

Franchising in the USA



Franchise Consultants



**Should Latin American brands
consider franchising in the USA?**

Franchising is...

(1) a license to use another's trademark, and (2) along with a method of doing business wherein the franchisor is providing significant assistance and/or controls to operate that business, and (3) in exchange for a fee.

Franchising in the USA

2022:

- **792,014** franchise establishments
- **\$ 827 billion* U.S. dollars** in economic output, supporting **8.5 million jobs**
- The largest segment of the franchising industry is quick service restaurants, comprising over **276 billion U.S. dollars** of the industry's total economic output.
- This is followed by business services with around **\$100 billion* U.S. dollars**.
- Top five categories are franchises in full-service restaurants, real estate, and commercial and residential services.

Source: <https://www.statista.com/topics/5048/franchising-in-the-us/#dossierKeyfigures>

*Billion in U.S English. is equivalent to “mil millones” in Spanish

Franchising in the USA

One Reason Latin American Businesses Should Consider Expanding in the US

The U.S. Hispanic population reached 62.1 million in 2020, an increase of 23% over the previous decade, which outpaced the nation's 7% overall population growth.

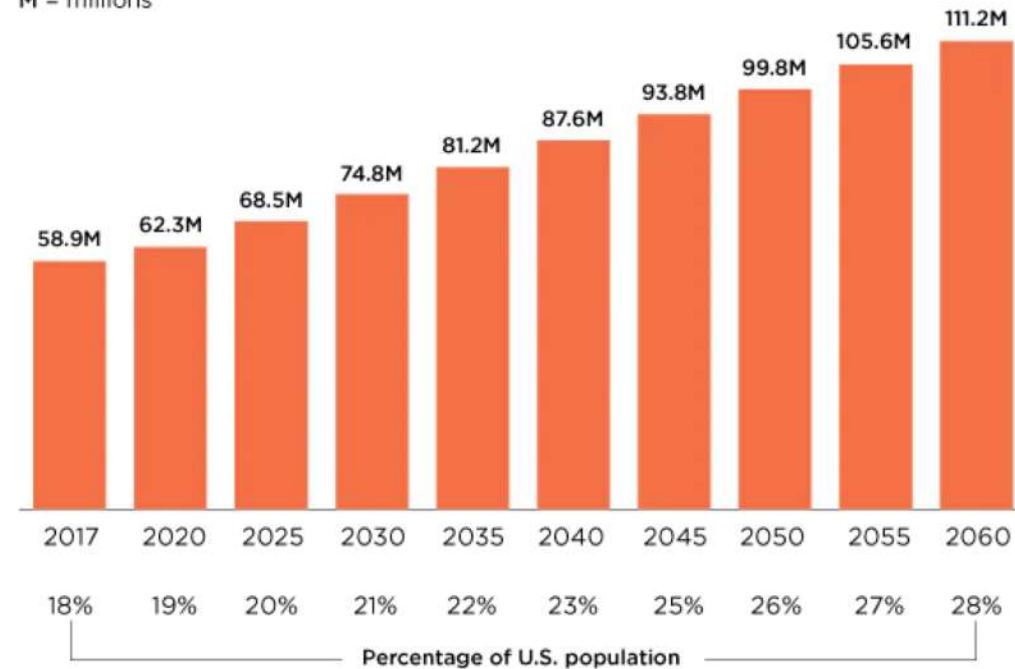


Franchising in the USA

Hispanic Population to Reach 111 Million by 2060

Projected Hispanic Population 2020 to 2060

M = millions



United States®
Census
Bureau

U.S. Department of Commerce
Economics and Statistics Administration
U.S. CENSUS BUREAU
[census.gov](https://www.census.gov)

Source: 2017 National Population Projections and
Vintage 2017 Population Estimates
www.census.gov/popest and
www.census.gov/programs-surveys/popproj.html

Franchising in the USA

The Top 10 States For Franchising In 2022

- Texas
- Florida
- Arizona
- South Carolina
 - Idaho
- Tennessee
- North Carolina
 - Montana
 - Nebraska
 - Nevada



