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Are Domestic and International Food Franchise Websites in the United States Legally Sound? A Content Analysis

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Abstract

Depending on the country of operation, franchisors must adapt their online marketing practices to local legal requirements. This study focuses on intellectual property right, web accessibility, disclosures, testimonials, and comparative advertising issues. The results of the content analysis of 227 United States (U.S.) and 43 non U.S. food franchisor's websites interested in franchising in the U.S. presented differences on their use of the copyright notice and web accessibility for visually-impaired visitors. Franchisor founded since 1990 behave different that franchisors founded before 1990 on the use of deep linking, data collection, terms of use, and the use of testimonials.

Key Words: franchising, website, legal issues

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Introduction

Businesses use franchising as a way to expand their operations through a third party. In franchising, the franchisor grants a franchisee the right to use its operating procedure, trademark and other intellectual property for a determined period in exchange for a monetary contribution. Once a business decides franchising, it has two marketing efforts: (1) market the business to consumers, and (2) market the franchise to potential franchisees.

A growing marketing and communication tool to help this endeavor is the Internet for its worldwide reach¹ and content diversity potential (Miniwatts Marketing Group, 2009). In a website, franchisors can include products, services and company information, direct sales to clients, recruit employees and potential franchisees, provide an electronic franchise disclosure document, and supply franchisee's intranet (Dixon & Quinn, 2004). A successful franchisee solicitation website will attract suitable potential franchisees and detract unsuitable ones. Also, franchisors' websites can complement more traditional franchisee recruitment efforts, such as, ads in magazines, franchisor sales force, franchise brokers, trade shows, and franchise directories. The effectiveness of the website may help determine the success of the franchise system that relies on it. Besides the technical and operational efficiency that are usually taken into consideration when designing a website, franchisors must also be specially keen in making sure it is legally sound.

Franchising in the United States of America (U.S.) has an important economic impact. In 2005, franchised businesses² represented of the U.S. private sector: 8.1% of total jobs, 5.3% of payroll, 4.4% of output, and 3.3% of establishments (International Franchise Association, 2006). Food represents the biggest industry sector in

¹ From 2000 to 2009, world Internet users' growth ranged from 175.2% in Oceania / Australia to 1648.2% in the Middle East. In the same period, North American growth was 890.8%. The total worldwide Internet users' growth was 380.3%. The Internet still has growth potential, since it only has a worldwide penetration of 25.6%. At September 30, 2009, North America's penetration was 74.2% of its population (Miniwatts Marketing Group, 2009).

² Franchised businesses refer to all establishments that are part of a franchise system – franchisor-owned and franchisee-owned.

business format franchising³, with 43.6% of total franchised jobs, 23.3% of total franchised payroll, 29.9% of total franchised output, and 29.6% of total franchised establishments (International Franchise Association, 2006). Due to its importance, this paper is limited to franchises in the food sector.

In the U.S., domestic and international franchisors interested in franchising recruitment must comply with federal and state regulations⁴. For the purpose of this study we will limit to federal regulations, with the exception of state legislation on notice of disclaimer. The wrong message (or the lack thereof) may have current or future legally undesirable consequences for the Website owner. The purpose of the paper is to determine whether U.S. and non-U.S. franchisee solicitation websites interested in franchising in the U.S. are legally sound. For the purpose of this paper, legally sound means that is in compliance with specific federal and state laws currently in effect and with legal trends that may become law in the future, such as, the issue of web accessibility.

We have organized the flow of this paper in the following order. The introduction focuses the importance of this topic. In the next section, the objectives of our study are presented. The following section includes the theoretical foundation of the study with explanation of practices in the design of a website intended to market within the American legal framework. The methodology section includes the explanation of the use of content analysis. Finally, the study includes data analysis and results, and conclusion sections.

³ Franchising has two formats: product franchising and business format franchising (BFF). Product franchising is when a franchisor offers franchisees the right to sell or distribute a product along with the use of its trademark, while business format franchising also includes the use of the franchisor operating manual and support. BFF is the biggest format in the U.S. In 2005, it represented 81.8% of total franchised jobs, 74.4% of total franchised payroll, 75.6% of total franchised output, and 85.1% of total franchised establishments (International Franchise Association, 2006).

⁴ In March 30 2007, the Federal Trade Commission (FTC) amended its Trade Regulations entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" better known as the "Franchise Rule". Subpart B – Franchisor Obligations, §436.2 – Obligation to Furnish Documents states "In connection with the offer or sale of a franchise to be located in the United States of America or its territories unless the transaction is exempted under Subpart E of this part, it is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act: (1) For any franchisor to fail to furnish prospective franchisee with a copy of the franchisor's current disclosure document..." (16 CFR Part 436, 2007).

Research Objectives

There are three main objectives of this study:

- 1) To show a profile on how legally sound are international and domestic food franchisor solicitation websites in the United States;
- 2) To compare international and domestic restaurant franchisor websites operating or interested in soliciting franchisees in the United States, and show in which areas they show a different profile, if any; and
- 3) To compare franchisor solicitation websites of newer and older food firms in the United States, and show in which areas they show a different profile, if any.

Theoretical Foundations of the Problem

Franchising is a special form of license that is characterized by three factors (1) the right to operate a business identified with the franchisor's trademark; (2) the franchisor exerts significant control over the franchisee's operations; and (3) franchisees have to make an initial franchise fee (Disclosure requirements and prohibitions concerning franchising, 2007). The franchisor is the seller and the franchisee is the buyer of the rights to operate a business and use the franchisor's trademark in exchange of financial contributions during a period of time stated in the franchise contract.

