

## A Duck Story

Business opportunity laws are very different from franchise laws. The Federal Trade Commission (FTC) regulates both franchises and business opportunities. A business opportunity (sometimes referred to as a "biz opp") can be distinguished from a franchise by the FTC definition of a franchise.

Some companies are selling an opportunity to investors under the misguided notion that because they don't charge royalties or visible franchise fees that they are not a franchise. These companies are biz opps. Some biz opps even boast "No franchise fees or royalties, - no territory or expansion restrictions". Worse yet, they make unsubstantiated earnings claims.

These biz opps also forget to mention what else they don't have: No ongoing support or buying power for you, no credible image or identity of company products or services, no consumer awareness building power, no ongoing research and development for you, no protected territory for you, no substantial demographic or geographic considerations studies for you, no lease negotiation and site location assistance for you, no disclosure of their company's financial condition for you, no disclosure of past litigation history of their company and employees for you, no disclosure of all persons involved in their business operation, no disclosure of all past investor failures for you, no proven and documented marketing plan for you, no federally registered trademark to protect the company name, and much more.

Some franchise laws vary state-to-state. Some franchise laws are somewhat similar to some business opportunity laws as well. Some business opportunity laws are different state-to state. But, both laws are intended to protect people from fraud and misrepresentation of the facts. Both laws are intended to protect the buyer and the seller. The problems occur when the buyers or sellers misunderstand, intentionally or unintentionally, what they are buying or selling. Enter the "duck test".

This is the franchise duck test: If you act like a duck, look like a duck and talk like a duck-then, YOU ARE A DUCK!!! Even if the duck advisor (i.e. your attorney) says you are a COW. You can't do business legally as a COW, if you are really a DUCK. More importantly, you don't get to vote! Franchising is regulated by law. The general test of whether or not a business opportunity is a franchise, can be summarized as follows:

If you sell a business opportunity to any person and you;

1. Allow the buyer to use your company name or logo;
2. Charge a fee to the buyer (inside or outside of product or service);
3. Provide any significant assistance or maintain any significant control over any part of the business.

Franchising, under a business microscope, has more than one meaning. There are two types of franchising: product franchising, like PepsiCola or Ford, and, business format franchising, like McDonalds or Holiday Inn. Product franchising is very big business, but it is not an investment consideration for all but a very few. The true fame of franchise investments has come as a result of business format franchising, which, from this point forward I will be referring to as I speak of franchising. There are two main categories in franchising: retail and service. Retail franchises may sell tangible products, like food, lodging, clothing, appliances, toys, automobile parts, etc. They may also sell services such as automotive maintenance repair, health programs, accounting, decorating or other services with tangible or intangible products. These franchise businesses may operate from a retail store space, an office or from home

Retail franchises require retail space, a store, a building or an office, retail service franchises generally do not. Customers come to retail locations to purchase franchise products or services. Virtually any product or service that is sold to the public can be purchased through a retail franchise store or mobile franchise service. Getting the right information, accurate and current, before you buy can prevent costly litigation and financial disaster.

**If you haven't been living under a rock for the last several years, then you know the tremendous success that the franchise method of doing business has achieved. The U.S. Department of Commerce has published the results of more than fifteen years of studies that consistently verify that the statistical success of franchises are higher than 95%. For every one hundred franchises sold, ninety five succeed.**

In comparison, non-franchise businesses, big or small, start up or existing, have a mortality rate of greater than 90%. Nine out of every ten non-franchised businesses, regardless of status, start up or existing businesses, fail. As for the franchise statistics of such incredible success, we must examine the definitions of business opportunity, failure and success as pertains to franchising..

The words "business opportunity" have a separate and distinct meaning legally when it concerns a person or a company that sells to another person or company a product or a service as a business investment. In other words, if what you buy, from a person or company, that you can in turn sell to someone else and derive a profit, then it is a business investment that then becomes a "business opportunity". That business opportunity may meet certain legal tests that then cause it legally to be a franchise. If a business opportunity does offer certain items of the above list, they just might be selling you a franchise, not a business opportunity as defined by law.



A generic use of the words "business opportunity" may be applied to describe a franchise, but generic or otherwise the legal definition of the word "franchise" cannot be applied to describe a "business opportunity".

There are success stories in non-franchised opportunities as well. The limited non-franchise businesses that succeed are owned by "types" that I have classified into just two groups. The first group consists of genius inventors of excellent and unique products or services that hire first class salesmen. The second group consists of extraordinary hard-working people willing and able to do everything by themselves.

