



International Distribution Institute

Failure to comply with disclosure rules in the USA

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Laws Governing Franchise Disclosure

- Types of Disclosure Violations
- Federal Trade Commission Rule (the “Franchise Rule”)
 - 16 C.F.R. Part 436 (2007)
- States Laws:
 - States with Franchise Disclosure Laws



Types of Disclosure Violations

- Failure to Register – State Only
- Disclosure Violations – Federal and State:
 - Failure to deliver an FDD
 - FDD with Material Omissions or Misrepresentations
 - Improper reliance on exemption or exclusion



US Federal Law

- No private right of action – only FTC can bring actions to enforce Franchise Rule
 - “private right of action” is the right of one person to sue another based on violation of a law or regulation
- Complaint Process
 - Filed with Federal Trade Commission
 - Investigation by FTC Staff
 - Remedy will be based on severity of violation



US Federal Law - Remedies

- Cease and Desist Orders
- Temporary and Permanent Injunctions
- Civil Fines up to \$11,000 per violation
- Referral to Justice Department to prosecute crimes
- Order Rescission or Restitution
- Order referral to IFA Compliance Training Program



Persons Liable for Franchise Violations Under the Revised Rule

- Franchisor
- “Franchise Sellers” – Every person who directly or indirectly controls the franchisor, including “key management”
- Every employee who materially aids in the act or transaction that violated the Franchise Rule



State Franchise Disclosure Laws

- State franchise laws provide for private remedies as well as potential civil and criminal penalties



State Franchise Enforcement Agencies:

- California
- Hawaii
- Illinois
- Indiana
- Maryland
- Michigan
- Minnesota
- New York
- North Dakota
- Rhode Island
- South Dakota
- Virginia
- Washington
- Wisconsin



State Remedies

- Denial, revocation, or suspension of the franchise registration;
- Investigations and hearings;
- Interim and permanent cease and desist orders;
- Administrative penalties;
- Prosecution or referral to state or local authorities for prosecution of civil or criminal actions;
- Restitution on behalf of injured parties;
- Appointment of receivers;
- Civil, administrative and criminal penalties;
- Imprisonment for willful violations;
- Costs, reasonable attorneys fees, investigative expenses, and other remedies
- Order referral to IFA Alternative Rule Enforcement - Compliance Training Program

Conclusion

- What to do if a violation occurs:
 - Self discovery
 - Voluntary Reporting
 - Government Inquiry
- Questions