Pre-and post-sale legislation were created in order to prevent fraud and to reduce potential conflicts and litigation in the franchise relationship. At the federal level, the Franchise Rule⁵ regulates only pre-sale disclosure requirements (16 CFR Part 436, 2007). The Federal Trade Commission (FTC) is the agency in charge of regulating franchise disclosure documentation and deceptive advertising. At the state level, there are 15 states⁶ with franchise disclosure laws that prohibit the offer or sale of a franchise in their state without registering first (Federal Trade Commission, 2009). Registration procedure varies from filing requirement of offering circular and promotion in California to only notice of offer and sale requirement in Michigan.

⁵ Disclosure Requirements and Prohibitions Concerning Franchising, part 463 of the Trade Regulation Rule of the Federal Trade Commission (16 CFR Part 436, 2007) is commonly referred as the "Franchise Rule" or "Rule".

⁶ The States that require registration are: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Oregon, South Dakota, Rhode Island, Virginia, Washington, and Wisconsin.

The literature review included the areas of law, website design, content analysis and franchising. There were few academic sources in the topic of legal issues in website development; one was focused in franchising which was not empirical (Brady, Monin, Tingley, & Skelton, 2000; DuPree, 2007; Duvall, 2005; Oppenheimer, 2008). Dixon and Quinn (2004) performed a content analysis of the use, content and features of United Kingdom franchisor websites, but did not analyze any legal issues. Most sources on the issue are from professional publications, such as, *Franchising World* of the International Franchise Association.

The study focuses on the legal soundness of the franchisor's website on a few areas that are: (a) key for the legal protection of the franchisor and (b) readily verifiable through an examination of the website without the aid of any extraneous information. The legal areas of interest are the following: (a) Intellectual property protection, (b) Web accessibility, (c) Use of testimonials, and (d) Comparative advertising.

Intellectual Property Protection

In its most basic definition, Intellectual Property (IP) is a product of the human intellect that has commercial value. It includes a wide range of creations, such as movies, songs, computer source codes, or a company logo or secret recipe (VanderBroeck & D'Angelo, 2008; Duffin & Watson, 2009). When carefully considered, the most important assets of many of the most important companies in the world are Intellectual Property. In general, IP can be divided into four distinctive categories: Copyrights, Trademarks, Patents, and Trade Secrets. In particular, when it comes to information supplied in a website, we decided to focus on the protection of copyrights since it more difficult to rely on the website alone to determine whether the other three categories are vulnerable or not.

Copyright Law protects all types of creative expression, including what the franchisor includes in its website (e.g. text, images, music, and video). This protection starts the moment it is in tangible form. In other words, when the website is created and published, it is protected by Copyright Law (The Copyright Act, 1976). However, the rights of the copyright holder (i.e. the website owner) are enhanced when it places a notice on the website warning that it is a work protected by copyrights. Countries and regions, as in the case of the European Union, around the world have their own copyright law with their own requirements. Therefore, we hypothesize that:

H1A: U.S. franchisors' and non-U.S. franchisors' websites will differ on their use of copyright notice.

Franchisors that have been in business for a longer period should have faced more experience in the management of their IP portfolio. Thus, we hypothesize that:

H1B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their use of copyright notice.

Besides the area of protection of the franchisor's website copyright, other legal issues, such as copyright and trademark infringement, defamation, or association to illegal sites, can be examined. Those issues could be determined by the analysis of the use of framing, "passing off" and deep linking in franchisors' websites.

Framing is a compilation of Hyper Text Markup Language (HTML) documents that are independent one from the other. A website can be divided into different frames. Although framing has navigational benefits, if it is linked to an external link, depending on the link in the frame, the website owner could be contributing to copyright infringement, trademark infringement, defamation, and association to illegal sites (Oppenheimer, 2008).

Passing off happens when sites deliberately pretend to be another organization's site or part of another (Abell & Scott, 2000). The company passing off could be using another company's name, design, unique colors, unique fonts, documents, or other IP materials. Although passing off is associated with illegitimate business trying to gain from legitimate business' goodwill, it can also be used by legitimate business. Companies passing off are infringing other organizations' intellectual property rights.

Deep linking is when the link to an external site does not point to the external site's *main* page, where it can make ad revenue, but to another page or image (Markel, 2002). When it comes to linking and passing off, it has been mentioned that "*the very fabric of the web depends on linking, yet there can be circumstances where such linking is controversial. It is reasonable to assume that placing material on a web page gives others an implied license to create links to that page, but does not give an implied license to copy or disseminate without permission substantial portions of the web page*" (Oppenheimer, 2008). The legal question of violating other people's copyrights becomes more problematic. U.S. franchisors should be more used to the U.S. legal systems. The same is expected for older franchise systems; therefore, we hypothesize that:

H2A: U.S. franchisors' and non-U.S. franchisors' websites will differ on their correct use of framing.

- H2B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their correct use of framing.
- H3A: U.S. franchisors' and non-U.S. franchisors' websites will differ on their use of passing off.
- H3B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their use of passing off.
- H4A: U.S. franchisors' and non-U.S. franchisors' websites will differ on their use of deep linking.
- H4B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their use of deep linking.

Web Accessibility

Since most marketing and legal information on the website is conveyed through text, it is important that it be accessible to people with disabilities. Web accessibility "means that people with disabilities can perceive, understand, navigate, and interact with the Web, and that they can contribute to the Web"(World Wide Word Consortium (W3C), 2005). Even though the United States has the Americans with Disability Act (ADA) since 1990 to protect the rights and accessibility of people with disabilities, it does not explicitly address the issue of web accessibility (Matzin, 2009). In 2006, the Ninth Circuit decided the first case in the U.S. of whether a virtual store is considered a place of public accommodation. Target.com was considered a place of accommodation as Target physical stores (DuPree, 2007). Public accommodation issue is regulated by Title III of ADA⁷(42 U.S.C. §§ 12181–12189).

