

**BG** *Bowman Gilfillan*  
Attorneys

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INTELLECTUAL  
PROPERTY  
FRANCHISING



# *franchising*

Our primary aim is to provide clients with an efficient, cost-effective service in creating and maintaining a competitive edge using intellectual property rights. Our qualified & extremely competent team of lawyers are highly regarded and fully equipped to advise clients on how best to protect their businesses, and their intellectual property. This also includes their brands, inventions and particular trading styles, as well as the commercial exploitation thereof by way of licensing or franchising.

A franchise agreement properly identifies all aspects of the franchisor's intellectual property and other propriety rights and ensures that these are properly protected and licensed to the franchisee. The contract should also focus on, and accommodate, the specific needs and requirements of the franchise operation and control the relationship between the parties in a positive and constructive manner. Franchise agreements are extremely complex and it is certainly advisable to obtain legal assistance from an expert skilled in intellectual property & franchising.

The Law with regard to franchising in South Africa has changed substantially during the course of the past few years. These changes include new legislation relating to competition and draft legislation relating to consumer protection. As a result many franchise agreements are now at risk and should be audited so as to ensure that they are not vulnerable to termination. In addition, all new franchise agreements should take cognizance of the changes which have taken place in the law relating to franchising including the aforesaid legislation relating to competition and the new consumer protection bill.

It is also essential that the Intellectual Property which is being licensed to the franchisee is properly protected and properly identified and licensed in the franchise agreement. This would include the registration of trade marks used by the franchisees, ensuring inter alia that the relevant copyright is owned by the franchisor and that know-how is protected by suitable confidentiality provisions or agreements.

The structure of the franchise system (including that of the franchise agreement) is particularly important and it is usually for the franchisor or proprietor of the intellectual property to decide precisely what makes commercial sense and what he is going to allow the franchisee to use. A competent written franchise agreement is a key factor to promote and enhance a win-win situation and to protect the respective rights of both parties and the entire franchise operation.

## *our services to franchisors*

- General & Strategic Franchising advice
- Corporate Structure advice
- Company or Close Corporation registration
- Commercial Agreements
- Name, Brand & Copyright Management & Registration
- Patent & Design Registration
- Operation & Procedures Manual assistance
- Disclosure Document assistance
- Negotiating with Franchisees
- FASA Application assistance
- Review & Update of Franchise Agreement
- Review, Update & Management of Trademark & Intellectual Property Portfolio's
- Litigation - Franchising & Commercial
- Seminars to Franchisees

## *our services to franchisees*

- General advice on Franchising
- Advising on Franchise Agreements
- Negotiating favourable Agreements
- Litigation - Franchising & Commercial



**disclaimer**

*Disclaimer*The information provided in this brochure is, by its nature, brief and incomplete and is not meant as a substitute for detailed legal advice. Bowman Gilfillan John & Kernick shall not be liable for any loss resulting from the use of the information provided herein. We urge you to consult us with your specific queries in regard to any intellectual property matter. For more information, please feel free to contact us +27 11 695-3500 or visit our website [www.bowman.co.za](http://www.bowman.co.za).

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