Source: <https://www.thefranchiseking.com/best-states-start-franchise-2022>

Registering Your Franchise in the USA*

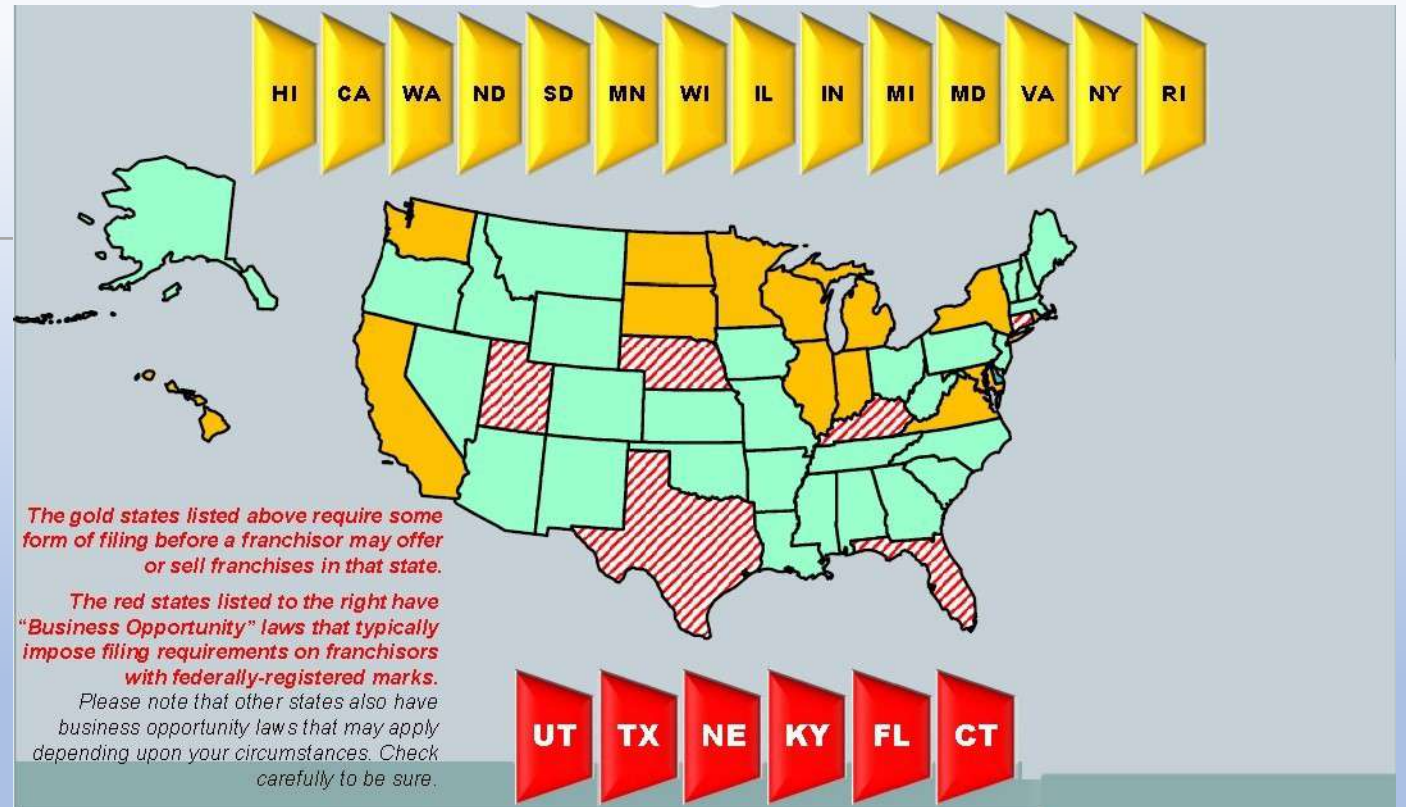
Federal

No filing or registration; FTC Rule (16 CFR 436)

State

- 14 Registration States
- 25 Business Opportunity States
- From “notice filing” to full review
- Requirements under law & unofficial policy
- Pendulum swinging

• Source: Lee Plave, Esq., Plave Koch PLC



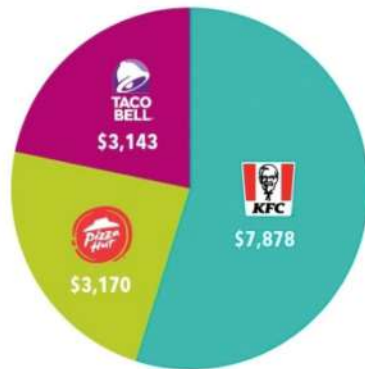
Franchise Establishments by Industry Sector

