



## KENNETH R. COSTELLO

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## BIOGRAPHY

Kenneth Costello is highly experienced in U.S. and international franchising law and product and service distribution. Mr. Costello's experience includes licensing and branding; structuring franchising programs; franchise regulatory compliance programs; multi level distributorships; and anti trust counseling. His experience also includes intellectual property law including internet, e-commerce, domestic and international trademark, service mark, copyright, know how, and technology transfers and licensing. Mr. Costello represents clients in general business transactions, including mergers and acquisitions, advice and counsel with respect to unique intellectual property issues involved in acquisitions of franchising companies, lending, employment agreements and formation and capitalization of business organizations.

Mr. Costello has testified on franchise trade regulation issues before the Federal Trade Commission and has been consulted on franchising issues by the *Wall Street Journal*, *Reuters*, *New York Times*,

CBS News, *Forbes*, *Nations Restaurant News*, *Los Angeles Times*, *Entrepreneur Magazine*, SkyRadio, and *Advertising Age*.

## CIVIC INVOLVEMENT & HONORS

- *Chambers*, Franchise, 2007-2023
- *Chambers Global*, 2009-2014
- *Best Lawyers In America*, Los Angeles Area Franchise Lawyer of the Year, 2013
- *Best Lawyers In America*, Franchise, 2007-2024
- Ranked in top 13 “Most Highly Regarded Franchise Lawyers Globally” by *Who’s Who Legal: Franchise* (Law Business Research, Ltd., London, 2003-2023)
- *Los Angeles Magazine*, Southern California Super Lawyers, 2006-2023
- “Legal Eagle” list of top US franchise lawyers in *Franchise Times*, 2004-2023
- *Who’s Who* (Strathmore’s)
- *Who’s Who in the World* (Marquis)
- *Entrepreneur Magazine* Franchise 500 Edition
- Board of Editors: *ABA Franchise Law Journal* (1999-2002)
- *Leader’s Franchising Business & Law Alert*
- *Andrews* (Thomson-West) Franchise & Distribution Litigation Reporter

## PROFESSIONAL AFFILIATIONS

- International Franchise Association; member: Legal and Legislative Affairs Committee , Membership
- Committee, and Counsel of Franchise Suppliers Advisory Board
- American Bar Association, member: Section of Intellectual Property Law, Forum Committee on Franchising

- California State Bar Consulting Group on Legal Specialization
- California State Bar Franchise Legislation Committee

## **ADMISSIONS**

- California, 1978

## **EDUCATION**

University of Santa Clara, J.D., *magna cum laude*, 1978

Loyola University, B.A., 1975

## **RELATED PRACTICE AREAS**

- Franchising
- Antitrust
- Investigations
- Litigation & Dispute Resolution
- Regulation, Compliance & Advisory
- Corporate
- International
- Litigation & ADR
- Regulatory Franchising
- Transactional
- Franchise Mergers & Acquisitions
- Food & Beverage
- Pubs, Clubs & Restaurants
- Food & Agribusiness

## **RESOURCES**

### **PUBLICATIONS**

### **BOOKS**

- *"Franchising" (Bloomberg BNA 2014-17) (corporate practice portfolio series)*

- *Collateral Issues in Franchising: Beyond Registration and Disclosure*, editor, 2014
- *ABA Student Text Book Project* – Chapter on Alternatives to Franchising, 2013
- *ABA The FTC Rule Monograph*, Chapter III – Disclosure Changes, 2011
- *ABA Franchise Desk Book*, contributing author revising FTC Rule chapter, 2008
- *Franchising Law: Practice and Forms*, a 3 volume book published by Specialty Technical Publishers, Edition 2003-2012 (co-author)
- *Franchising: Legal Compliance Check Ups: Business Clients*, Chap. 5, Vol. 1, Robert B. Hughes, Editor, Callaghan & Co., 1985 (co-author)

## ARTICLES

- "Troubled Franchisees in Troubled Times: How to Spot Them and How to Deal with Them," 45th Annual IFA Legal Symposium, Washington D.C., May 20-22, 2012
- "Franchise Compliance Quiz," *Franchise Law News*, 2010
- "From License Agreement to Regulated Relationships: The Accidental Franchise" American Bar Association Forum on Franchising Annual Forum, Ontario Canada October 15-16, 2009
- "Franchising, Licensing and Trademarks: Viewing Real Estate Issues from a Branded Chain's Perspective" -ICSC 2007 U.S. Shopping Center Law Conference, January 10, 2008
- "Financing Tools – From Traditional Lending to Private Equity and Venture Capital" – Comments before the Annual ABA Forum on Franchising, Phoenix, Ariz., Oct. 10-12, 2007
- "An Overview of the New FTC Rule," *Leader's Franchising Business & Law Alert*, Vol. 13, No. 6, March 2007
- "International Franchising 2006: Why Attorneys Need to Know the Laws in Other Countries" *Leader's Franchising Business & Law Alert*, Vol. 12, No. 4, January 2006
- "The Basics of State Registration and Disclosure After the New FTC Rule," The American Bar Association Forum on Franchising 2005 Annual Forum, Orlando, Fla., Oct. 19-21, 2005
- "Countdown Begins for the Revised FTC Franchise Rule and UFOC," *Leader's Franchising Business & Law Alert* Vol. 11, No. 1A, Special Issue, October/November 2004
- "The New FTC Rule and the UFOC: Nuts And Bolts," The American Bar Association Forum on Franchising 2002 Annual Forum, Scottsdale, Ariz., Oct. 9-11, 2002

