



American Franchisee Association
Susan P. Kezios, President

American Franchisee Association (AFA)

List of Accomplishments

Following is a partial chronology of the American Franchisee Association's (AFA) activities and accomplishments since 1993 on behalf of franchisees.

- AFA's founding Board of Directors (Feb. **1993**) felt that the only permanent manner in which to level the playing field between franchisor and franchisee was to change the rules and laws that govern franchising.
- The AFA's not-for-profit status originally belonged to the National Franchise Association Coalition (NFAC) (est. **1975**) and subsequently to the National Alliance of Franchisees and Dealers (NAF&D) (est. **1980**). The NAF&D Board of Directors signed over their 501 (c) 6 number to the AFA's founding Board of Directors by unanimous consent.
- AFA's Board discovered that by educating the press on franchisee issues both the general public and governmental officials gained a better appreciation for the unfair conditions under which many small business franchisees operate. The relationships the AFA has developed with the press over the years means that a more realistic picture of the nature of franchising is now routinely portrayed in the media.
- In the **1993-1994** legislative sessions alone franchisee-friendly legislation was introduced in 21 different states. The AFA organized franchisees and testified in 15 of those states (CA, CT, FL, IA, IL, IN, KY, MD, MA, ME, MN, NY, NV, SD, TX).
- AFA's bi-annual Legislative Affairs Days (LAD) held in Washington, DC, every spring and fall, provided Advocacy Training for franchisees, beginning in **1993**.
- In a **1993** report to Congress, the General Accounting Office found that the FTC began investigations on only 5.7% of the 1,360 complaints it had received over a four-year period and that it closed approximately 40% of those cases without taking any action. The report noted at that time that potentially meritorious cases were not pursued and consequently some victims were not being helped.



American Franchisee Association
Susan P. Kezios, President

- In August **1994** the AFA provided testimony before the U.S. House of Representatives Subcommittee on Transportation and Hazardous Materials regarding the Federal Trade Commission's (FTC) role in the regulation of the franchise industry.
- The AFA was actively involved in the Federal Trade Commission's Franchise Rule review process which began in **1995**. The AFA submitted written comments and participated in public workshops in both 1995 and **1996**. In **1997** after the FTC published an Advanced Notice of Proposed Rulemaking (ANPR), the AFA submitted written comments along with 70 individual franchisees representing 20 independent associations of franchisees.
- The AFA suggested that regional workshops be held in order that franchisees might be better able to have their comments included on the record. The FTC responded to the AFA's request and held six public workshop conferences in **1997** where the second day was an open forum in which the public was invited to express their views. Franchisees from another 15 independent franchisee associations, all AFA members, participated in these public conferences. In **1999** after the ANPR workshops the FTC published a Notice of Proposed Rulemaking (NPR) to which the AFA again submitted written comments.
- At the AFA's request three United States Senators asked the General Accounting Office (GAO) to audit the FTC's enforcement of the franchise rule with a goal of determining what additional congressional oversight is needed in the franchisee-franchisor relationship. The GAO's audit, entitled, "Federal Trade Commission: Enforcement of the Franchise Rule," was released to the public on **July 31, 2001** (<http://www.gao.gov/products/GAO-01-776>, GAO Report 01-776). The report showed that 92% of the franchise complaints received by the FTC relate to post-sale relationship problems. The FTC stated in the report that it cannot act on those complaints.
- On **June 24, 1999**, and at the AFA's request, the House of Representatives held an oversight hearing on franchising, 'What's the Beef?' (American Franchisee Association, Statement of Susan P. Kezios, President, before the U.S. House of Representatives Judiciary Committee Subcommittee on Commercial and Administrative Law).
- By **2002** the AFA had convinced the House of Representatives to hold a hearing on the enforcement of the FTC's Franchise Rule, 23 years after its promulgation (American Franchisee Association, Statement of Susan P. Kezios, president, before the U.S. House of Representatives Subcommittee on Commerce, Trade and Consumer Protection, Committee on Energy and Commerce).



