



firm profile

McMillan is a modern and ambitious business law firm serving public, private and not-for-profit clients across key industries in Canada, the United States and internationally. With recognized expertise and acknowledged leadership in major business sectors, we provide solutions-oriented legal advice through our offices in Vancouver, Calgary, Toronto, Ottawa, Montréal and Hong Kong. Our firm values – respect, teamwork, commitment, client service and professional excellence – are at the heart of McMillan’s commitment to serve our clients, our local communities and the legal profession. For more information, please visit our website at www.mcmillan.ca.

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franchising and distribution

overview

Franchising and distribution arrangements are important elements of our global economy. A strong franchising or other distribution network enables companies to grow revenues by expanding beyond their home markets to sell their products, services and customer experiences on a national or international stage. Many brands that are global household names today achieved their success through master franchisees and distributors who bring established products, services and customer experiences to international markets.

We understand that businesses involved in franchising face unique contractual and legal challenges. Franchisors have invested valuable time and money in developing brands and products, and they are entrusting third parties to uphold standards and maintain goodwill. In many provinces, franchisors also must comply with statutes requiring franchise disclosure.

Franchise participants require specialized legal counsel that can help protect their valuable assets, while maximizing their business opportunities.

Lawyers in our Franchise and Distribution Group have deep experience advising on franchising and distribution arrangements and represent some of the world’s largest franchisors and distributors. Our team – which includes a former in-house counsel and franchise law specialist from one of the world’s best known fast service restaurants - advises clients throughout the entire franchise life cycle, from assessing and establishing a franchise system, drafting the legal documents required to ensure effective operation of the franchise, assisting to resolve disputes between franchisor and franchisee, to purchasing and selling a franchise.

The litigators in our Franchise and Distribution Group have extensive experience representing Canadian, American and other International franchisors and suppliers in all manner of franchising and distribution disputes, from defending claims for breaches of provincial franchise legislation, deficient disclosure documents and resisting injunctions designed to restrain terminations to enforcing non-competition clauses against, and recovering inventory and payments from current and former franchisees/distributors.

We are experts on provincial franchise legislation, serve on the Canadian Franchise Association’s Legal and Legislative Affairs Committee and routinely write and lecture on franchise and distributorship issues.

In the distribution area, we advise major manufacturers, wholesalers, distributors and dealers on a full range of distribution



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matters, helping them create and maintain their legal relationships.

McMillan professionals help clients lead by:

- Drafting the complete range of franchise and supporting agreements including master franchise agreements, and distribution and sales representative agreements
- Structuring license and distribution arrangements
- Preparing franchise disclosure documents, and keeping them current
- Advising on the financing, acquisition or sale of existing franchise systems or individual franchise locations
- Assisting with the termination of franchisor/franchisee, distributor and agency relationships
- Advising on the acquisition or sale of distribution businesses
- Resolving franchisor/franchisee disputes
- Advising on and enforcing the protection of trademarks and other proprietary rights
- Advising on legislation governing advertising, contests, packaging and labeling, and other regulatory matters
- Preparing territorial restrictions and non-competition covenants
- Advising on the development of distribution networks
- Advising on and litigating the applicability of franchise legislation to distribution and sales representative relationships
- Advising on and defending against alleged breaches of franchise legislation and other distribution-specific legislation
- Advising on the termination of franchisees and distributors and defending termination decisions
- Defending clients in class actions
- Litigating and enforcing intellectual property rights, restrictive covenants and non-competition clauses
- Recovering inventory and enforcing payment obligations
- Resolving disputes through alternative dispute resolution, including mediation and arbitration

representative transactions

- Assisting distributors to assess whether their proposed business arrangements are subject to Canadian franchise laws



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- Advising on the acquisition, disposition and financing of franchise systems and individuals locations
- Advising vehicle (automotive and truck) manufacturers on the establishment of dealer networks in Canada, including drafting/updating dealer agreements and compliance with franchise legislation
- Assisting franchisors with the drafting and updating of franchise agreements, franchise disclosure documents and disclosure protocols
- Adapting international franchise agreements and disclosure documents for use in Canada
- Drafting and negotiating distribution agreements, agency agreements licensing agreements, development agreement, territorial restrictions / rights and non-competition covenants and other support agreements for clients in various industry sectors
- Advising distributors and franchisors on intellectual property strategy, protection, valorization and enforcement
- Advising distributors and franchisors on legislation governing advertising, contests, packaging and labeling, and other regulatory matters
- Advising distributors and franchisors across industries on dealer and franchisee disputes, compliance issues, and terminations
- Defending franchisors against rescission claims for inadequate disclosure under provincial franchise legislation.
- Defending franchisors against claims for improper termination of franchise agreements, encroachment, breaches of the duty of fair dealing and violations of franchisees' right to associate.
- Defending franchisors, licensors and suppliers on interlocutory injunction motions to restrain termination of their agreements pending trial.
- Defending suppliers and manufacturers in actions brought by their dealers and distributors for misrepresentation, breach of contract, and improper termination of their agreements.
- Defending licensors in disputes against their licensees for alleged breaches and improper terminations of their license agreements.
- Representing franchisors and suppliers in enforcing the terms of restrictive covenants.
- Representing automotive manufacturers in disputes with their respective dealers regarding allegations of non-compliance with provincial franchise legislation, improper termination of



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dealer agreements and in disputes involving the failure by dealers to implement facility improvements required by their manufacturers.

- Representing automotive manufacturers in NADAP disputes brought by their dealers involving allegations of encroachment and improper termination of dealer agreements.
- Representing franchisors and suppliers in actions relating to the seizing of assets and related disputes on leases and financing agreements.
- Representing franchisors in negotiating complicated multi-party settlements that involve sub-franchisees.
- Representing franchisors in litigation relating to claims made during CCAA proceedings.