Franchise Establishments <i>by Industry</i>					
	2017	2018	2019	2020 (Est.)	2021 (Proj.)
Business Services <i>Percentage change</i>	108,813	108,011 -0.7%	106,936 - 1.0%	107,789 - 0.8%	110,241 +2.3%
Commercial & Residential Services <i>Percentage change</i>	66,041	66,495 +0.7%	67,226 +1.1%	73,116 +8.8%	75,627 +3.4%
Lodging <i>Percentage change</i>	28,374	29,116 +2.6%	29,706 +2.0%	27,136 -8.7%	27,931 +2.9%
Personal Services <i>Percentage change</i>	109,898	114,058 +3.8%	118,825 +4.2%	110,050 -7.4%	113,907 +3.5%
Quick Service Restaurants <i>Percentage change</i>	192,992	194,395 +0.7%	196,794 +1.2%	183,543 -6.7%	191,146 +4.1%
Real Estate <i>Percentage change</i>	63,098	64,170 +1.7%	65,307 +1.8%	66,332 +1.6%	68,657 +3.5%
Retail Food, Products & Services <i>Percentage change</i>	146,622	151,390 +3.3%	155,649 +2.8%	157,538 +1.2%	162,669 +3.3%
Table/Full Service Restaurants <i>Percentage change</i>	32,914	32,843 -0.2%	33,160 +1.0%	28,266 -14.8%	30,010 +6.2%
Total <i>Percentage change</i>	748,752	760,476 +1.6%	773,603 +1.7%	753,770 -2.6%	780,188 +3.5%

Top Franchises in the USA – 2021



Total System Sales (\$MM)