Current franchises use their site not only as a place to market to customers and potential franchisees, but also for employee's solicitation. Over fifty percent of the analyzed sites included online employee application forms, most of which were not accessible for people with disabilities. Although the *National Federation of the Blind v. Target Corporation* is highly specific, the decision and industry trends, such as employee solicitations and only-web stores, could open the door to changes in federal legislation (National Federation of the Blind v. Target Corp., 2006). Australia, Ireland, and the United Kingdom are examples of jurisdictions were judicial

⁷ 42 U.S.C. § 12182(a) "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." Title III explicitly defines "... (2) restaurants and other places serving food or drink..." as a public accommodation place.

decisions anteceded legislative changes in disability laws (Thatcher, et al., 2006).

This is a relatively new issue, and its jurisprudential conclusion is not definitely settled, but we wanted to see how well the websites have adapted to the ever-changing paradigms in the legal protection of the handicapped in ways that may not have been apparent when the franchise's website was first designed. In this paper we only looked at and analyzed visual web accessibility. U.S. franchisors should be more used to the U.S. legal systems. The same is expected for older franchise systems; therefore, we hypothesize that:

- H5A: U.S. franchisors' and non-U.S. franchisors' websites will differ on their use of web accessibility features.
- H5B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their use of web accessibility features.
- H5C: Less than half U.S. franchisors' websites will incorporate web accessibility for the visual impaired.

Legal Disclaimers

The website owner needs to determine and make sure the visitor understands the rules to follow when visiting the site. Here is where we concentrated the largest portion of our research.

If the website franchise information falls within the legal definition of an offer, the franchisor must be careful where it offers franchise opportunities. If there is no disclaimer that indicates that there is no offer of a franchise, it may be interpreted that there is an offer (Duvall, 2005). Franchisors should prevent liability by clearly stating they offer or do not offer franchises. U.S. franchisors should be more used to the U.S. legal systems. The same is expected for older franchise systems; therefore, we hypothesize that:

- H6A: U.S. franchisors' and non-U.S. franchisors' websites will differ on their use of non-offer disclaimers.
- H6B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their use of non-offer disclaimers.

Since prospective franchisees want to generate a competitive return on their investment (ROI), franchisors use financial performance representations, including earning claims, as part of their marketing message (Piper Marbury Rudnick & Wolfe LLP, 2000). The use of

financial performance representation in franchising marketing documents is tightly controlled at federal and state levels, since it may lead to deceptive marketing. We limit this part to the federal level franchise legislation under the FTC's jurisdiction⁸. FTC's Franchise Rule defines financial performance representation as *"Any representation, including any oral, written, or visual representation, to a prospective franchisee, including a representation in the general media that states, expressly or by implication, a specific level or range of actual potential sales, income, gross profits, or net profits. The term includes a chart, table, or mathematical calculation that shows possible results based on a contribution of variables"* (16 CFR 436.1(e) 2007). Every time a franchise makes a financial performance representation⁹, it should have a reasonable basis and written proof, and even if it does, depending on the wording to the franchise could still face complaints that the data is not complete, that the language is not clear. The FTC's Franchise Rule item 19 will apply if the information on the franchisor's website is intended to market to prospective franchisees, even if the document is not an offer of sale(16 CFR Part 436, 2007). The best practice is not to include anything that remotely looks like financial performance representation without a proper validation of the information. U.S. franchisors should be more used to the U.S. legal systems. The same is expected for older franchise systems, therefore, we hypothesize that:

H7A: U.S. franchisors' and non-U.S. franchisors' websites will differ on their inclusion of financial performance representation.

H7B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their inclusion of financial performance representation.

In relation to data collection, there is a growing concern that there is not enough emphasis on the protection of personal information collected by websites, including those related to the promotion of a franchise. According to a recent study, U.S. companies do not measure up to European Union (EU) standards for the privacy of consumer's personal information(Cogar, 2002). A main reason is that the EU's privacy policies are stricter than the U.S. ones. U.S. franchisors should be more used to the U.S. legal systems. The

⁸ The Securities Exchange Commission (SEC) penalizes the dissemination of false financial information by publicly traded companies.

⁹ Franchise Rule has an exception to copies of publicly filed reports and other information "intended to educate the public rather than used to attract prospective franchisees" (16 CFR Part 436, 2007).

same is expected for older franchise systems; therefore, we hypothesize that:

- H8A: U.S. franchisors' and non-U.S. franchisors' websites will differ on their users' private data collection practices.
- H8B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their users' private data collection practices.

Some of the issues examined by these questions arise because of Federal regulations in the sale of franchises. There are even some States in the U.S. that have local regulations as well. The other questions arise because of good legal practices that should be followed whenever there is communication with prospective clients, especially with those with whom you have had no previous contact. If you offer franchising on your website, you will need to insert a disclaimer that you are not offering franchises in states where you are not approved. *"If you take money from a prospective franchisee that is from a state where you are not registered, or if he is going to operate a franchise in a state where you are not registered, you will be fined, will be required to return the money, and must disclose this infraction for 10 years on your UFOC"* (Power, 2008). U.S. franchisors should be more used to the U.S. legal systems. The same is expected for older franchise systems; therefore, we hypothesize that:

- H9A: U.S. franchisors' and non-U.S. franchisors' websites will differ on their inclusion of notice of jurisdiction.
- H9B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their inclusion of notice of jurisdiction.

Failure to state a choice of Law or Venue in the terms of use of the Website leaves the franchise open to litigation in forums, and/or subject to Laws, other than those of the State where its own headquarters (HQ) are placed. This loss of "home field advantage" may leave the franchise vulnerable, since its lawyers may not be familiar with other legal systems. Moreover, the franchise's whole legal framework may have been specifically designed to take advantage of its home State's Laws. Without the protection of those laws, the franchise's ability to litigate may be severely curtailed.

