

WITMER, KARP, WARNER & RYAN LLP

COUNSELLORS AT LAW  
22 BATTERYMARCH STREET  
BOSTON, MASSACHUSETTS 02109

TELEPHONE (617) 423-7250  
TELEFAX (617) 423-7251  
www.wkwrlaw.com

ERIC H. KARP  
MARK J. WARNER  
STEVEN J. RYAN  
RONALD A. WITMER, OF COUNSEL

ELISABETH PELLETIER JONES  
RYAN M. GOTT  
ERIN M. LUIZZI  
ANDREW J. KESTNER  
BRIGID HARRINGTON  
SARA E. KITAEFF

May 2, 2014

Via email to [Art.Rubinett@7-11.com](mailto:Art.Rubinett@7-11.com) and First Class Mail

Arthur Rubinet, Esq.  
7-Eleven, Inc.  
1722 Routh Street  
Dallas, TX 75201

Re: Various Matters

Dear Art:

Thank you for providing me with a copy of the 2014 FDD.

I wanted to address with you some recent developments in the 7-Eleven franchise system, which have generated significant concern and distress, with the hope that we can arrive at a mutually satisfactory set of conclusions.

As you know, the franchise agreement takes pains to memorialize the status of the franchisees as independent contractors. In particular, paragraph 2 of the franchise agreement requires the franchisee to hold himself or herself out to the public as an independent contractor, to exercise complete control over and responsibility for all labor relations and the conduct of employees, including the day-to-day operation of the store and all store employees. The franchise agreement also recites that the franchisor does not exercise any discretion or control over the franchisee's employment policies or employment decisions and that the franchisee will control the manner and means of the operation of the store.

Franchisor recently issued a new GEA Form, without any input, comment or suggestions from the National Coalition or any of its constituent 40 Franchise Owners Associations. As you know, the National Coalition represents more than 4,700 franchisees who own and operate more than 6,000 locations. It is thus a major stakeholder in the system.

Arthur Rubinett, Esq.  
7-Eleven, Inc.  
May 2, 2014  
Page 2

The GEA Form is problematic, not only because it is wholly inconsistent with the independent contractor status of the franchisee, but also because it contains numerous subjective, undefined and unquantifiable standards, which makes it subject to inconsistent application and even abuse.

The massive nature of this document is illustrated by the following statistics regarding its content:

- 13 pages
- 67 separate categories of standards
- 448 separate standards
- 6500 words

This GEA Form would be much more appropriate to a fast food restaurant than a convenience store which happens to serve some fresh food. It is the proverbial tail wagging the dog.

The Guest Focus portion is particularly problematic. The franchise agreement gives the franchisee sole control over the employees in the store, yet the GEA Form purports to regulate grooming, hygiene, jewelry, tattoos, as well as every detail of every interaction between each employee and customer. Each employee is required to "consistently and actively acknowledge guests with a smile", to "make them feel welcome", "demonstrate the ability to effectively communicate with guests", and to be "knowledgeable about the food, share what it tastes like, what their favorite is, and what other guests have said". How does one uniformly apply such subjective and unmeasurable standards, and how does one accurately and consistently evaluate interactions with customers?

We are also concerned about the level of training that has been provided to the persons responsible for completing these GEA Forms. We are already seeing instances of inconsistent and unnecessarily punitive evaluations.

One franchisee that we are aware of received a default notice because he set aside one moldy package of pizza, so that he could discuss with his Market Manager how to obtain credit for it. Another franchisee reports to us that he received a breach notice because of an inexplicable cleanliness score of 55, when his previous score five weeks earlier was 85, and his score two weeks later was 89. We are further advised that on a particular day last week, 25 LONs were delivered in the Seattle market alone. This proliferation of LONs and breach notices, in many cases without any prior discussion with the franchisee, is a marked departure from prior practice and not indicative of good faith and fair dealing.

Arthur Rubinett, Esq.  
7-Eleven, Inc.  
May 2, 2014  
Page 3

Separately, we are aware of franchisees receiving LONs and breach notices for *de-minimus* out of stock items. As you are undoubtedly aware, SEI has unilaterally changed delivery schedules for many franchisees, without giving them an opportunity to adjust. In addition, any particular store can have out of stock items depending on what day of the week or what time of day the store is inspected. We are sure that this is true of company-owned stores as well.

It is not the position of the National Coalition that there should be no brand standards. Rather, we believe that any such standards should be developed in collaboration with the National Coalition, which will necessarily result in greater franchisee buy in. In addition, the standards need to be rational, straightforward and as quantitative as possible so as to avoid inconsistent and indeed discriminatory use of the GEA Form.

We welcome the opportunity to work with you on these and other related issues.

Very truly yours,



Eric H. Karp

cc: Board of Directors, National Coalition of Associations of 7-Eleven Franchisees