For: LeClairRyan, New York
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FOR IMMEDIATE RELEASE

First-Time Franchisors Face Unique Challenges, Attorney Warns
--*Regulatory, other hurdles should be considered, says LeClairRyan's Thomas M. Pitegoff in blogpost*

NEW YORK, N.Y. (4/5/17)— One of the toughest challenges facing a new franchisor is actually selling the first franchise, says Thomas M. Pitegoff, counsel in the New York City office of LeClairRyan and co-chair of the national law firm's franchise industry team. After all, who would take the risk of buying a franchise from an organization that has no existing franchisees?

A satisfied customer may initiate the franchising idea, even before the would-be franchisor has taken the first step to prepare an offering, but this rarely happens, writes Pitegoff in a recent blog, *Testing a New Franchise Concept*. His post appears in the firm's Franchise Alchemy, which focuses on franchise law, franchise agreements and related issues.

Instead, if an entrepreneur already has a successful store, restaurant or other business that's currently operated by a trusted manager, consider offering the first franchise to that individual, Pitegoff advises. "The manager will already know the business inside out, having successfully managed the business as an employee," he writes. "The transaction would entail the sale of the existing business at a single location in which the buyer undertakes to continue operating as a franchisee of the seller. The buyer's newly-formed company would sign a franchise agreement as part of the purchase of the business."

To sweeten the deal, the franchisor could extend credit for a portion of the purchase price, or may waive the payment of any initial fee, and give a grace period on any ongoing royalty or marketing fee, Pitegoff says. But a first-time franchisor should also pay extra attention to a variety of regulatory issues.

"With only one franchisee, the franchisor is unlikely to include financial performance representations in Item 19 of the franchise disclosure document," he explains. "And without providing numbers in Item 19, the franchisor may not discuss numbers orally. Only an existing franchisee can do that."

Fortunately, issuing a single license should not trigger a federal requirement to prepare a comprehensive and costly disclosure document. Also, state laws will usually not be a concern if the outlet is located in a non-registration state – where franchise registration is not required as a condition to selling franchises in the state—but state-level business opportunity laws may still pose an issue, he adds. Some registration states—like Indiana, Minnesota, New York and Washington—generally exempt the isolated sale of a franchise, but there may be exceptions.

Launching a first franchise can present challenges, but entrepreneurs can negotiate the maze a bit easier by carefully researching federal, state and local regulations, and by working closely with their legal and other advisors.

To read the full column, visit: franchisealchemy.com/testing-a-new-franchise-concept/

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