author of the Arizona Chapter of *Covenants Against Competition in Franchise Agreements* (M. Grey and N. McNew, coeditors). Christina is a graduate of Miami University (B.A., Accounting, *cum laude*, 1990) and Arizona State University College of Law (J.D., *cum laude*, 1996, managing editor, *Arizona State University Law Journal*). She is admitted to practice in Arizona.

CHAPTER 3

Jeffrey A. Brimer is a counsel in the Denver, Colorado office of Faegre Baker Daniels LLP. Previously, he was of counsel in the Denver office of Snell & Wilmer LLP, and Vice President, General Counsel and Secretary of Medicine Shoppe International, Inc., a St. Louis, Missouri-based subsidiary of Cardinal Health, Inc. Jeffrey is a graduate of the University of Missouri-St. Louis (B.S., Political Science, *summa cum laude*, 1976) and the University of Missouri-Columbia School of Law (J.D., 1979), where he was a Member of the Missouri Law Review. He is a member of the American Bar Association (Sections on Business and International Law and Practice, and the Forum on Franchising), the Colorado and Missouri Bars, and the International Bar Association. He holds a Certified Franchise Executive designation from the International Franchise Association. Jeffrey was the editor of the *Franchise Law Compliance Manual* (Second Edition), published by the

American Bar Association Forum on Franchising in 2011. He served as a member of the Governing Committee of the Forum on Franchising from 2000 to 2005, was the Chair of the Long-Range Planning Committee of the Forum on Franchising, and served on the ABA Section Officers Committee – CLE Task Force. He was programs officer of the Forum from August 2002 until May 2004 and was co-chair of the ABA Annual Forum on Franchising, held in Scottsdale, Arizona in October 2002. He was a member of the Steering Committee of the Corporate Counsel Division of the Forum on Franchising from 1994 through 2000 and served as the Director of the Division from 1998 through 2000. He is a member of the International Franchise Association Legal-Legislative Committee. Jeffrey has written and spoken on a variety of franchise issues at the ABA Annual Forum on Franchising, the International Franchise Association Legal Symposium and Annual Meetings, the Bar Association of Metropolitan St. Louis, the Kansas City Bar Association, the Colorado Bar Association, the Denver Franchise Business Network, and the International Bar Association. Jeffrey has been named to *The International Who's Who of Franchise Lawyers*, Franchise Times "Legal Eagles," Chambers USA and Chamber's Global: America's Leading Lawyers for Franchising, *Best Lawyers in America*®, and Super Lawyers®.

CHAPTER 4

Kenneth A. Freed is the founder of Freed Law Offices based in Newport Beach, California. He has over thirty years' experience focusing on franchise and distribution law; business mergers and acquisitions; real estate acquisition; leasing, finance and development; corporate and commercial finance; and general corporate, LLC, and partnership issues. He also performs litigation oversight and management and acts as an arbitrator, mediator, and expert witness in franchise- and business-related disputes. Following law school, Kenneth joined the San Francisco firm of Feldman, Waldman & Kline, where he rose to become a shareholder in the firm. From 1995 to 2005, Kenneth was the chief legal and administrative officer for a multi-unit franchisee restaurant operating company, where he structured and managed major acquisition, financing, and development transactions to help grow the company in only eight years from start-up to over 300 locations in 16 states, with \$350 million in annualized sales and over 7,500 employees. Kenneth also managed and coordinated the restructuring and sale of the restaurant operating company, and the refinancing of the debt and restructuring of the leases of the real estate holding company affiliates that continue to own the real estate underlying 133 of the restaurants. Kenneth continues to manage all aspects of the business of the real estate holding company affiliates

as president of the companies, in addition to practicing law. Kenneth has an AV rating from Martindale-Hubbell. He previously served as chair of the Franchise Law Committee of the Business Law Section of the State Bar of California, where he was instrumental in initiating changes to California's franchise investment laws. In addition, he is a member of the American Bar Association Forum Committee on Franchising. He is a former member of the International Franchise Association's Legal/Legislative Committee and served on the Advisory Board of the Council of Franchise Suppliers. He has been a featured speaker at both the International Franchise Association Legal Symposium and the American Bar Association Forum on Franchising. Kenneth received a B.A. in Economics, *magna cum laude*, from Boston University, and a J.D. from the University of Chicago Law School.