American Franchisee Association
Susan P. Kezios, President

- In August of **2004** the FTC issued its Staff Report on the Franchise Rule to which the AFA again submitted written comments. All along the way, the AFA encouraged its member franchisees and Affiliate Member attorneys to participate in the process. Over 60 franchisees from 20 different systems and a dozen franchisee law firms were represented in the Rule re-write process.
- The approval and release of the revised FTC Franchise Rule on **January 22, 2007**, was, in many respects, heavily influenced by the input of the AFA. The AFA was cited 80+ times in the footnotes to the 'DISCLOSURE REQUIREMENTS AND PROHIBITIONS CONCERNING FRANCHISING - *Staff Report to the FTC and Proposed Revised Trade Regulation Rule*' (<http://ftc.gov/os/2004/08/0408franchiserulerpt.pdf>). Changes directly attributable to the AFA include:
 - 1) **Gag Clauses**: The FTC now requires that franchisors disclose the names of franchisees who are required to sign gag clauses. These gag clauses are designed to prohibit or restrict existing and former franchisees from discussing with prospective franchisees their experiences, positive or negative, with the franchise system. (The kinds of gag clauses included for disclosure do not include confidentiality agreements designed to protect a franchisor's trade secrets and other proprietary information.)
 - 2) **Litigation**: First, the FTC now requires that franchisors disclose litigation involving predecessor corporations. Second, the FTC requires that franchisors disclose civil actions, other than ordinary routine litigation, that may impact upon the franchisor's financial condition or ability to operate the business. Third, the FTC requires franchisors to disclose pending franchisor-initiated lawsuits against franchisees involving the franchise relationship. (In the past, the FTC Rule required franchisors to disclose only suits that franchisees have filed against the franchisor.)
 - 3) **Disclosure of Trademark-Specific Franchisee Associations**: The FTC now requires franchisors disclose the existence of trademark-specific franchisee associations. Only those incorporated independent franchisee associations that make their existence known to the franchisor need be included. The burden to inform the franchisor of their existence on an annual basis falls on the franchisee association leadership.
 - 4) **Use of Integration Clauses**: The FTC Rule no longer allows franchisors to disclaim liability for, or cause franchisees to waive their reliance on, statements made in the franchisors' disclosure documents. The FTC recognized that the use of integration clauses to disclaim liability for required disclosures undermined the very purpose of the



American Franchisee Association
Susan P. Kezios, President

Rule, which is to prevent fraud and abuse by ensuring that prospective franchisees have complete, truthful and material information in order to make their investment decision.

- The AFA organized franchisees in 32 states to participate in the **1995** White House Conference on Small Business (WHCSB). The AFA succeeded in getting 126 franchisees and 11 franchisee attorneys elected as delegates to the WHCSB.
- At the National WHCSB in Washington, DC (**June 1995**) over 1900 small business delegates from all fifty states—including the 137 AFA delegates--voted on a priority list of small business issues to be presented to the President and Congress for immediate action. Among the final list of sixty priority issues were “franchisee legal and constitutional rights.” For the first time, franchisees were recognized as independent business owners and not merely extensions of their franchisors. The issue of franchisee legal rights is and has been front-and-center in the legislative agenda of the United States Congress since that time.
- In the U.S. House of Representatives the AFA coordinated the introduction of the *Small Business Franchise Act* in both the 105th and 106th Congresses (**1998** and **1999**).
- In **1999** the AFA organized the first-ever *Franchisee Bar [lawyers]-Regulator Meeting* in Chicago which was attended by regulators of 4 registration states plus the Federal Trade Commission and 10 franchisee lawyers from across the country.
- The AFA served from **1995-2003** as an advisor to the Franchise Project Advisory Group of the North American Securities Administrators Association (NASAA). AFA’s presence on this Advisory Group helped ensure that any policy decisions effecting franchising made by state regulators would have the input of franchisees.
- As a member of the Tax Relief Coalition (TRC) the AFA worked with other business organizations to secure passage of the President's tax relief package. The Job Creation and worker Assistance Act of 2002, signed into law on **March 9, 2002**, was designed to help the economy recover from the effects of September 11th.
- The AFA again provided testimony on **June 25, 2002** as franchisees’ advocate at a hearing before the House of Representatives’ Subcommittee on Commerce, Trade and Consumer Protection: “The FTC’s Franchise Rule—23 Years After its Promulgation.”



American Franchisee Association
Susan P. Kezios, President

- Sponsor and supporter of California Assembly Bill 2305, 'The Level Playing Field for Small Businesses Act of 2012' introduced **February 24, 2012**, by Assembly Members Jared Huffman and Tom Ammiano.

(Updated April 2012)