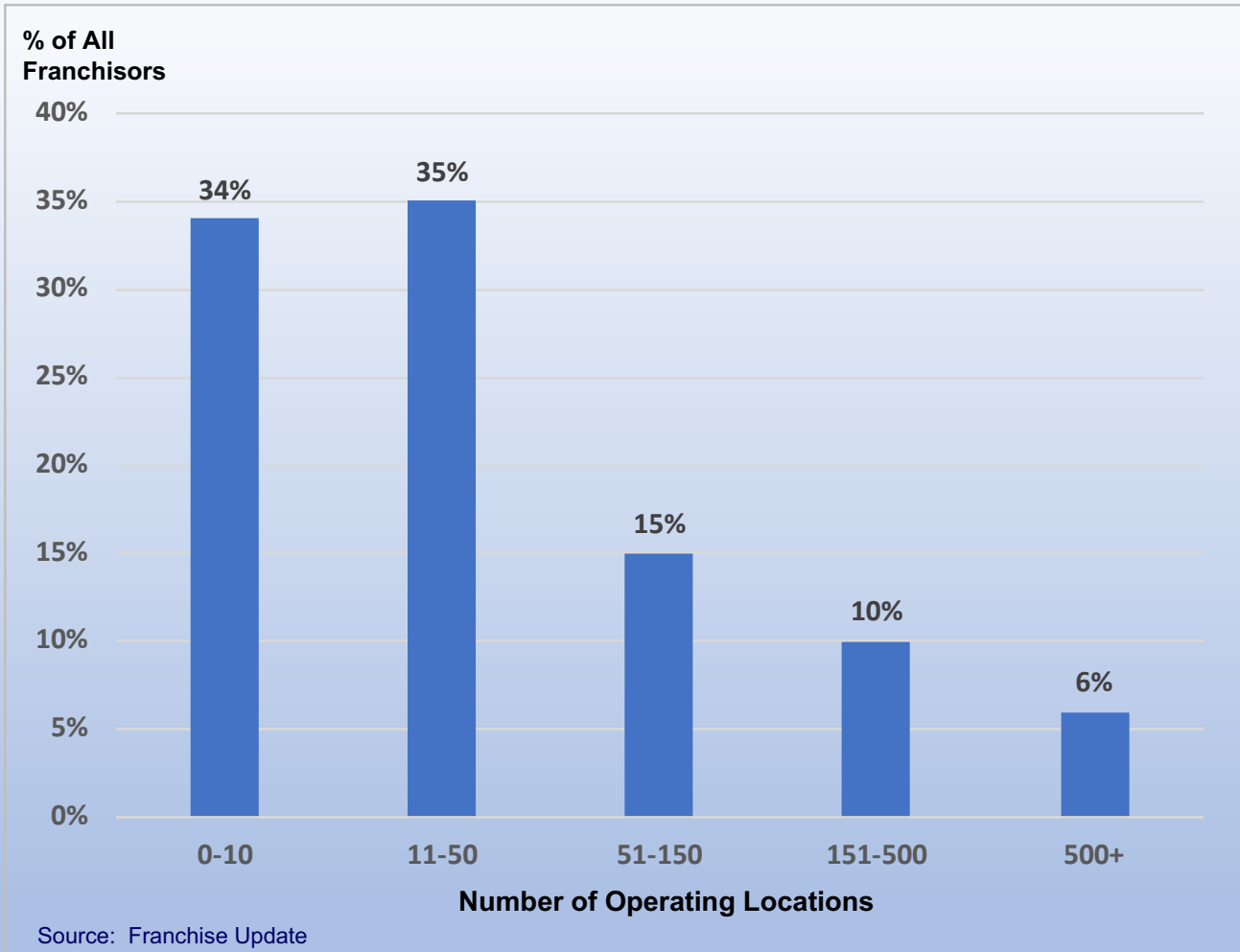


- **Average Amount of Time in Franchising:** 39.8 years
- **Most Number of Units:** 77,000 + (KFC)
- **Average Number of Units:** 5,063
- **Most Represented Industries:**
Food (35), Home Service (10) Automotive (9)

- KFC 7,878 Millions (opened 428 new units in 2021)
- Pizza Hut 3,170 Millions
- Taco Bell 3,143 Millions

Most U.S. Franchisors are Smaller Regional Brands

System Size of U.S. Franchisors



- Most franchise systems are regional rather than national in scale
- **70%** of franchise systems have 50 or fewer operating locations
- **6%** of franchise systems have 500 or more locations

Fastest Growing Segments (2021)

CATEGORY

SEGMENT GROWTH

- | | |
|-------------------------------------|--|
| ➤ Commercial & Residential Services | Growth rate of 3.4% in 2021, to approximately 76,000 units |
| ➤ Real Estate | Increased by 25.7% in 2021 to \$60.8 billion |
| ➤ Retail Food, Products, & Services | Growth rate of 3.3% in 2021 to 162,669, faster than 2020's estimated growth of 1.2%. |
| ➤ Business Services | Increased by 13.7% in 2021 to \$105.8 billion, up from -12.2% in 2020. |
| ➤ Lodging | Increased by 61.2% to \$66 million, but still below 2019's pre- pandemic level. |
| ➤ Personal Services | Growth rate of 3.5% in 2021, to a total of 113,907 locations, but still below the pre-pandemic level |

Source: International Franchise Association and FRANData.

Why Franchising is Thriving in North America

Factors underlying the success of franchising in the U.S. and Canada:

- Size of the consumer market in North America
- Maturity and experience of franchisors and their staff
- Franchisees are educated on franchising and have high expectations
- Legal regulation of franchising, and legal risks of poor performance
- Increasing integration of technology and data within franchise organizations
- Access to a large network of suppliers supporting franchisors and franchisees
- Relatively easy access to capital

What are the United States Business Considerations for the Latin American Franchise?

Characteristics of The Successful Franchisor

The best US franchisors do these things well:

- ✓ Operate their own company-owned locations successfully
- ✓ Involve franchisees in the strategic development of the system
- ✓ Develop and refine their support system around the issues most important to franchise owners
- ✓ Accumulate, benchmark and share key performance measures with franchisees
- ✓ Promote communication between franchisees
- ✓ Maintain a strong internal culture that is supportive of franchisees
- ✓ Evaluate the potential benefit of any support program to the franchisor company, the franchise owners and the franchisees' consumers

Why Expand Internationally?

Good Reasons

- ✓ Add new revenues
- ✓ Build more brand value
- ✓ Reduce dependence on single market
- ✓ Leverage on existing resources
- ✓ Current market is nearing saturation
- ✓ Have people and capital in place

Bad Reasons

- ✓ Bragging rights
- ✓ Easy money
- ✓ Competition is doing it
- ✓ Approached by a wealthy prospect

Developing a Franchise Offer for the U.S.

- Develop a U.S. Prototype, Develop JV, or Rely on Partner to Develop?
- Quality Control Processes
- Initial Territory Fees
- Per Unit Opening Fees
- Royalty Split (assuming master franchise structure)
- Product and supply chain issues
- Expenses
- Performance Requirements
- *Take support and structure into account when pricing*
 - Field support
 - Telephone support
 - Computer development and support
 - Marketing
 - Distribution and purchasing
 - Product adaptation, research, and development

Initial Steps in International Expansion

- Register Trademarks, IP, and Domains
- Market Studies
- Prototype Development?
- Franchise agreements and Franchise Disclosure Documents (“FDDs”)
- Prepare U.S. GAAP Financial Statements
- Adapt Operations Manuals
- Recruit and Train “Partner”
- Calculate Travel and Training Costs



The Structure for most Franchise Agreements provides for...