The choice of Law and Forum are usually part of a package of Website rules commonly known as the terms of use. The reason for the inclusion of these terms of use is the same we stated when

discussing choice of Law/Venue. Without clear terms of use, courts may start ruling against franchises when confronted with complaints from visitors that were not told the rules of the land. When you are the one with the power to design the website and choose the rules, you are responsible for making those rules clear (Mirchin, 2007; Mirchin, 2009). U.S. franchisors should be more used to the U.S. legal systems. The same is expected for older franchise systems; therefore, we hypothesize that:

- H10A: U.S. franchisors' and non-U.S. franchisor's websites will differ on their inclusion of choice of Law/Forum.
- H10B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their inclusion of choice of Law/Forum.
- H11A: U.S. franchisors' and non-U.S. franchisors websites' will differ on their inclusion of their terms of use.
- H11B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their inclusion of their terms of use.

Testimonials

The use of testimonials can be a powerful marketing tool when promoting a franchise. After all, the prospective franchisee is definitely interested in knowing other people's experience with the franchise. However, it does present certain potential legal pitfalls, since it can too easily lead to false advertising or specific earnings claims that may not be met later on (Vilafranco, 2010). If the testimonial is a common endorsement of the franchise, without specific ROI data or sales figures, then its use is probably harmless. Otherwise, it may commit the franchisor into agreements it never intended to make. In any case, the use of testimonials may be a potential legal headache. U.S. franchisors should be more used to the U.S. legal systems. The same is expected for older franchise systems; therefore, we hypothesize that:

- H12A: U.S. franchisors' and non-U.S. franchisors' websites will differ on their use of testimonials.
- H12B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their use of testimonials.

Comparative Advertising

Under the heading of false advertising, we can include the old concept of bad mouthing the competition. It can lead to civil liability for violation of other people's trademarks and copyrights (Vilafranco, 2010; Trice, 2001). Generally, it is a bad idea to even mention the competition in the website, since it can so easily be construed as a bad mention and will almost certainly lead to lawsuits from the competition. This situation follows from the Lanham Act, which protects businesses against this type of activity (Lanham Act, 1949). Specifically, it states that *"Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which ... in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act."* (15 U.S.C. §1125 (a)(1)(B)).

It is clear that the more specific the attack is on the competition, the closer we flirt with the Lanham Act, and the higher the chance we may be found in violation of its prohibitions. The FTC offers a series of guidelines for the use of the Internet and online advertising as well as the Better Business Bureau Code of Advertising.

U.S. franchisors should be more used to the U.S. legal systems. The same is expected for older franchise systems; therefore, we hypothesize that:

- H13A: U.S. franchisors' and non-U.S. franchisors' websites will differ on their mentioning of competitors.
- H13B: Older franchisors' (before 1989) and newer franchisors' websites will differ on their mentioning of competitors.
- H14A: U.S. franchisors' and non-U.S. franchisors' websites will differ on the use of comparison with competitors.
- H14B: Older franchisors' (before 1989) and newer franchisors' websites will differ on the use of comparison with competitors.

The legal areas that we have introduced here are the ones that we used as a guide to determine how legally healthy franchises' websites really are, at least from the perspective of the American legal framework. We do not mean to imply that if a Website does

poorly in any of our 14 points presented here, it is breaking the Law. It may simply mean that the franchise may present some vulnerability that can be exploited by the competition, or it may unnecessarily open the door to complaints and potential clients' dissatisfaction.

Methodology

The methodology for the study is content analysis. We use Neuendorf's (2002) definition of content analysis: "a summarizing, quantitative analysis of messages that relies on the scientific method and is not limited as to the types of variables that may be measured or the context in which the messages are created or presented." The use of content analysis for website analysis is accepted and is not new (Neuendorf, 2002; McMillan, 2000). This content analysis is limited to content features and not to structural features, such as, interactivity, sound and color.

Unit of Analysis

We define the unit of analysis as the unit of observation, the element on which each variable is measured. In this study, our unit is the individual food franchise website in the area for current and prospective franchisees. This study is limited to the pages of the website dedicated to promoting the acquisition of the rights to franchise. Websites of franchisor not currently franchising or with a franchising section were not included.

Sampling

The sampling frame is the pool from which we draw the list of units to be subject to analysis. For our study, we chose to utilize several directories available on the Web that catalogue a list of companies that are interested in recruiting franchisees for the expansion of the their business. We are particularly interested in those directories containing food franchises looking for franchisees in the U.S. Although there are several online lists available that market to U.S. potential franchisees, we decided to filter the directory list to the ones that met our criteria: Alexa's Traffic Rank¹⁰ lower than 250,000, Alexa's Traffic Rank in the USA lower than 50,000, Sites Liking In¹¹

¹⁰ Alexa is a web information company that provides web traffic metrics. Alexa traffic rank is measure of web popularity and is calculated with the average daily visitors and page views in the last three months. The most popular websites have lower ratings; since there are millions of websites worldwide, a site in the top 250,000 is a popular site.

¹¹ Measure of website reputation. Double links in the same site are counted only once. Higher ratings are preferred.

of over 300, and an USA audience¹² of over 50% (Alexa, 2009). Five franchise directories met our criteria: (1) International Franchise Association Franchise Directory; (2) Franchise Gator; (3) Entrepreneur Directory, (4) Franchise Direct, and (5) Franchising.com. After purging the combined list of franchises for overlaps, there were 657 franchises available from which to draw our sample. Of these franchises, 609 were U.S.-based and 48 were foreign. Although there is no complete list of U.S. and non-U.S. franchise systems in the food industry interested in doing business in the U.S., including its territories, we believe that the combined list of franchises chosen here adequately represents the population of food franchises currently looking to expand in the United States.

A sample size of 270 franchises was chosen to conduct our study, of which 227 were U.S. businesses and 43 were foreign-based, on a confidence level of 95%, confidence interval of 5.2. A stratified systematic random sample equation determined that the skip interval was 2.43; therefore, we selected every second, third, and second franchise and then repeated the skip interval (2-3-2) until the end of the population. Finally, the remaining franchises, non-sample, were randomized in case that any franchise in the systematic random sample did not meet one of the following criteria: (1) has a website and (2) is currently franchising. The non-sample franchises were systematically randomized by selecting every second unit.