- "The Internet as a Primary Source of Franchise Sales," 35rd Annual IFA Legal Symposium, Washington, D.C., May 13-14, 2002
- "Franchising Offers Alternatives to IPOs," *Los Angeles Business Journal*, Nov. 26, 2001
- "International Franchising: Why Attorneys Need to Know the Laws in Other Countries" *Leader's Franchising Business & Law Alert*, Vol. 7, No. 12, September 2001
- E-Commerce and Encroachment Issues On the Internet - Franchise Update Tech Conference, San Francisco, Calif., May 5, 2001
- "E-Commerce: Judicial/Legislative Developments and Their Impact on Franchising's Use of the Internet," American Bar Association Forum on Franchising 2000 Annual Forum, Oct.16-18, 2000
- E-Commerce and Encroachment Issues On the Internet - Franchise Update Tech Conference, June 23-24, 2000
- "E-commerce for Franchisors: Cross Your T's and Dot.com Your I's," *Leader's Franchising Business & Law Alert*, Vol. 6, No. 8, May 2000
- "Internet - Franchisor Policy & Enforcement," - Comments Before the *33rd Annual IFA Legal Symposium*, Washington, D.C., May 15-16, 2000
- "Franchising Currents," *Franchise Law Journal*, Vol. 19, No. 1, Summer 1999, ABA [co-author]
- "Baskin Donuts: Hidden Pitfalls in Co-Branding," *Leader's Franchising Business & Law Alert*, Vol. 3, No. 11, July 1997
- "Co-Branding - Through Leasing, Licensing or Franchising?," Comments Before the Branding America Conference and Expo, Indianapolis, Ind., April 8-10, 1997
- "Key Issues in International Franchise Agreements," *Franchising World*, March/April 1997
- "Infrastructure: Software Development and Licensing Agreements," Comments Before The American Bar Association Forum on Franchising 1996 Annual Forum, Phoenix, Ariz., Oct. 16-18, 1996 [co-author]
- "Application of U.S. Franchise Laws to International Transactions: Part 2," *Franchise Law Journal*, Vol. 15, No. 3, Spring 1996, ABA [co-author]
- "Acquiring Master Franchise Rights From a U.S. Franchisor Part Two: Negotiating the Master Franchise Agreement," *World Franchise and Business Report*, First Quarter 1996

- "Acquiring Master Franchise Rights From a U.S. Franchisor: Part 1: How to Conduct a Due Diligence Investigation," *World Franchise and Business Report*, Fall 1995
- "Applicability of the Federal Trade Commission Rule to International Transactions," *Franchise Law Journal*, Volume 15, No. 1, Fall 1995, American Bar Association [co-author]
- "The Use of Intellectual Property Law to Protect Franchisors' Rights," *Journal of International Franchising and Distribution Law*, Vol. 9, No. 3, 1995, Tolley's [co-author]
- "Emerging Technology Issues," Comments before the 28th Annual Legal Symposium of the International Franchise Association, Washington, D.C., May 1995 [co author]
- "International Lawyers Say Self-Regulation Not the Answer," *CCH Global Franchising Alert*, Vol. 1, No. 11, November 1994, Commerce Clearing House
- "Government Regulation or Self-Regulation: Which is the Answer for International Franchising," Comments before the 38th Congress of the Union Internationale des Avocats [co author], Marrakesh, Morocco, Oct. 28-30, 1994
- "When a Contractual Relationship Can Be Considered a Franchise," *Daily Journal*, March 8, 1993, p. 5
- "Advertising by the Franchise System," 12th Annual A.B.A. Forum on Franchising, Oct. 17, 1991 [co author]
- "Applicability of Franchise Laws to Distributorships," Comments before Century City Bar Assoc., 1987
- "Advanced Registration and Disclosure Issues: A Franchisor's Duty to Amend," IFA Legal Symposium, 1986

## SPEAKING ENGAGEMENTS

- "Troubled Franchisees in Troubled Times: How to Spot Them and How to Deal with Them," 45th Annual IFA Legal Symposium, Washington D.C., May 20-22, 2012
- "From License Agreement to Regulated Relationships: The Accidental Franchise" American Bar Association Forum on Franchising Annual Forum, Ontario Canada, October 2009
- "Franchising, Licensing and Trademarks: Viewing Real Estate Issues from a Branded Chain's Perspective" -ICSC U.S. Shopping Center Law Conference, San Diego, Calif., Jan. 10, 2008
- "Financing Tools – From Traditional Lending to Private Equity and Venture Capital," 2007 Annual ABA Forum on Franchising, Phoenix, Ariz., Oct. 10-12, 2007

