

## **Safe and Effective Communications**

When communicating with franchisees or even when merely taking notes or making internal communications it's important to understand the significance of the words you use. Statements committing to do or not to do something; statements admitting responsibility; and statements concerning other' intentions while made innocently may bind your company to a particular course of action.

When writing you should 1) stick to the facts; 2) do not include opinions; 3) avoid generalizations; and 4) not include insults or sarcasm. In addition you'll want to make an investigation before you reach any conclusions and put them in writing. Further, in order to avoid possible vicarious liability where you can be held liable for the acts of other because they were following your directions, you should merely relay information rather than act as a direct actor whenever possible and couch your advice as recommendations rather than directives to a franchisee.

Certain things should never be put in writing including any: 1) admission or implication of wrong doing; 2) passing the buck or protecting yourself; 3) defamatory statements; 4) balancing economics with safety and quality; 5) opinions regarding sensitive issues; and 6) speculation about franchise claims predatory status. You should assume that your writing will be seen by persons other than the intended recipient. Don't write anything that you would not want to see blown-up as an exhibit at trial.

This is not to say that writing are not important and a writing should be in fact made in certain circumstances. Don't allow an inaccurate writing to be the last writing. You should memorialize oral agreements; promptly write back identifying any incorrect statement of facts; and beware of gaps in series of written communications on a single issue.

Recalling these are rules are particularly important when making electronic communications. Electronic communications often give a false sense of privacy and a false sense of an ability to delete. In addition electronic communications such as e-mails are often drafted casually or carelessly and you should be aware that messages can be copied and resent to others other than the intended recipients. In addition your electronic communications create a permanent record, which can be discovered by an adverse party in court. You should at all times remember that although informal, your electronic writing still represent the company. In short the best advice is to think first.