

OUR PRACTICE

Franchise and Distribution

Baker Donelson's Franchise and Distribution attorneys have decades of experience serving as trusted advisors to B2B and B2C franchisors, multi-unit franchisees, suppliers, distributors and dealers. Our experience includes advising our clients on establishing, executing and managing traditional brick and mortar locations, mobile services, non-traditional locations and delivery systems, global distribution networks, supply chain and other support services.

Whether you operate through two-tier or multi-tier arrangements, our experience supports your strategy and tactics for growing and sustaining your chosen business model. Our franchise attorneys have worked with franchisors in a number of industry sectors, including hospitality; retail; health care; oil and gas; plumbing, heating and air conditioning; and emergency relief.

Our services for franchise and distribution clients include the following:

Franchising

- Franchise Disclosure Documents and related transactional documents – unit agreements, area development and multi-unit development agreements, area representative program disclosure documents and agreements
- International outbound master license agreements
- Federal and state regulatory compliance and compliance training, including IFA's FRAN-GUARD training program for franchisors and franchise sellers
- Regulatory compliance audits
- Franchise transactions with franchisees and developers -- special stipulations, ancillary support forms, lender estoppel and attornment agreements
- Franchisor acquisition and sale diligence evaluation and reporting
- Franchise broker and referral source agreements
- Franchise recruitment advertising
- Franchise agreement enforcement and litigation
- Franchisee advisory councils
- Exempt transactions

Distribution

- International distributor agreements
- Domestic distributor agreements
- Dealer agreements
- Compliance assistance and training
- Enforcement and termination
- License agreements

Operations

- Management and administrative services agreements
- Operating, supply chain, sourcing and service agreements
- Procurement, event and performance agreements
- Convention services, destination management and transportation services

- Alcoholic beverage licensing
- Federal and state public policy (legislative) representation and lobbying

Entity Support and Strategic Transactions

- Entity formation and capitalization
- Joint ventures
- Public and private debt and equity offerings
- Asset securitizations
- Project finance
- Sarbanes-Oxley compliance and director training
- Public company reporting
- Executive compensation
- Tender offers
- Mergers and acquisitions

Data Protection, Privacy and Cybersecurity

- Privacy policies and customer engagement communication
- Terms of use for web sites and content review
- Vendor management and transactional due diligence
- Privacy and data protection law compliance planning and implementation
- Information governance
- Data breach readiness, response and litigation

Development

- Raw land and existing building acquisitions and dispositions
- Historic property acquisition and renovation
- Ground and space leasing and shopping center out lots
- Net leases, subleases and tenant improvements
- Sale and leaseback transactions
- Architectural, construction and renovation contracts
- Debt and equity financing
- Equipment leasing
- Owner tax structuring, planning and restructuring
- Tax-exempt financing for convention centers and related hotels or industrial development revenue bonds
- Tax increment financing
- Government grants and assistance
- Conventional mortgages, capital leases, loans and working capital lines
- Subordination, non-disturbance and attornment agreements for lenders, borrowers and third parties
- Franchise comfort and estoppel letters
- Environmental diligence and compliance
- Hotel condominiums
- Property tax assessment appeals
- EB-5 financing

Environmental

- Due diligence for site acquisitions
- All types of site cleanups and brownfield agreements allowing for the redevelopment of previously used properties

- Wetlands and green design issues
- Environmental agreements and opinions with lenders and other parties
- Compliance permitting and utilities for new and existing facilities
- Mold and asbestos concerns
- Litigation strategies and defense
- Single unit and multiple locations

Information Technology

- Computer hardware and software acquisition and licensing
- Telecommunications
- Internet access services
- LAN/WAN technology
- Building system management systems
- Property management systems and reservation systems
- Point-of-sale systems
- Back-office accounting systems and customer databases

Intellectual Property

- Intellectual property protection strategy
- Employee and contractor work for hire and assignment agreements
- Trademarks and service marks
- Copyrights
- Patents
- Confidentiality and non-disclosure agreements

Labor & Employment

- EEO, FLSA, ADA, Title VII, ADEA, and wage and hour employment law compliance
- ERISA and benefit plans
- OSHA
- OFCCP compliance programs and evaluation
- NLRB, union organizing campaigns, union avoidance training and collective bargaining representation
- Workers' compensation
- Wrongful termination and discrimination claims

Litigation and Dispute Resolution

- Mediation
- Arbitration
- Litigation
- Vicarious liability defense
- Premises liability and tort claims
- Business divorces
- Contract dispute evaluation



Case Studies

- Summary Judgment Victories for Choice Hotels International, Inc. - TVPRA Litigation



Representative Matters

Labor & Employment

- Obtained a favorable resolution in defense of a publicly traded national restaurant chain in collective action under the FLSA with a putative class of more than 550 members.
- Obtained a summary judgment victory in federal court on behalf of a national restaurant franchisor over allegations of race discrimination under 42 U.S.C. § 1981 (Civil Rights Act of 1866) and for defamation under Florida law.
- Successfully defended and obtained full summary judgment on behalf of a national restaurant client in a hotly contested case in which the plaintiffs claimed sexual harassment, retaliation, and gender discrimination and sought over \$400,000 in damages and reinstatement.
- Obtained summary judgment for a national restaurant operator in a lawsuit asserting claims of sexual harassment.
- Defended a federal court lawsuit in which hourly employees of a restaurant company brought FLSA claims to recover unpaid overtime, claiming they were required to work off the clock. The case was conditionally certified and then settled after years of litigation.

Litigation

- Obtained summary judgment for a franchisor in a vicarious liability case the morning of trial, successfully avoiding a \$4.5 million verdict which was awarded against the co-defendants.
- Obtained an injunction and ultimately a judgment on behalf of a nationwide franchisor against a franchisee for breach of franchise agreements and wrongful possession of inventory.
- Settled an eminent domain matter on behalf of a fast food restaurant corporation involving a corner interstate site in Clayton County in metro Atlanta. The Department of Transportation condemned the principal access to the site, thus decreasing the value of the property. The DOT paid \$2.3 million pursuant to the consent judgment to conclude the settlement, which represented a 200 percent increase over the original sum offered by the DOT.

Real Estate

- Served as real estate counsel for site acquisition and development in Louisiana for a national fast-food franchisee.
- Represented a franchisee of a national restaurant chain in negotiating leases with its landlords.

Transactions

- Represented a national franchisor and operator of "paint and sip" art studios in its internal restructuring and acquisition of two entities – an international franchisor and operator of "paint your own pottery" studios and a supplier of ceramics and art supplies. As a result of the transaction, the newly formed holding company became the leading national franchisor and operator of arts and crafts studios.
- Represented a restaurant franchisee in the \$60 million sale of more than 60 restaurants to a strategic buyer.
- Represented a large independent franchisee in connection with multiple asset purchases and sales involving various brands of franchise restaurants valued between \$250,000 – \$750,000 each.
- Served as lead counsel for founders and investors of a 100-franchise chain of cupcake bakery stores in its sale to a private equity firm.
- Served as franchise counsel to a leading provider of device insurance, warranty and support services for cell phones, consumer electronics and home appliances, in the acquisition of a franchise chain that operates more than 500 stores in the U.S., specializing in same-day personal electronics repair.
- Represented a leading Tennessee-based financial institution in the acquisition of a franchise lending portfolio consisting primarily of restaurant loans valued at more than \$500 million.
- Assisted a due diligence team in reviewing and summarizing the terms of hundreds of franchise agreements for a national hotel chain under intense deadlines.
- Represented restaurant operators in the sale of franchised locations.