

The Franchise Agreement and The Promotional Fund with Franchisee Contributions

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The world a franchising is quite an industry full of litigation. One of the favorites of franchisee attorneys in class-action lawsuits used to sue the franchisor for misuse of the promotional funds, which the franchisees have contributed to. There are a number of huge cases with large settlements, some of which have nearly bankrupted the franchisee company.

It is for this reason that I decided to upgrade the clauses in our franchisee agreement and the information on the promotional fund and its contributions in the confidential operations manual. Here below is a copy of the clauses that I inserted into my franchisee company's franchise agreements;

2.3 Promotional Fund

2.3.1 Franchisee Contributions

Franchisee will pay to Franchisor each month as a contribution to a Car Wash Guys System promotional fund (the "Promotional Fund"), if and when established, one hundred dollars (\$100) per calendar month. Promotional Fund contributions are due and payable in full at the same time and in the same manner as continuing royalty fees. Payments of Promotional Fund contributions are not refundable.

2.3.2 Use

Franchisor will not commingle Promotional Fund contributions with its general funds, but will hold all Promotional Fund contributions from all its Franchisees in one or more designated accounts.

The Promotional Fund may be used as determined by Franchisor:

- (a) to purchase national, regional, and local advertising in broadcast, print, internet and electronic media;
- (b) to be used exclusively to meet any and all costs of maintaining, administering, researching, directing and preparing advertising and/or promotional activities (including, among other things, the costs of preparing and conducting television, radio, magazine, newspaper and internet advertising campaigns); direct mail and outdoor billboard advertising; marketing surveys and public relations activities; use of advertising agencies and website developers to assist with projects, website development and maintenance and internet informational and advertising links and promotional brochures, CD-ROMs, video tapes and other marketing materials for the Franchisor. (c) to acquire the services of in-house and outside advertising, public relations professionals and website developers;
- (d) to carry on other advertising and promotional activities as Franchisor may reasonably deem advisable to increase demand for Services offered by its Franchisees, whether Core Services or Optional Services; and
- (e) to pay the reasonable expenses of administering the Promotional Fund, including the reasonable compensation of Franchisor's employees and expenses of the advisory committee described in Section 2.3.3 (if established by Franchisor) while working on behalf of the Promotional Fund.

2.3.3 Administration

The Promotional Fund will be administered by the Franchisor or by an advertising agency selected by the Franchisor. Franchisor, in its sole discretion, may establish a Franchisee advisory committee from time to time to provide input and suggestions regarding use of the Promotional Fund and the effectiveness of programs funded by the Promotional Fund. If the Franchisee advisory committee is appointed, it will consist of representatives of Franchisor and representatives of the Franchisees, with the representatives of Franchisees constituting a majority of the members thereof. Franchisor shall retain sole discretion over the use of the Promotional Fund.

2.3.4 Accounting

Franchisor will account to Franchisee annually for all Promotional Fund contributions received and spent. The accounting will be made by written report within ninety (90) calendar days of the end of the year setting forth the total contributions received from all Car Wash Guys System Franchisees as a group and all expenditures made by Franchisor, together with the balance on account in the Promotional Fund as of the date of the report.

2.3.5 Commercial Relationship

Franchisor and Franchisee agree that the rights and obligations of the parties arising from the Promotional Fund and all related matters are governed solely by this Agreement, and that this Agreement and the Promotional Fund are not

in the nature of a "trust," "fiduciary relationship," or similar special relationship. Franchisor and Franchisee agree that the Promotional Fund and this Agreement are based on an ordinary commercial relationship between independent businesspersons.

Every franchisor who has a promotional fund which is paid into by the franchisees must pay special attention to this issue to keep from being sued. It is wise to contact a franchise attorney to best prepare a strategy to protect your company from liability and lawsuits over the promotional fund. Consider this in 2006.Lance Winslow - Online Think Tank forum board. If you have innovative thoughts and unique perspectives, come think with Lance; www.WorldThinkTank.net/wttbbs/