- **Franchise Fee; Renewal Fee; Royalty Rates**
- **Marketing, Technology, Training Fees**
- **Franchise Association**
- **Territory**
- **Area Development, Master Franchise, Area Representatives**
- **Monitoring and Compliance obligations**
- **Termination**
- **Redesign/Update obligations**

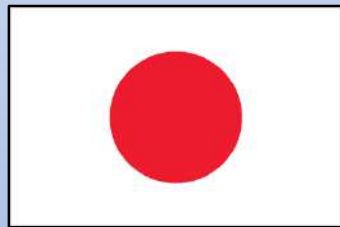
Foreign Franchisors Operating in the U.S.



Australia



Brazil



Japan



Foreign Franchisors Operating in the U.S.



Argentina



ProntoWash

CAFE
MARTINEZ



South Korea



United Kingdom



Austria



Foreign Franchisors Operating in the U.S.



Germany



Belgium



Guatemala



Brazilian Brands (Franchises, Licenses, Joint Ventures and Master Franchisees, Exporting) in other Markets

- 163 total Brazilian brands
- US - #1 Market/Destination
- 61 brands in 2020
- 67 brands in 2019



ABF Association Brazilian Franchising

Franchise Expansion into the US

Case Study: Pollo Campero



- Opened first restaurant in Guatemala in 1971
- Began franchising in Central America in 1997 when they had 26 locations
- Began US franchising in 2001 with Master Agreement for Western States
- Followed Master Agreements with Area Development elsewhere
- The first U.S. restaurant opened in 2002, guests waited for up to 7 hours
- Investment for a freestanding location is approximately \$826K - \$1.65 million with sales of between \$1.9 and \$3.5 million
- Have over 50 franchises and 8 company-owned in US, with several hundred in development
- Over 350 locations globally

Foreign Franchisors Operating in the U.S.







Why Aren't More Foreign Companies Franchising in the U.S.?



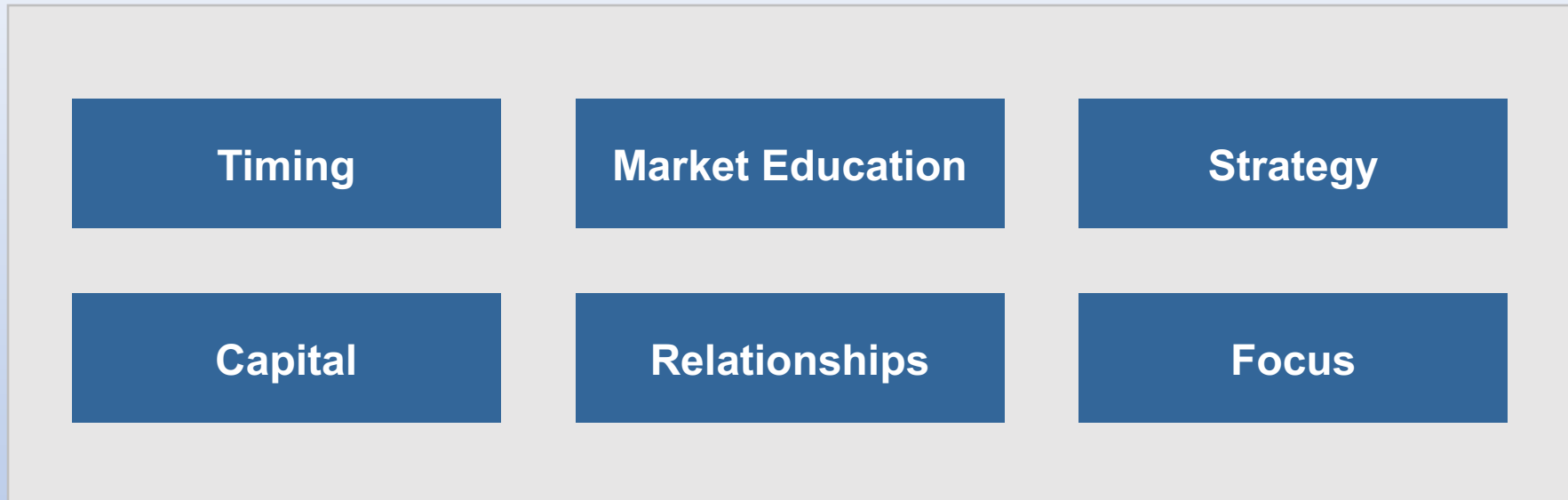
- Lack of knowledge about franchising in the U.S.
- Perceived legal complexity/liability of franchising in the U.S.
- Language differences
- Lack of resources to properly develop and launch a U.S. franchise strategy
- Fear of competing against well-established U.S. brands in their category
- Other factors

Case Studies of Brands Entering the U.S.