CHAPTER 5

David Gurnick practices law with the Lewitt Hackman firm in Los Angeles, California. David represents manufacturers, franchisors, cooperatives, distributors, dealers, and franchisees in wide-ranging industries in preparation of agreements, franchise law compliance, antitrust and competition matters, government investigations, trademarks, copyrights, trade secrets, e-commerce, and related litigation. David is certified as a specialist in franchising and distribution law by the State Bar of California Board of Legal Specialization. David has written numerous books and articles on franchise and distribution law subjects. He authored *Distribution Law of the United States* (Juris Publishing 2011). He was a contributing co-author for *International Franchising*, a text on law and strategies for international franchising programs. David is also author of *Franchising Depositions* (Juris Publishing 2003). David has served as an adjunct professor of law teaching franchising. He has been a panelist at the American Bar Association Forum on Franchising, International Franchise Association Legal Symposium and California Continuing Education of the Bar. Previously, David was on the editorial board of the American Bar Association *Franchise Law Journal*. David is 2012–2013 President of the San Fernando Valley Bar Association and served as president in 1993–1994. He previously chaired its Business Law and Litigation Sections. He previously served as a trustee of the University of West Los Angeles College of Law and as president of the Valley Community Legal Foundation. He is a 2012–2013 trustee of the Los Angeles County Bar Association and also served two terms as trustee in the 1990s. David is admitted to practice in the U.S. Supreme Court, U.S. Courts of Appeals for the Federal Circuit and Ninth Circuit, and U.S. District Court for the Central District of California. David is a member of the Bars in California and the District of Columbia. David earned his Bachelor's degree in 1981 from the University of

California, Los Angeles (UCLA), where he graduated *summa cum laude* and Phi Beta Kappa. At UCLA, David was a member of the Student Council and University Policies Commission and chaired the Judicial Review Committee. David received his law degree in 1984 from the University California, Berkeley. During law school, David served as Judicial Extern to the U.S. Ninth Circuit Court of Appeals.

CHAPTER 6

Mark D. Shapiro is a founding partner of the law firm Hyland Levin in Marlton, New Jersey. He concentrates his practice in the areas of real estate and franchise law. Mark's franchise practice includes counseling regional and national franchisors on franchise structuring, operational, relationship, real estate, and regulatory issues. He regularly represents buyers and sellers of business assets in a variety of distribution-related industries. His real estate practice focuses on development, leasing, and loan transactions. He also represents property owners in tax appeal matters. Mark has participated as a program presenter on franchise law for the American Bar Association's Forum on Franchising, the New Jersey Institute of Continuing Legal Education, the International Franchise Association and the Pennsylvania Bar Institute. He has also presented on real estate law for the Pennsylvania Bar Institute and Lorman Education Services. The State of New Jersey Department of Banking and Insurance/Real Estate Commission has approved Mark as an instructor for continuing education credits. He moderates and teaches continuing education credit programs to commercial real estate brokers. He served as chair (2009–2011) and secretary (1997–1999) of the New Jersey State Bar Association's Franchise Law Committee and has been a member of the American Bar Association's Forum Committee on Franchise Law since 1996. Honored by *New Jersey Monthly Magazine* as a "New Jersey Rising Star" and listed as a "Super Lawyer" in the area of real estate, Mark was also recognized by Chambers USA: America's Leading Lawyers for Business as "Leaders in Their Field" in the area of real estate. He has an "AV" Peer Review Rating from Martindale-Hubbell Law Directory. In addition, he was twice selected as a "40 under 40" New Jersey lawyer by the *New Jersey Law Journal*. Mark is a graduate of Emory University (B.A. 1990) and the George Washington University Law School (J.D. 1993).

CHAPTER 7

Gary R. Batenhorst is a partner in the Omaha, Nebraska office of Cline Williams Wright Johnson & Oldfather, LLP. As a member of the firm's Franchising and Distribution Practice Group, he concentrates his practice on transactional and

compliance matters, representing primarily franchisors, product manufacturers, and multi-unit franchisees. He also represents start-up franchisors in the establishment of franchise systems. Gary was Vice President, Secretary and General Counsel for Godfather's Pizza, Inc. from 1988–2001. He taught Franchising as an adjunct professor at Creighton University School of Law for fourteen years, where he currently teaches business planning. Gary received his B.S./B.A. from Creighton University (*magna cum laude* 1973) and his J.D. from New York University School of Law (1976). Gary has been recognized by *Best Lawyers in America*®, *Who's Who of International Franchise Lawyers* and Super Lawyers®. He has written on franchise topics in state and national publications and has presented programs on franchise topics for national and state continuing education programs and seminars for individuals interested in establishing franchised businesses.