Variables and their measurement

A variable is a definable and measurable concept that holds different values for different units being analyzed. In our case, our variables are the degree to which each website under study satisfies standards of legal protection for (a) Intellectual property protection, (b) Web accessibility, (c) Use of testimonials, and (d) Comparative advertising.

When it comes to the measurement of these variables for each unit under study, we developed a coding scheme (see Neuendorf (2002)), which helps operationalize the variables in the sense that each unit of study is assigned a quantifiable score for each variable. Intellectual property protection had four independent questions copyright notice, framing, passing off, and deep linking. Web accessibility and use of testimonial each had one question. Use of testimonials included not a disclaimer, financial performance representation, data collection, jurisdiction, choice of Law/Forum, and use of terms. Finally, comparative advertising has two questions: mention and comparison with competitor. The coding

¹² Since the study focuses on the franchise recruitment in the U.S., we decided to use the sites with more U.S. audience.

scheme had a total of 14 questions. Table one presents the variables and coding scheme option.

The besides variables previously mentioned, the coding scheme included demographic information, such as founding date, started franchising date, headquarter and online store. Once the codebook and code forms were developed, testing and training started.

Coding

For our study, we engaged in human coding (i.e. human beings were charged with the responsibility of assigning the values to each variable, according to the coding scheme) as opposed to machine coding. This was so since there is no single format or unique words that must be followed when making a website legally compliant, therefore a certain degree of personal judgment is necessary. Six human coders were used, the two researchers, two master students, and two undergraduate students. All coders are proficient in English.

Coder training was based on Neuendorf's (2002) process. Coder training started after revising the written codebook. Researchers explained coders the method of content analysis, the coding scheme and the variables. Coders discussed the codebook. Using non-sample food franchise websites, coders practiced the codebook individually but in the same computer lab. After coding, the coders discussed the results and engaged in consensus building. The codebook was revised and the coders were trained using the new version. Again, the coders did the pilot individually, but in the same lab. From training to pilot, Holsti's intercoder reliability improved from 0.712 to 0.952. Neuendorf (2002) suggested the use of Holsti's method when the measures are categorical.

Sample coding started once we had intercoder reliability in the pilot websites. Five coders were in charge with an equivalent share of units of random sample food franchise websites. Also in the same week, two reliability coders, one of the researchers, and an independent coder cross-coded 82 sample websites (32%). As a control measure, only the authors knew the identity of the independent coder. Intercoder reliability was confirmed with a Holsti's intercoder reliability of 0.953.

In the next section we show the data analysis and results of our studies. First we present our profile of franchising websites, based on descriptive statistics. Later we present our hypotheses for this study and which ones were supported.

Data Analysis and Results

The data gathering process took four weeks to finish. Twenty one franchisor's websites that were in the first sample list were not used because the franchise website did not exist, or company was not currently franchising. Therefore, 21 franchisors were chosen from the second sample list.

Descriptive Results

Of the 270 websites under study, 227 were U.S.-based, equivalent to 84%. The rest are foreign-based, mostly in Canada, with a few from Australia, and even some from as far away as the Arab Emirates, South Africa, Japan, and Nigeria. The oldest franchise in the study was founded in 1902, while the newest just opened its doors last year. Moreover, of the franchises under study, 72 (equivalent to 27%) had an online store right in the website.

In terms of intellectual property protection, most franchisors use correct copyright notice in their website, did not use framing, passing off and deep linking. Eleven percent of franchisors' websites were web accessible. Ninety six percent of all franchisor did not used earning claims. This result is not similar to the others disclaimer variables were most franchisors did not include the appropriate disclaimers. On the positive side, most franchisor's websites did not use testimonials, competitors name and comparative advertising. Table one presents descriptive results for each of the variables.

Table 1. Descriptive Results

| Variable | Options | Nationality | | | Age | |
|------------------|--|-------------|------|----------|----------|-----------|
| | | All (%) | U.S. | Non-U.S. | Pre 1990 | Post 1989 |
| Copyright Notice | Correct employment | 75% | 78% | 58% | 77% | 73% |
| | Misses at least one component | 5% | 4% | 9% | 5% | 5% |
| | No copyright notice | 20% | 18% | 33% | 18% | 22% |
| Framing | No framing | 94% | 94% | 95% | 95% | 94% |
| | Framing to associated websites | 1% | 1% | 0% | 0% | 2% |
| | Framing to external site, implicit warning | 3% | 3% | 2% | 2% | 3% |
| | Framing to external site, explicit warning | 0% | 0% | 0% | 1% | 0% |
| | Framing to external site, no warning | 2% | 2% | 2% | 2% | 2% |

