

to resolve the dispute within the stated time in the franchise agreements, the dispute must then be submitted to arbitration, if the issues are arbitrable. And, the alternative dispute resolution provision in the franchise agreements obligated the parties to submit their disputes to arbitration unless they were related to or were based on WOBF's trademarks, which the court found that in this case, WOBF had alleged matters that were not just related to the WOBF trademarks. Thus, the court found that WOBF had not followed the procedures to submit a claim to mediation under the requirements in the parties' agreement, and the request for preliminary injunction had correctly been denied without prejudice.

This case teaches that a pre-suit mediation provision that is included in a franchise agreement to decrease the risk of litigation or arbitration and reduce attorneys' fees and costs may not produce its intended results if the circumstances in which the mediation must take place are not clearly

spelled out up front to cover all appropriate circumstances. As a franchisor, in drafting pre-suit mediation provisions that will allow the parties to carve-out certain disputes from such mediation, care must be given to draft the provisions using precise language so that the carve-outs and exceptions are applicable in all the appropriate and desired circumstances. At the same time, franchisees should carefully review and assess whether they are able to negotiate for narrower exceptions so that they may ultimately argue that the exceptions to the pre-suit mediation provisions are narrower than the circumstances provide. Regardless, precise choices with regard to wording of pre-suit mediation provisions, especially when it comes to scope of application and timing, must be considered at the outset when drafting the franchise agreement to prevent potentially costly and time consuming delays that run counter to the desired effect of such provisions.

Rupert Barkoff, Through the Eyes of a Colleague

By Christopher P. Bussert

In the spring of 1985, I had made the decision to practice exclusively in the intellectual property area. I was aware of Kilpatrick & Cody's lofty reputation in the area and soon focused my efforts in securing employment there. The hiring partner at the time was Rupert Barkoff and my positive interactions with him caused me to choose to come to Kilpatrick & Cody.

My interactions with Rupert did not end there. Although we were initially in different practice groups, I learned that Rupert had a need for trademark related advice for a number of his franchise clients, which I was happy to fill. Many years later, I recognized that what Rupert had done was to "bait the franchise hook" and it was not long before I had taken that bait hook, line, and sinker. I was pleased to turn the tables on him much later when I recruited Rupert to join me in the firm's trademark group.

Over the next 30 years, Rupert and I enjoyed not only a thriving franchise practice, we also

became great friends. Indeed, I considered him my best friend at the firm. As my career developed in franchising, Rupert was there every step of the way. He was available 24/7 to discuss any issue and every time I asked him to go with me to meet with a client or participate in a pitch or presentation, he did so without question or complaint. I cannot imagine having a better mentor or colleague.

What I learned through these and other interactions is that Rupert was the consummate people person. He loved interacting with all members of the franchise bar, whether friend or foe. He was most interested in learning about your practice and interests and what made you tick. I often joked with Rupert that his professional CV was the longest I had ever seen (17 pages). Of course, the reason for this is that he was one of the most recognized and prolific writers and speakers ever in the field of franchising. Despite all of this, as well as his numerous accolades and recognitions, Rupert never took himself too seriously. In his mind, it was all about what he could do for others and, in

particular, cultivating their interest in franchising. Based on the many tributes I have seen since Rupert's passing, those are the memories others have of him as well.

At the time I was interviewed for one article on Rupert's passing, I expressed the best single

word to describe him was that he was a true "Mensch." I was pleased to see that others have described him using that exact term. Stated another way, Rupert was a great lawyer, but he was an even better person. His gentleness, intelligence, and sense of humor will be missed by all but never forgotten.

Message from the Chair

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collect from a variety of sources to make sure that we are providing the most current and useful information to our members.

- For the first time, we are conducting a top-to-bottom review of the Annual Forum, the crown jewel of our organization, which over the last three years has averaged 850 attendees--more than 55% of our lawyer membership. The 2018 Nashville Forum had the best attendance in the history of our organization.
- We engaged an outside meeting planning and management firm, with deep experience in the representation of membership-based associations, to provide additional help to make the member experience as productive, collegial, enjoyable and seamless as possible.
- We celebrated our 40th anniversary in Palm Desert in 2017, honoring all of our Past Chairs for their wisdom, insight and leadership that sustained and strengthened the Forum and brought us to that important milestone.
- A new Task Force on Balance created an Editorial Policy which for the first time provides guidance to our editors and writers, so that all of our written work reflects a fair balance of viewpoints among the various constituencies within our Forum and creates value for every member, whether they represent franchisees, franchisors, or both, or whether they are in private practice or serve as corporate counsel or as a state or federal regulator.
- Finally, in light of the membership and financial challenges faced by the ABA at large, we are implementing a variety of

measures to make the Forum on Franchising as self-sustaining as possible.

My work as Chair has been greatly aided by my good friend, Karen Satterlee, Immediate Past Chair. Her experience, sound judgment and deep commitment to our mission have been an invaluable and indispensable resource. No one could have asked for a better partner in this endeavor. I am grateful for Karen's guidance and deeply in her debt.

And I am supremely confident in my successor, Will Woods, who hit the ground running months ago, and is fully engaged. His wealth of experience in a wide variety of roles at the Forum will put him and the Forum in good stead as he moves forward. I have pledged to Will, with Karen as my role model, whatever assistance is needed as he assumes the role of Chair.

I also want to thank the hundreds of members of the Forum, too many to list in this space, who over the last two years have served on the Governing Committee, as Senior Appointed Leadership, a member of a division, caucus or committee, an Annual Forum presenter, an editor of or the author of an article in *The Franchise Lawyer* or the *Franchise Law Journal*, an editor of one of our books or an author of a chapter in one of those books, or a presenter at a webinar. Your willingness to contribute and participate is the engine that runs the Forum.

At the outset of my all-too-fleeting time as Chair, my goal was very simple: leave the Forum on Franchising even better than I found it. I hope that goal has been fulfilled, but I leave that judgment to you.

I look forward to seeing all of you at the 42nd Annual Forum on Franchising in Denver, Colorado, October 16-18, 2019.

Thank you and best regards to all.