

# BENNETT

communications

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Best Overall Magazine in Utah  
Utah Valley Magazine,  
Society of Professional Journalists, 2007

Third Place, Best Overall Magazine in Utah  
Utah Valley BusinessQ,  
Society of Professional Journalists, 2007

First Place, Cover Design  
Utah Valley Magazine,  
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## A letter from our editorial board >>

SUMMER 2008



# Franchise in Utah: Are You Protected?

MICHAEL KRIEGER  
Kirton & McConkie

**U**nder ideal circumstances, franchising can be a highly beneficial symbiotic relationship. The franchise seller, or franchisor, benefits from exploiting successful intellectual property and from rapid expansion. The franchisee benefits from the franchisor's established and proven business model.

To prevent abuses by either party, the Federal Trade Commission has enacted regulations aimed at protecting the franchise relationship. The most recent rule is the Disclosure Requirements and Prohibitions Concerning Franchises and Business Opportunity Ventures, commonly referred to as the "Franchise Rule." This rule requires all franchisors to provide franchisees with a disclosure document that must contain 23 specifically enumerated items. So, the question is, in the absence of state legislation adopted to enforce the Franchise Rule, what can prospective franchisees do to protect themselves in Utah?

To begin with, prospective franchisees should know the 23 disclosure items that the FTC requires in the disclosure document. There are five items with which one should be particularly familiar.

First, franchisors must disclose any pertinent information regarding litigation or bankruptcy history. Such information may be a good indicator of the organization's practices and stability.

Second, franchisors must disclose all

initial payments and fees to provide an estimated initial investment.

Third, franchisors must disclose all trademarks, service marks, trade names, logo types, commercial symbols, patents and copyrights connected to the franchise agreement and any associated limitations on the franchisee in using them.

Fourth, if a franchisor makes claims regarding sales, profits or earnings, then the franchisor must describe the method used to develop such claims.

Lastly, franchisors must provide a summary of franchises sold, the number actually operating, the number of agreements signed but not operating and the number of company-owned outlets. Further, item 20 requires the franchisor to disclose the number of franchises terminated or not renewed and the associated causes for the franchisor's last three fiscal years. The full list of items required under the Franchise Rule, as well as additional resources, can be found on the FTC's Web site at [www.ftc.gov](http://www.ftc.gov).

Any prospective franchisee should demand full disclosure under the FTC Franchise Rule — if a franchisor is unwilling or unable to provide such disclosure, any agreement would likely end in disappointment, failure and perhaps liability. Additionally, the disclosure document should be read very carefully prior to entering any associated agreement, and it is advisable to have a lawyer and/or an accountant review it as well. **Q**