Foreign Brands Have Used a Variety of Strategies to Enter the U.S.

Master Franchise	Direct-Owned Office	Joint-Venture
  	     	 

Six Pillars That Will Define Your Success or Failure in North America



The Impact of the Correct Royalty as an Example

- The impact of a 1% royalty mistake
 - If a single franchisee generates \$500,000 in revenue
 - 1% = \$5,000 off the bottom line
 - But franchisees will never tell you that they are paying too little and often inertia will keep the royalty where it is at for years

Lost revenue from a single franchise	\$5,000
Times 100 franchises opened	\$500,000
Times 20 years	\$10,000,000
Lost enterprise value at 10x earnings	\$5,000,000
Total Loss	\$15,000,000

What are the United States Legal Considerations for the Latin American Franchise?

Franchise Structures to Consider for the USA

Direct-owned units

Joint Venture

Master Franchise

Multi-unit Development Agreement

Unit-by-Unit Franchise Agreement

U.S. Franchise Law Issues To Consider

Location and Expansion

Registration State vs. Non-Registration State

Exemptions (Federal + State)

Termination

The Franchise Disclosure Document (FDD)

- Item 1: **The franchisor and any parents, predecessors and affiliates.**
- Item 2: **Business experience.**
- Item 3: **Litigation.**
- Item 4: **Bankruptcy.**
- Item 5: **Initial fees.**
- Item 6: **Other fees.**
- Item 7: **Initial investment.**
- Item 8: **Restriction on sources of products and services.**
- Item 9: **Franchisee obligations.**
- Item 10: **Financing.**
- Item 11: **Franchisor's Assistance, Advertising. Computer Systems and Training.**
- Item 12: **Territory.**
- Item 13: **Trademarks.**
- Item 14: **Patents, copyrights and proprietary information.**
- Item 15: **Obligation to participate in the actual operation of the franchise business.**
- Item 16: **Restrictions on what the franchisee may sell.**
- Item 17: **Renewal, termination, transfer, and dispute resolution.**
- Item 18: **Public Figures.**
- Item 19: **Financial Performance Representations.**
- Item 20: **Outlets and Franchisee Information.**
- Item 21: **Financial statements.**
- Item 22: **Contracts.**
- Item 23: **Receipts.**

Preparing Your Franchise Intellectual Property for the U.S.

Trademarks

- Words / Names
- Designs
- Slogans
- Shapes
- Music
- Colors
- Scents
- Characters
- Numbers
- Trade Dress
- Register w/USPTO

Copyrights

- Menus
- Advt'g & mkt'g
- Graphic designs, photos
- Arch. designs
- Software
- Ops manuals, training materials – but use caution
- Register w/Library of Congress

Patents

- Mechanical
- Electrical
- Process
- Design
- Pat. Pending
- Register w/USPTO

Trade Secrets

- Must genuinely be secret
- Must treat as a secret
- Not registered
- Common law

Non-IP Legal Issues to Consider for U.S. Franchising

Federal:

- Antitrust laws
- Federal Trade Commission Acts
- Horizontal vs. Vertical Relationships
- Employment

State:

- Relationship laws
- Unfair Competition
- Pricing/Non-competes/No poaching
- Employment
- Privacy/Biometrics

Franchise Litigation in the U.S. is NOT Common

“According to a recent study of 2,489 franchisors’ FDDs, 54 per cent of franchisors had experienced no franchise litigation, and another 16 per cent reported only one lawsuit over the previous 10 years. 88 of 165 (53 per cent) of franchisors with 500 or more units reported five or fewer lawsuits over the previous 10 years. Only seven franchisors with 1000- plus units reported over 50 lawsuits over 10 years.”