By the dictionary definition, the word success has two basic meanings: one; satisfactory completion of something, and two; the gaining of wealth and fame. From my investigations. I have concluded that four out of five of the above franchise "success" stories do not meet my definition of success, which is the latter of the two definitions. These people were attracted to franchising primarily because of the published fail-safe of franchising. They were either not brave enough, or not foolish enough, to trade their life savings and their ego just to own their own business. The glowing reports of franchise success, being in business for yourself, but not by yourself, offered the working class a chance to get off of the employee merry-go-round. They could reach the brass ring without falling (or failing). They did attain success because they didn't fail.

# Franchise Profiles International

Oddly enough, the word fail has seven meanings: decline, die away, stop functioning, be unsuccessful, become bankrupt, disappoint or abandon, and neglect. In truth, most just "bought a job they couldn't be fired from". This, by itself, constitutes success. They did accomplish something satisfactorily. That alone fulfills meaning number one of success. More importantly, they didn't meet any of the criteria for the seven meanings of failure. They are successful.

In contrast, there are many people who have the same objectives and expectations of owning their own business, but shun franchising. This is the group who takes a dim view of accepting, needing or wanting anyone's help to succeed. They are not familiar with the infrastructure of franchising and they usually don't care to learn. They perceive franchise fees, royalties, control and restrictions to be unreasonable, costly impositions. I certainly believe there are people who can and do succeed, by both meanings, totally on their own without the benefits of franchising. They exist in extremely small numbers, as noted above in the failure rate of non-franchised businesses.

**If the buyer's objectives include spending more time with their family, or dictating their own work schedule, or performing work they enjoy, or not having to tolerate certain employee requirements, then working for yourself as a franchisee, and making a decent living, is success. Less obvious, but more critical benefits of franchises that prevent business failure, are unique to franchises.**

The dream of being their own boss had also conjured up visions of wealth and higher social status. More wealth than any career or job might provide. The franchise buyer's erroneous perception is not the fault of the franchisor. The FTC disclosure laws require accurate representations from franchisors to prospective franchisees. With rare exception, the franchisors willingly comply. Since the disclosure document is the foundation for the franchise contract and as such gives specific rights to both parties, and more importantly, the franchisor the right to control the franchise, the franchisor is careful to provide and fulfill the reporting requirements to the smallest detail.

Generally, the prospective franchisee, in his enthusiasm, has been open to the glowing reports of franchise success as reported by the media. He sees the advertising of hundreds of well known franchises and assumes that all of these costly promotions are free. These self preconceived notions, along with many other misinterpretations, often lead him to assume amenities that simply do not exist even though they were never offered by the franchisor.

And, these expectations are the root of the problem that breeds bad feelings between a few franchisors and franchisees. The franchisee's distorted allegations that evolve from this dilemma are fueled by ambitious reporters and attorneys who are unfamiliar with the franchise selling process.

The real confusion arises when the franchise is not a real franchise but is actually a "business opportunity" as defined by law. The business opportunity is often mistaken for a franchise because the "duck story" is not known or understood by the so called "franchisee victims", who are really biz opp victims.

Thinking of buying a "hot home business" or vending business? For a sample of the devastating fraud so rampant in these types of "biz opps" visit the recent cases on the Federal Trade Commission site at:

<http://www.ftc.gov/bcp/franchise/1999-2000cases.htm>

None of these companies are really franchises, yet they fall under the "Little FTC Act" of business opportunities that regulates Franchise & Business Opportunities.

Investors, who desire to be in business for themselves, usually perceive themselves as entrepreneurs. No franchisee is an entrepreneur, but most fancy themselves as such. Entrepreneur is another word that needs further illustration, particularly in the world of franchise investments. Entrepreneurs engage in high-risk ventures. Franchisees do not have these high-risks because franchisors have provided a fail-soft opportunity. But, this cushion is a "fail-soft" against business failure, not a "fail-safe".

Franchisors have no such business failure cushion. In fact, franchisor failure is equal if not higher than the failure rate of traditional business start-ups. There are hundreds of companies, each year, that enter the franchise format to form a franchise system and fail. But once a company has properly formed a franchise system, then all the benefits of franchising fall into place for the company and the franchisees of the system. As long as the duck is a duck, the DUCK STORY has a happy ending.

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