

LAW SPECIAL REPORT

Franchising/Intellectual Property

Independent contractor law AB5 could disrupt the franchise business model in California.

Franchise law has shrunk since last March, while the related field of intellectual property law has seen a modest uptick in business interest, **Tal Grinblat** of Encino firm **Lewitt Hackman** said.

These two law sectors often go hand-in-hand because they're both means to grow a business, either by duplicating the business model through franchising or selling another the right to use intellectual property, trademarks or designs.

Some sectors within the franchise industry have bucked the macro trends of decline, according to Grinblat.

Portable moving and storage franchises, Grinblat said, have had a strong year.

"It's not all doom and gloom for everyone, but I would say for the industry as a whole, it

has taken a big hit," Grinblat added, referring to franchise law practice. "Companies with delivery services, they're doing fine. I have another client that is in the precious metal industry, and they told me recently that last year was probably the best year they've ever had. I think when people are scared, they go and buy precious metals," he explained.

Computer gaming company franchises have boomed too, the lawyer said, with more people stuck at home playing on screen.

Food service and fitness franchises, on the other hand, fared poorly because of pandemic restrictions. "I represent a client that provides cafeteria food services in office buildings, and office buildings have either been shut down or people

have been working remotely. Their business

has dried up," he said.

Some franchisors, Grinblat noted, reinvented themselves. One of his clients, for example, developed a virtual or ghost kitchen concept and sold product through virtual storefronts.

Seizing opportunities might backfire, however, with potential repercussions from the ever-present Assembly Bill 5, which Gov. **Gavin Newsom** signed in September 2019. The law, which assumes a worker is an employee rather than an independent contractor unless he or she meets certain requirements, can ensnare companies in the franchise sector.

Under AB5, contractors must pass the following requirements, referred to as the ABC test: they are free from the control and direction of the company in performing work; they perform work outside the usual course of business for the hiring company; and they maintain an independently established trade, occupation or business of the same nature as the work performed.

"In franchising, the franchisee has to follow guidelines, training that the franchisor



Tal Grinblat

Lewitt Hackman

HEADQUARTERS: Encino

PRACTICES: Franchise and licensing, intellectual property, business/corporate, M&A, employment, estate planning, tax, personal injury, family law, commercial finance

EMPLOYEES: 37

LOCATIONS: 1

dictates, and many times a franchise company will offer the same kinds of services as the franchisee," explained Grinblat.

He added that franchisees would have a problem meeting all three requirements under the franchise business model.

"That is now creating the risk that all franchisees, at least in California, will be deemed to be employees of the franchisor, which is not tenable," said Grinblat. "That's just a cherry on top, in addition to COVID."

— Amy Sulick