| Variable | Options | Nationality | | | Age | |
|-------------------------|---|-------------|------|----------|----------|-----------|
| | | All (%) | U.S. | Non-U.S. | Pre 1990 | Post 1989 |
| Passing Off | No passing off | 85% | 84% | 88% | 86% | 83% |
| | External site link but with implicit warning | 8% | 8% | 5% | 5% | 11% |
| | External site link but with explicit warning | 3% | 3% | 5% | 4% | 2% |
| | Passing off | 4% | 4% | 2% | 5% | 4% |
| Deep Linking | No unrelated external links | 76% | 74% | 86% | 75% | 76% |
| | Related linking | 11% | 12% | 9% | 16% | 8% |
| | Unrelated linking but to main page | 5% | 5% | 5% | 2% | 8% |
| | Deep linking | 7% | 9% | 0% | 7% | 8% |
| Accessibility | Web accessible | 11% | 9% | 21% | 10% | 13% |
| | Not or not completely web accessible | 89% | 91% | 79% | 90% | 87% |
| Not an Offer Disclaimer | Yes, in the homepage or franchising main page | 21% | 22% | 16% | 27% | 16% |
| | Yes, implicit, but not in the homepage or franchising main page | 1% | 1% | 0% | 0% | 2% |
| | Yes, explicit, but not in the homepage or franchising main page | 12% | 13% | 5% | 11% | 14% |
| | No | 66% | 63% | 79% | 62% | 68% |
| Earnings Claim | No earnings claims | 96% | 95% | 98% | 95% | 95% |
| | Earnings claim, notice of no guarantee | 1% | 1% | 2% | 2% | 1% |
| | Earnings claims no notice of no guarantees | 3% | 4% | 0% | 3% | 4% |
| Data Collection | No data collection | 9% | 9% | 7% | 10% | 8% |
| | Data collection with a privacy policy | 35% | 36% | 28% | 44% | 26% |
| | Data collection without a privacy policy | 56% | 55% | 65% | 46% | 66% |
| Jurisdiction Disclaimer | Notice of specific jurisdictions | 7% | 8% | 2% | 6% | 8% |
| | Notice of nonspecific jurisdictions | 16% | 16% | 16% | 17% | 16% |
| | No notice of jurisdiction | 77% | 76% | 81% | 77% | 76% |

| Variable | Options | Nationality | | | Age | |
|-----------------------------|--|-------------|------|----------|----------|-----------|
| | | All (%) | U.S. | Non-U.S. | Pre 1990 | Post 1989 |
| Choice of Law/Forum | Choice of Law and Forum | 6% | 5% | 7% | 8% | 4% |
| | Choice of Law only | 2% | 3% | 0% | 2% | 2% |
| | Choice of Forum only | 4% | 5% | 2% | 6% | 3% |
| | No choice of Law/Forum | 88% | 87% | 91% | 84% | 91% |
| Terms of Use | Terms of use with grace period and limited applicability | 1% | 1% | 0% | 2% | 0% |
| | Terms of use with grace period, no limited applicability | 1% | 1% | 0% | 1% | 1% |
| | Terms of use with limited applicability, no grace period | 9% | 9% | 5% | 11% | 6% |
| | Terms of use with neither grace period nor limited applicability | 19% | 18% | 26% | 23% | 14% |
| | No terms of use | 70% | 70% | 70% | 62% | 79% |
| Use of Testimonials | No testimonials | 82% | 83% | 74% | 76% | 87% |
| | Testimonials, no ROI | 18% | 17% | 26% | 24% | 13% |
| | Testimonials, ROI, no earnings claim | 0% | 0% | 0% | 0% | 0% |
| | Testimonials, ROI, earnings claim | 0% | 0% | 0% | 0% | 0% |
| Mention of Competition | No mention | 99% | 98% | 100% | 98% | 99% |
| | Implicit mention | 0% | 0% | 0% | 0% | 1% |
| | Explicit mention | 1% | 1% | 0% | 2% | 0% |
| | Implicit and explicit mentions | 0% | 0% | 0% | 0% | 0% |
| Comparison with Competition | No comparison | 96% | 95% | 100% | 94% | 97% |
| | Implicit comparison, with substantiation | 0% | 0% | 0% | 0% | 0% |
| | Explicit comparison, with substantiation | 1% | 1% | 0% | 2% | 0% |
| | Implicit or explicit comparison, without substantiation | 3% | 4% | 0% | 4% | 2% |
| | Explicit and implicit comparison, without substantiation | 1% | 1% | 0% | 1% | 1% |

Overall, we are of the opinion that the web accessibility, not an offer of disclaimer, data collection, jurisdiction, choice of Law/Forum, and terms of use require the greatest improvement when it comes to designing a website that does not open new areas of legal vulnerabilities for the franchise.

Most of the websites studied made no effort whatever to ensure that their site would be accessible to people with disabilities, particularly in terms of eyesight. About two thirds of the websites studied made no effort to make it clear that the Website was not intended as an offer to sell a franchise. Failure to do so can only get them in trouble with the FTC.

Over half the websites studied collected data from visitors without consideration to the privacy rights of the people providing such information. Even though those privacy rights are not clear in the U.S., there are affirmative steps taken in other jurisdictions that may make such websites problematic when the franchises try to expand to other geographical areas of commerce, e.g. the European Union. Three quarters of the websites studied made no effort to meet the legal requirements stated by some States that you cannot sell franchises in their State unless you register first. This kind of lapse leaves the franchise open to sanctions and lost business.

About nine out of every ten websites studied stated no preference on the applicable Law and or Forum in case of litigation. As explained earlier, this is just asking for trouble, since it makes litigation much more difficult to prosecute and win. Finally, about seven out of every ten websites studied stated no terms of use, which, as stated before, leaves the franchise open to claims of vagueness and ambiguity from its visitor. The lack of terms of use seriously limits the effectiveness of the Website for its owner.

Inferential Results

For this study, we tested two different sets of hypotheses. The first of the hypotheses stated that there is a difference between U.S.-based and foreign-based franchisors' websites in the food industry when it comes to the legal adequacy of their websites when promoting their franchise to potential franchisees. U.S. Law as the basis for our legal adequacy standards, so it stands to reason that familiarity with the legal system may have an impact on the company's ability to fully take advantage of the legal protection tools that can be employed. Since we had 14 different variables under study, it means we have 14 hypotheses, each stating that the ability of the franchise to adequately comply with the law in for each of the 14 variables would be dependent on whether the franchise is foreign or not. We used a level of significance of $\alpha=0.05$.

U.S.-based vs. non U.S.-based franchises

The sample was segregated into two groups, according to franchisor's HQ country. The U.S. sample had 227 units, while the foreign sample had 43 units of study. For each hypothesis, we tested using a chi-square test whether the characteristics of the franchise's website, when it comes to legal compliance, depended on whether the franchise was US- or non U.S.-based.

