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Newsletter, February 2010

What's the Difference Between a Franchise and --Seller Assisted Marketing Plans Business Opportunities Multilevel Marketing Salespersons Licenses Distributorships?

In this article I quickly explain the difference between franchises and seller assisted marketing plans, business opportunities, multilevel marketing plans, salespersons, licenses and distributorships.

Why Should You Care? If you expand your business using the efforts and capital of other people (who are not your employees), then you will trigger federal and state laws. Usually you trigger the franchise laws but sometimes you touch on another law, e.g. business opportunity laws. You need to know what law applies to you.

The hard part is figuring it out. Each business system has its own different type of legal compliance. At one end you have franchising where the legal compliance is extensive and expensive, and at the other end you have salesperson relationships where the legal compliance is minimal.

So here is a quick rule of thumb to determine if you are a franchise or something else: *Compare your business plan to the 3 elements of a franchise.*

Franchising. The 3 elements of a franchise are:

- #1. *Trademark* – franchisee uses franchisor's trademark.
- #2. *Franchise Fees* – franchisee pays fees to franchisor (\$500 federal law; \$100 California law).
- #3. *Business System* – franchisee uses franchisor's business or marketing system, or is subject to franchisor's control.

Franchise laws apply to your business if you meet all 3 elements. Conversely, franchise laws don't apply if you avoid any single element. For more information on franchising see my [Franchise Law](#) webpage.

Now let's play with the elements to see how they work for different business systems.

Seller Assisted Marketing Plans and Business Opportunities. In California you have a seller assisted marketing plan (a.k.a. a business opportunity) when you sell a business system that promises that a buyer can operate it and/or resell products for a profit + you require the buyer to pay you more than \$500 during the first 6 months. The concept is a bit fuzzy, but you know it when you see it – advertisements on telephone poles that promise big earnings on a part time basis where no experience is necessary.

A business opportunity is not a franchise because it does not have element #1 – there is no license of a trademark. A business opportunity probably has franchise elements #2 (fees) and #3 (business system), however. Many states, including California, regulate business opportunities. In fact, the regulatory schemes can be as difficult and expensive as franchising.

Multi-Level Marketing. You have a multi-level marketing system when you reward participants for recruiting new participants into the system (like Amway). The system usually has franchise elements #1 (trademark) and #3 (business system) but avoids franchise law for lack of element #2 (the participants pay nothing or only a nominal fee).

Federal and California law prohibit multi-level marketing when it becomes a pyramid scheme. In brief, you have a pyramid scheme when participants get paid for bringing new people into the system. To avoid the pyramid, a multilevel marketing plan may only pay commissions based on retail sales to end users; you may not pay commissions based on recruiting new sellers.

Sales Agents and Salespersons. A sales agent is usually not a franchisee for lack of element #2 - the salesperson doesn't pay a fee for the right to sell products. For example, most insurance companies use agents to sell their policies, and the agents might work under the insurance company's trademark and training – but the agents don't pay the insurance company to participate in the system.

Licenses. A simple trademark license has 2 of the 3 elements of a franchise: the licensee gets a trademark (element #1) and pays royalties (element #2). A license is not a franchise so long as the licensee doesn't use your business system and isn't subject to your substantial control (element #3).

Distributorships. A distributorship also has 2 of the 3 franchise elements – a license of the distributor's trademark (element #1), plus training, marketing materials and other help (element #3). A distributorship lacks the 2nd element, however – it doesn't require a fee for the right to distribute the product or services (although you can require payment of the wholesale price for your products or services).

Enough said. In this article I've simplified and over-simplified a very complex subject. Please don't do this analysis yourself – get the help of a competent attorney. Call me if you want to talk more.

Ideas

The physicist Leo Szilard once announced to his friend Hans Bethe that he was thinking of keeping a diary: "I don't intend to publish. I am merely going to record the facts for the information of God." "Don't you think God knows the facts?" Bethe asked. "Yes," said Szilard. "He knows the facts, but He does not know *this version of the facts.*" -- Hans Christian van Baeyer, from *Taming the Atom*.