
Franchise Systems' Role In Combatting Terrorism

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American franchised brands can be targets for terrorists seeking to attack American culture. Douglas Kellner's book *Media Spectacle* (Routledge 2003) describes attacks at McDonald's restaurants in Argentina, Australia, China, Pakistan, Russia, Toronto, Turkey, and Ukraine. He notes that at a 2002 World Economic Forum, McDonald's CEO Jack Greenberg conceded "McDonald's is oftentimes the poster child for anti-globalization sentiment." After the terrorist attacks of September 11, 2001, McDonald's sent an internal memo stating that because the United States was under attack, McDonald's was vulnerable and should prepare for the worst. *Id.* at 55.

Franchise systems can build anti-terrorism

measures into their systems, in ways that make business sense and align with their legal and moral principles. Potential measures follow.

Design physical structures with security and safety in mind. Franchisors typically provide franchisees with architectural designs and plans for restaurant and store layouts. When franchisors and franchisees hire architects and others to create and modify these plans, they can instruct these professionals to consider risks of terrorism and address security and safety. This analytic process can generate store designs with impediments to direct entry, such as reinforced doors and walls, lobby ways and partial wall separations from interior customer areas,

and enclosed loading dock areas. Of course, all such measures need to balance brand issues, including customer reactions to such designs.

Consider terrorism, safety, and security in developing location criteria. Some franchisors and franchisees may determine that the safety-related benefits of selecting locations away from busy commercial streets and famous landmarks and buildings are just as important as other site selection criteria. Service-oriented franchises that do not depend on walk-in clientele may find this factor more significant than do other types of franchises.

Incorporate security and safety into operating procedures. The standard operating procedures that franchisors require or recommend for their systems can include considerations of safety and security. One example is a recommendation to unpack and inspect deliveries before entry into the store to ensure that they are free from contraband. Franchisors also can include information on terrorism defense, safety, and security in their operations manuals and training materials, and can communicate regularly with franchisees on these subjects.

Require or encourage cooperation with law enforcement. Franchise agreements can include provisions mandating or encouraging franchisees to cooperate in every lawful way with the requests and requirements of law enforcement. Franchisees and the public may welcome the inclusion of such provisions. Within the constraints of laws on data privacy and security, franchisors in their franchise agreements can also reserve the right to make data available to law enforcement.

Expressly prohibit unlawful forms of discrimination. Prevention of unlawful discrimination against others is consistent with waging war on terrorism. Thus, franchisors may want to include express prohibitions against unlawful discrimination in their franchise agreements.

Encourage further efforts by franchisees. The franchise agreement and policies of the franchise system can permit, support, and encourage further anti-terrorism efforts by members of the franchise system. Ad campaigns and benefits for members of the military, law enforcement personnel, fire fighters, and medical first responders can offer moral support consistent with promotion of franchised businesses.

Encourage or require franchisees to purchase terrorism insurance. Many standard insurance policies exclude coverage for claims arising from acts of terror. Franchisors can require franchisees to purchase specific insurance coverage for terrorism. Alternatively, franchisors can consider creating a fund,

including contributions from the franchisor and franchisees, to assist any victims of a terrorist attack.

Include other antiterrorism provisions in franchise agreements. Today, many franchise agreements include antiterrorism provisions. A few sample provisions follow:

- Franchisee shall comply, and assist in Franchisor's efforts to comply, with all laws, regulations, and Executive Orders relating to anti-terror activities, including without limitation the U.S. Patriot Act and U.S. Executive Order 13224.
- Franchisee shall not enter into any prohibited transaction. Franchisee shall properly perform all currency reporting and other activities relating to the franchise business as required by law.
- Franchisee represents and warrants that to the best of its knowledge, no owners or managers of Franchisee have been designated a terrorist or a suspected terrorist, or are associated or affiliated with a terrorist or suspected terrorist, as defined in U.S. Executive Order 13224 or otherwise.

Use Treasury Department terror lists.

Franchisors can consider adopting policies against granting franchises to anyone on the Specially Designated Nationals and Blocked Persons List, or on other sanctions lists administered by U.S. Treasury Department and its Office of Foreign Assets Control. See <https://sdnsearch.ofac.treas.gov/>. Franchisors can also encourage or require franchisees to refrain from transacting business with anyone on such lists. See e.g., *Insulate SB, Inc. v. Advanced Finishing Systems, Inc.* 797 F.3d 538, 545 (8th Cir. 2015) (holding that under the United States Supreme Court's *Colgate* doctrine (in antitrust law), a private business "generally has a right to deal, or refuse to deal, with whomever it likes, as long as it does so independently."), citing *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919).

Develop plans to address terrorism threats. The Model Business Corporation Act (MBCA) permits bylaws that take effect in an emergency and provide for calling board meetings and designating additional or substitute directors. The Act defines an emergency as circumstances when a quorum of directors cannot readily be assembled due to a catastrophic event. MBCA §§ 2.07, 3.03. To provide for continuity, franchisors can consider including provisions for re-establishment, relocation, and continued operation of franchised locations in the event of a terror incident. ■