As can be seen from the results, we can conclude that U.S.-based and non U.S.-based franchises do behave differently when it comes to their use of the copyright notice in the website (H1A) and the accessibility of the website to visually-impaired visitors. For all other variables (H5A), we could find no significant difference between both sets of franchises. Table three summarizes the results.

Notice that for the framing variable, we were unable to use a chi-square test, since the sample was too small for an accurate result; we therefore used a z-test of difference in proportion. Moreover, for the competition variables, the samples were not large enough to do any kind of testing.

Table 3. Summary of Hypothesis Testing based on Nationality

| Hypothesis | Chi-Square Test | Result |
|------------|---|---------------|
| H1A | Chi-Sq = 7.548, DF = 1, P-Value = 0.006 | Supported |
| H2A | Test for difference = 0 (vs not = 0): Z = -0.30 P-Value = 0.763 | Not supported |
| H3A | Chi-Sq = 1.369, DF = 3, P-Value = 0.713 | Not supported |
| H4A | Chi-Sq = 4.718, DF = 3, P-Value = 0.194 | Not supported |
| H5A | Chi-Sq = 4.993, DF = 1, P-Value = 0.025 | Supported |
| H6 | Chi-Sq = 4.795, DF = 2, P-Value = 0.091 | Not supported |
| H7A | Chi-Sq = 0.541, DF = 1, P-Value = 0.462 | Not supported |
| H8 | Chi-Sq = 1.618, DF = 2, P-Value = 0.445 | Not supported |
| H9A | Chi-Sq = 1.936, DF = 2, P-Value = 0.380 | Not supported |
| H10A | Chi-Sq = 1.681, DF = 2, P-Value = 0.431 | Not supported |

| Hypothesis | Chi-Square Test | Result |
|------------|---|---------------|
| H11A | Chi-Sq = 2.677, DF = 2, P-Value = 0.262 | Not supported |
| H12A | Chi-Sq = 2.677, DF = 2, P-Value = 0.262 | Not supported |

The second set of hypotheses stated that, instead of the national origin of the franchise, a determining factor of whether it can adequately build a legally compliant website would depend on the experience factor, i.e. how long has the franchise been in business. Again, we have 14 hypotheses to test here, and again we used a level of significance of $\alpha=0.05$.

Old Franchises vs. New Franchises

We segregated the sample into two groups, according to the year the business was founded. We used the median (1989) as the divider between the samples, thus the OLD (i.e. those franchises founded before 1990) sample had 132 units, while the NEW (i.e. those franchises founded 1990 or after) sample had 131 units of study. For each hypothesis, we tested whether the characteristics of the franchise's website, when it comes to legal compliance, depended on whether the franchise was founded. We tested each hypothesis using a chi-square test.

As can be seen from the results, we can conclude that franchises founded before 1989 behave differently than those founded after 1989 when it comes to the use of deep linking (H4B), the use of data collection (H8B), the use of terms of use (H11B), and the use of testimonials in their websites (H12B). For all other variables, we could find no significant difference between both sets of franchises. Table three summarizes the results.

Table 3. Summary of Hypothesis Testing based on Aging

| Variable | Result | Supported |
|----------|---|---------------|
| H1B | Chi-Sq = 0.652, DF = 2, P-Value = 0.722 | Not supported |
| H2B | Chi-Sq = 0.079, DF = 1, P-Value = 0.779 | Not supported |
| H3B | Chi-Sq = 3.033, DF = 3, P-Value = 0.387 | Not supported |
| H4B | Chi-Sq = 7.874, DF = 3, P-Value = 0.049 | Supported |

| | | |
|------|--|---------------|
| H5B | Chi-Sq = 0.637, DF = 1, P-Value = 0.425 | Not supported |
| H6B | Chi-Sq = 5.630, DF = 2, P-Value = 0.060 | Not supported |
| H7B | Chi-Sq = 0.000, DF = 1, P-Value = 0.989 | Not supported |
| H8B | Chi-Sq = 10.676, DF = 2, P-Value = 0.005 | Supported |
| H9B | Chi-Sq = 0.538, DF = 2, P-Value = 0.764 | Not supported |
| H10B | Chi-Sq = 3.275, DF = 3, P-Value = 0.351 | Not supported |
| H11B | Chi-Sq = 9.619, DF = 2, P-Value = 0.008 | Supported |
| H12B | Chi-Sq = 5.504, DF = 1, P-Value = 0.019 | Supported |
| H13B | Chi-Sq = 1.000, DF = 1, P-Value = 0.317 | Not supported |
| H14B | Chi-Sq = 2.532, DF = 3, P-Value = 0.470 | Not supported |

In addition to the two sets of hypotheses already described, we included Hypothesis H5C, which states that less than half of American franchises made their websites accessible for the visually impaired. It was tested with a z-test for proportion, with $\alpha=0.05$. Table two presents the z-test results.

Table 2. Z-test Results of U.S. Franchisor's Websites Web Accessibility

| Sample | X | N | Sample p | 95% Upper Bound | Exact P-Value |
|--------|----|-----|----------|-----------------|---------------|
| 1 | 21 | 227 | 0.092511 | 0.130483 | 0.000 |

Thus, hypothesis H5C was supported. The conclusion section includes suggestions for future research.

Conclusions

According to the results obtained from the study conducted for this paper, we can make several recommendations to any franchise that intends to make use of a website to better market its franchise system to potential franchisees in the United States.

The franchisor must verify that their current website and future revisions are consistent with franchisor' franchise disclosure document (FFD) and in compliance with federal and state regulations, including state franchise advertising laws. Also, the franchisor must ensure that its website is not in violation of well-known federal regulations, such as the Lanham Act, FTC rules, and Intellectual Property Laws. The franchisor must be especially careful to avoid the most common legal pitfalls in which a disproportionately large portion of franchise websites seems to incur, as described in our franchise profile descriptive section of results. The most common are lack or incorrect use correct copyright notice in their website, not web accessible, lack, incorrect or incomplete use of disclaimers. A way to facilitate the process, franchisors could perform annual website legal issues audits.