CHAPTER 8

Joyce Mazero is a partner in the Franchising & Distribution, Food & Beverage and Retail Industries and Consumer Products practice groups. She has substantial business experience as lead project partner assisting clients in developing strategy, structuring, negotiating, implementing, and resolving disputes for product- and service-based domestic and international license, franchise, distribution, and shared services systems. This includes organizational and governance matters for purchasing groups, cooperatives, manufacturers, suppliers, joint ventures, and sales representative systems as well as the full gauntlet of relationship, competition, and enforcement issues associated with such systems. Among her various honors and awards, Joyce was named by Chambers USA and Chambers Global as one of the nation's leading franchise attorneys and received the prestigious national Band 1 recognition annually from 2008–2013. She currently serves on the boards of trustees of the National Restaurant Association Educational Foundation and the International Franchise Association Educational Foundation, previously having been the 2006 recipient of the International Franchise Association's Bonny LeVine Award for leadership in franchising. She is the founding member and chair emeritus of the DFW Chapter of Women Corporate Directors (2008–present). She was awarded the Women's Foodservice Forum Leadership Award in 2010 and served as a board member of the Women's Foodservice Forum (2004–2009). She also serves on the Susan G. Komen for the Cure Advocacy Alliance Board and the Board of Governors for the College of Merchandising, Hospitality and Tourism for the University of North Texas.

Suzanne Trigg focuses her legal practice on product distribution and other supply chain issues. She has represented franchisors, restaurant systems, consumer

product manufacturers and distributors, medical device manufacturers, and other companies conducting supply chain initiatives. Suzanne's experience includes representing and establishing purchasing cooperatives and similar buying groups, structuring agreements with vendors and logistics providers, and addressing issues specific to restaurant and food-service companies, including food safety issues. Suzanne frequently drafts and negotiates franchise, license, product distribution and logistics agreements and counsels clients on regulatory compliance issues. Suzanne also draws upon her background in public policy to represent the interests of businesses contracting with or under inspection by government agencies. Before practicing law, Suzanne served as legislative director for a member of the Texas House of Representatives. Suzanne is a member of the ABA Forum on Franchising, has authored several articles on franchise issues, and has given presentations at conferences held by the International Franchise Association.

Emma Ricaurte Harker is an associate at Kastner Huggins Reddien Gravelle LLP. Emma focuses her practice on representing companies in commercial transactions, including supply and distribution arrangements, intellectual property licensing and technology-based transactions. She has represented clients in drafting franchise and development agreements, license agreements, service agreements and other distribution-related agreements and preparing domestic and international franchise disclosure documents.

CHAPTER 9

Craig Tractenberg focuses his practice on complex litigation, international arbitration, and counseling requiring expertise with franchise and distribution, insolvency, licensing, and intellectual property issues. He is a partner at the law firm of Nixon Peabody LLP and serves as its Franchise and Distribution Team Leader. Craig was named "New York Franchise Law Lawyer of the Year" by *U.S. News/Best Lawyers* for 2012 and has been recognized for exceptional standing in the legal community in *Chambers USA: America's Leading Lawyers for Business*, "SuperLawyers," the *International Who's Who of Franchise Lawyers* and *Best Lawyers in America*®. Craig has been recognized for the past ten years as a "Legal Eagle" by *Franchise Times* and he was inducted into the inaugural Legal Eagles Hall of Fame in 2013. Craig is a regular contributor to *American Bar Association*, *International Franchise Association* and *American Lawyer Media* publications and is active in the franchise law committees of the Pennsylvania and New York State Bar Associations. He is a graduate of LaSalle College and Temple University School of Law, where he teaches as an adjunct professor of franchise law.

CHAPTER 10

Robert L. Zisk is a principal at Gray Plant Mooty, in its Washington, D.C. office, and concentrates his practice on franchise and distribution and commercial litigation. He is co-chair of the Franchise & Distribution practice group. Bob has extensive experience as a franchise litigator and counselor. For over twenty-five years, he has represented national franchisors in litigation with franchisees over issues of financial fraud, system standards, class actions, encroachment, trademark and trade dress infringement, and covenants not to compete. He specializes in addressing franchisee underreporting of sales, tax fraud, and related financial issues, both in and out of court. He is a frequent speaker on franchise law topics, and has presented programs at the American Bar Association's Forum on Franchising, the International Franchise Association's Legal Symposium and Annual Convention, and the National Restaurant Association's Internal Auditors' Group.

Jeffrey L. Karlin is a principal with Gray Plant Mooty's Washington, D.C. office and is a member of the firm's Franchise & Distribution and Business & General Litigation practice groups. Before entering private practice, he served for nine years as a trial attorney for the Torts Branch, Civil Division, U. S. Department of Justice. Jeffrey has litigated a wide variety of commercial cases for franchisor clients involving issues of financial fraud, underreporting of sales, wrongful discharge, conversion, encroachment, and market withdrawal. He has also defended a number of tort and product liability actions involving hot beverage spills, premises liability, wrongful death, invasion of privacy, and defamation. Jeffrey is licensed to practice in both the District of Columbia and California and is admitted to practice in the United States District Court for the District of Columbia. He is a member of the American Bar Association and actively participates in the American Bar Association's Forum on Franchising.