Quoting Carl Zwisler, former partner of Lathrop GPM

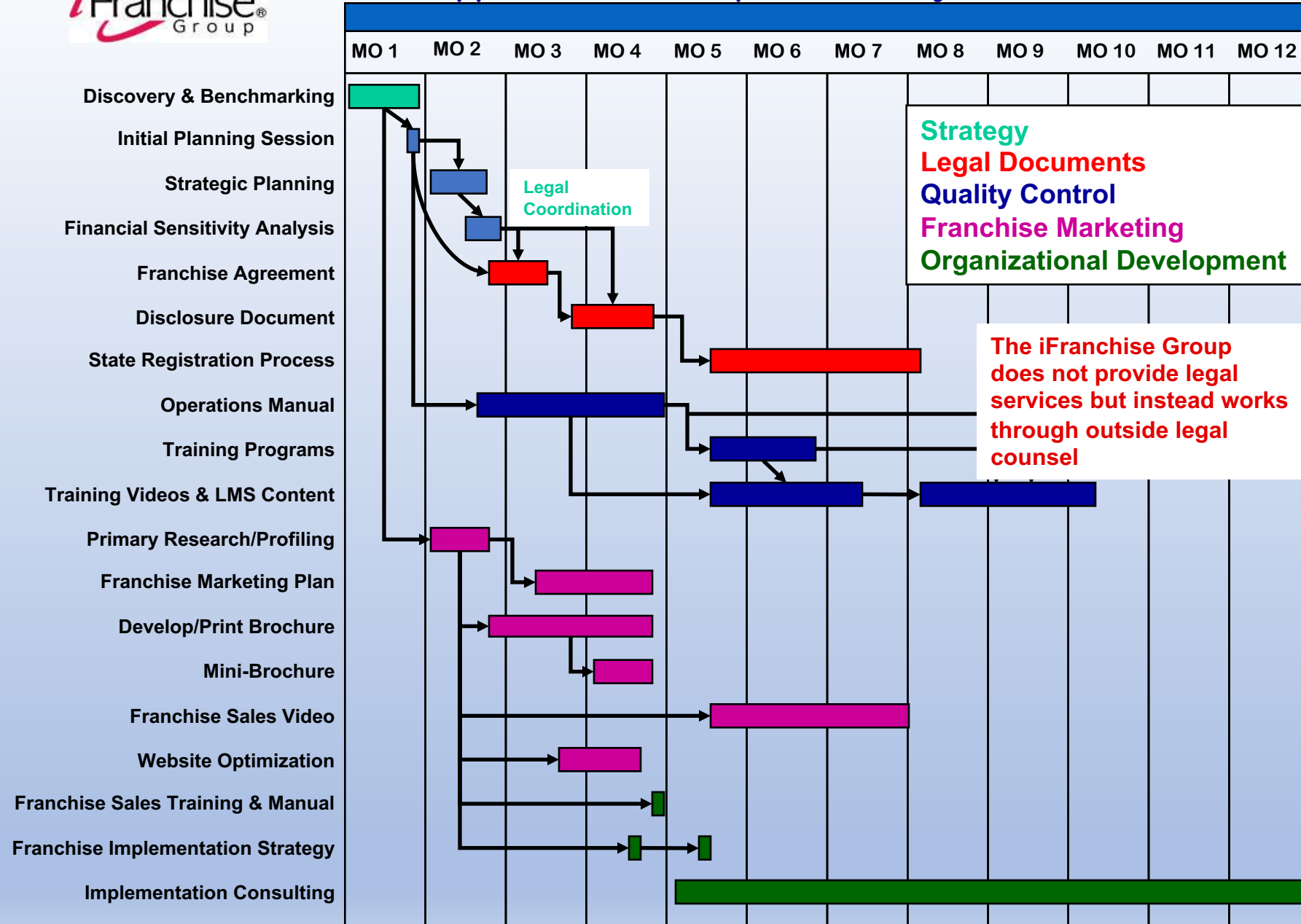
(<https://www.global-franchise.com/insight/entering-the-u-s-a-5-pitfalls-for-international-franchisors>)

Wrapping up...