Finally, the franchisor must regularly review the Law and Court decisions to ensure that the website is up to date. Just because it was legally sound yesterday, it does not follow that it is still sound today.

In future studies other legal, technical, communicational, and navigational and operational variables could be included. Also, the study could expand to other industries to determine whether the results are generalized in other industries. An interesting twist to this issue will be to explore whether franchisors Internet strategies help to avoid conflict with their franchisees, do not break competition laws, and do not break contracts. Finally to explore in detail international web accessibility and privacy issues in franchising.

Bibliographic Sources

16 CFR Part 436. 2007. Ammended Disclosure Requirements Concerning Franchise and Prohibition Concerning Franchising . Washington D.C.: Federal Trade Commission.

42 U.S.C. §§ 12181–12189. Title III of the Americans with Disability Act .

Abell, M., & Scott, A. 2000. "The e-commerce challenge for franchising". *Managing Intellectual Property*, vol. 101, pp. 34-44.

Alexa. 2009, November 10. Search. Retrieved November 2009, 2009, from Alexa: <http://www.alexa.com/>

Brady, M. J., Monin, L. O., Tingley, C. R., & Skelton, T. L. 2000. "The new world of the world wide web: Internet liability issues". *Defense Counsel Journal*, pp. 47-60.

Cogar, R. N. 2002. "Exposing legal land mines". *Information Management Journal*, vol. 36, no.1, pp. 60-64.

Disclosure requirements and prohibitions concerning franchising. 2007. *16 U.S.C. 436* .

Dixon, H., & Quinn, B. 2004. "Franchising and the Internet: An exploratory study of franchisor web sites". *Internet Research*, vol. 14, no. 1, pp. 311-322.

Duffin, F. J., & Watson, B. S. 2009. "Best practices in protecting and enforcing trademarks, copyrights, and other intellectual property rights". *Franchise Law Journal* , vol. 28, no. 3, pp. 1-7.

DuPree, I. A. 2007. "Websites as "places of public accomodaion" Amending the Americans wirh Disabilities Act in the wake of National Federation of the Blind v. Target Corporation". *Journal of Law & Technology* , vol. 8, no. 2, pp. 273-302.

Duvall, G. R. 2005. "Using the web more effictively". *Franchise Law Journal* , vol. 24, no. 3, pp. 173-181.

Federal Trade Commission. 2009. State offices administering franchise disclosure laws. Retrieved January 3, 2010, from Federal Trade Commission: <http://www.ftc.gov/bcp/franchise/netdiscl.shtm>

International Franchise Association. 2006. Economic Impact of Franchising. Retrieved October 2, 2009, from International Franchise Association: <http://www.buildingopportunity.com/>

Lanham Act . 1949. *15 U.S.C. §1125* .

Markel, M. 2002. "Deep linking: An ethical and legal analysis". *IEEE Transaction on Professional Communication* , vol. 45, no. 2, pp. 77-83.

Matzin, D. 2009. "Websites as places of public accommodation: regulating accessibility under Title III of the ADA". *Mental and Physical Disability Law Reporter* , vol. 33, no. 4, pp. 528-532.

McMillan, S. J. 2000. "The Microscope and the moving target: The challenge of applying content analysis to the world wide web". *Journalism and Mass Communication Quarterly* , vol. 77, no. 1, pp. 80-93.

Miniwatts Marketing Group. 2009, September 30. Internet Usage Statistics. Retrieved January 5, 2010, from Internet World Stats: <http://www.internetworldstats.com/stats.htm>

Mirchin, D. 2009. "Harris v. Blockbuster: Questioning 'Terms of Use'". *Information Today* , vol. 26, no. 10, pp. 44, 46.

Mirchin, D. 2007. "Terms of use: The rules have changed". *Information Today* , vol. 24, no. 9, pp. 27.

National Federation of the Blind v. Target Corp., 452 F. Supp. 2d 946, 949 (N.D. Cal 2006).

Neuendorf, K. A. 2002. *The Content Analysis Guidebook*. Thousand Oaks, California: Sage Publications.

Oppenheimer, C. 2008. "Legal issues for information professionals IX: An overview of recent developments in the law, in relation to the internet". *Journal of Documentation* , vol. 64, no. 6, pp. 938-955.

Piper Marbury Rudnick & Wolfe LLP. 2000. "Is your website legally and technologically sound?" *Francast* , June, pp. 1.

Power, J. 2008. Franchise Registration States. Retrieved February 1, 2010, from Evan Michael: <http://www.evancarmichael.com/Franchises/2790/Franchise-Registration-States.html>

Thatcher, J., Burks, M. R., Heilmann, C., Lawton Henry, S., Kirkpatrick, A., Lauke, P. H., et al. 2006. *Web Accessibility*. New York: Friends of.

The Copyright Act. 1976. 17 U.S.C. § 101-810 .

Trice, M. B. 2001. "Managing Internet issues within the franchise system: A legal perspective". *Franchising World*, pp. 37-38.

VanderBroeck, C. S., & D'Angelo, J. M. 2008. "Copyright protection: The forgotten stepchild of franchise IP portfolio". *Franchise Law Journal* , vol. 28, no. 2, pp. 84-87.

Vilafranco, J. E. 2010. "The law of comparative advertising in the United States". *The IP Litigator: Devoted to Intellectual Property Litigation and Enforcement* , vol. 16 no.1, pp.1-8.

World Wide Word Consortium (W3C). 2005, September. What is web accessibility? . Retrieved January 23, 2010, from Web Accessibility Initiative: <http://www.w3.org/WAI/intro/accessibility.php>