Franchise Program for Aggressive Growth

Approximate Development Activity Schedule



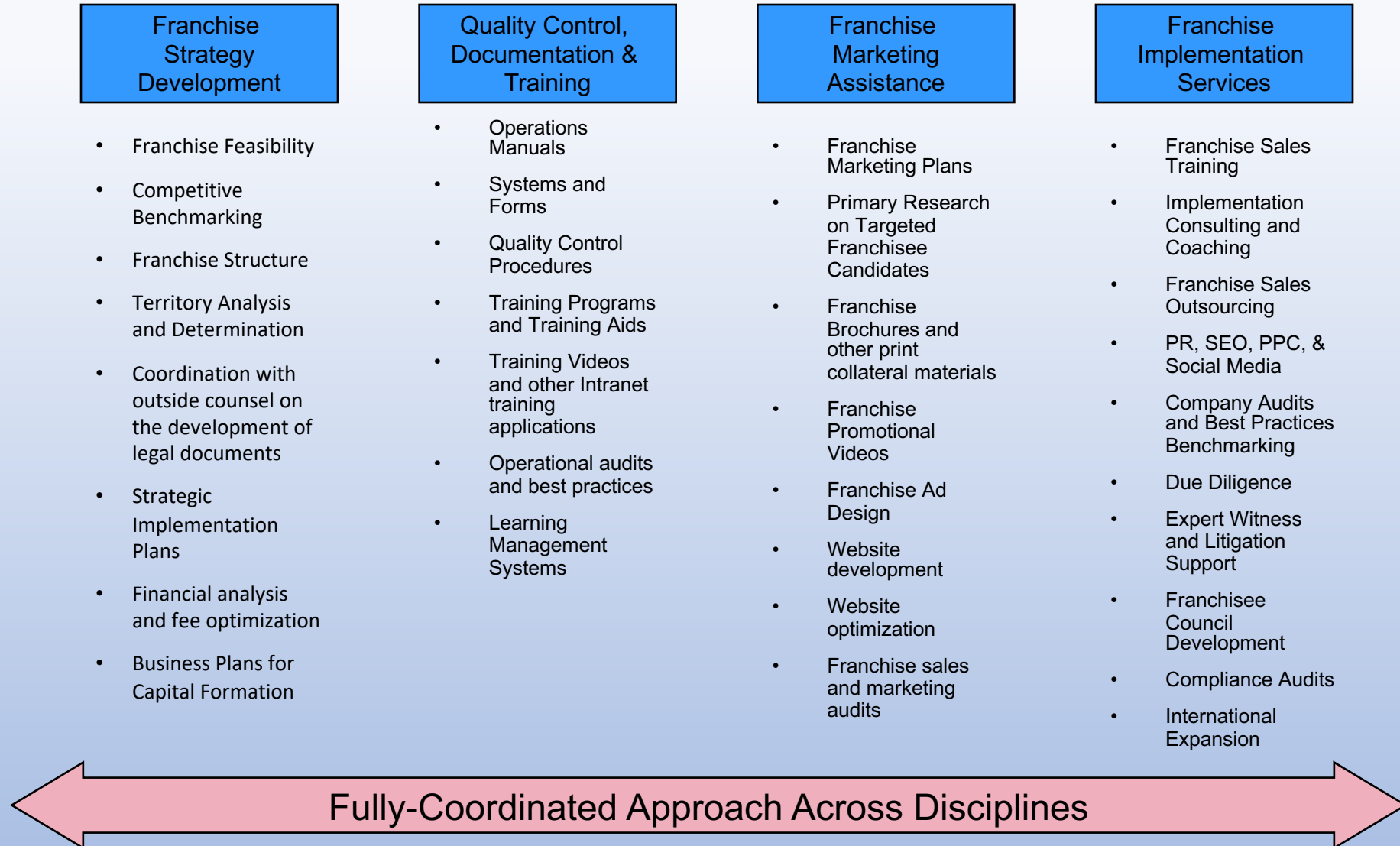
Welcome



- Founded 1997
- Offices: Chicago, Dallas, Los Angeles, Miami-Fort Lauderdale, Atlanta, Toronto, Dubai
- Professional staff: 40 consultants, each with 20+ years of experience, combined 800+ plus years of franchising expertise
- Ranked #1 by Entrepreneur 2019-2022
- Clients include franchisors, licensors, and dealer organizations
- Areas of focus:
 - Strategy development for franchise systems
 - Franchise operations and relationships
 - Best-practice audits for existing franchisors
 - Franchise marketing assistance



The iFranchise Group provides a fully integrated approach to the development and refinement of franchise businesses...



THANK YOU

Anchorage
Atlanta
Augusta
Beijing
Charlotte
Dallas
Denver
Houston
Los Angeles
New York
Raleigh
San Diego
San Francisco
Seattle
Shanghai
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Marc Lieberstein is a partner with Kilpatrick Townsend. Marc focuses his practice on intellectual property licensing and franchising in the consumer products/services, industrial design and fashion areas, including implementation of branding objectives. Marc counsels clients on creating effective strategies for procuring, protecting and enforcing their global intellectual property assets, including patent, copyright and trademark prosecution, trademark opposition and cancellation proceedings in the USPTO and US Copyright Office. Marc frequently lectures and writes on intellectual property issues for a variety of intellectual property organizations and publications, including INTA, ABA Forum on Franchising, International Franchise Association, NYSBA IP Section, Wharton Business Law Association, NYU, ABCNY Fashion Law Committee, National Law Journal, IP Strategist and The New York Law Journal, Practical Law, The Licensing Journal.



THANK YOU

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- Over 25 years of business experience across a range of industries and functions (retail business management, consumer service business operations, insurance law, franchising, and more)
- Over 15 years of direct franchising experience, both as a manager and as a franchisee within a multi-national franchisor system, and as a franchise consultant
- Provides franchise feasibility assessments for prospective franchisors throughout North and South America