- "Internet Sales Leads," Business Solution Roundtable – 92nd Annual IFA International Franchise Convention, Las Vegas, Nev., February 2007
- "Pros and Cons of Arbitration vs. Litigation," Business Solution Roundtable, 91st Annual IFA International Franchise Convention, Palm Springs, Calif., February 2006
- "The Basics of State Registration and Disclosure After the New FTC Rule," Comments Before The American Bar Association Forum on Franchising 2005 Annual Forum, Orlando, Fla., Oct. 19-21, 2005
- "Franchise Law Developments Roundtable" IFX Annual Internet Conference, San Diego, Calif., Jan. 13, 2005
- "Franchise Technology Roundtable," IFX Annual Internet Conference, San Diego, Calif., Dec. 11, 2003
- "Franchise Sales Disclosure Best Practices for Today's Broadbased Sales Program (including Earnings Claims)" Franchise UpDate's Franchise Development Conference, Atlanta, Geo., Sept. 19, 2003
- "Franchise Terminations and Workouts: Strategies for Protecting the Franchise System," Business Solution Roundtable - 88th Annual IFA International Franchise Convention, San Antonio, Texas, February 2003
- "Franchise Technology Roundtable," IFX Annual Internet Conference, San Diego, Calif., Dec. 12, 2002
- "The New FTC Rule and the UFOC: Nuts And Bolts," Comments Before The American Bar Association Forum on Franchising 2002 Annual Forum, Scottsdale, Ariz., Oct. 9-11, 2002
- "Restaurant Expansion in Today's Marketplace," Comments to the California Restaurant Association Expo, San Francisco, Calif., Aug. 26, 2002
- "The Internet as a Primary Source of Franchise Sales," 35rd Annual IFA Legal Symposium, Washington D.C., May 13-14, 2002
- "How to Negotiate a Master Franchise Agreement," 11th Annual International Franchise Expo, New Orleans, La., April 19, 2002
- "Franchise Technology Roundtable," IFX Annual Internet Conference 2001, San Diego, Calif., Dec. 6, 2001
- "Acquiring a Master Franchise: Selecting, Negotiating and Operating a Master Franchise," 10th Annual International Franchise Expo, Washington, D.C., May 19, 2001

- "Internet Regulation: Legal Issues and Challenges of Franchising and the Internet," Franchise Update Information and Technology Leadership Summit, San Francisco, Calif., May 4-5, 2001
- "Intellectual Property and Internet," ICFE Educational Seminar in conjunction with the 87th Annual IFA International Franchise Convention, February 2001
- E-Commerce Roundtable - IFX Internet Conference 2000, San Diego, Calif., Dec. 7, 2000
- "E-Commerce: Judicial/Legislative Developments and Their Impact on Franchising's Use of the Internet," Comments Before The American Bar Association Forum on Franchising 2000 Annual Forum, Oct. 16-18, 2000
- "Internet Reservation Systems," Lodging Conference 2000, Phoenix, Ariz., September 2000
- "E-Commerce and Encroachment Issues," Franchise Update Tech Conference, June 23-24, 2000
- "Internet - Franchisor Policy & Enforcement," 33rd Annual IFA Legal Symposium, Washington D.C., May 15-16, 2000
- "Intellectual Property and Internet," ICFE Educational Seminar in conjunction with the 86th Annual IFA International Franchise Convention, Feb. 18, 2000
- "Internet Franchise Sales Marketing," 87th Annual IFA International Franchise Convention, San Diego, Calif., Feb. 22, 2000
- "Earnings Claims" International Franchise Expo, Washington, D.C., April 9, 1999
- "Encroachment: Problems and Solutions Roundtable," 86th Annual IFA International Franchise Convention, Miami, Fla., March 5, 1999
- "Dispute Resolution in International Franchising: When all Else Fails," ICFE Educational Seminar in conjunction with the 86th Annual IFA International Franchise Convention, Miami, Fla., March 2, 1999
- "Co-Branding Roundtable," 85th Annual IFA International Franchise Convention, Las Vegas, Nev., March 9, 1998
- "Co-Branding - Through Leasing, Licensing or Franchising?," Comments Before the Branding America Conference and Expo, Indianapolis, Ind., April 8-10, 1997
- "Infrastructure: Software Development and Licensing Agreements," Comments Before The American Bar Association Forum on Franchising 1996 Annual Forum, Phoenix, Ariz., Oct. 16-18, 1996



- "Negotiation of Master Franchise Agreements for Russia," Presentation to International Academy for Leadership In Business and Administration, Sept. 30, 1996
- "Applicability and Impact of US Franchise Laws on International Franchise Agreements," 13th Annual International Bar Association/IFA Legal Symposium, Washington, D.C., May 15, 1996
- Invited Participant: Federal Trade Commission: Workshop Conference on the Application of the Franchise Rule to International Franchise Agreements, Washington, D.C., March 11, 1996
- "Technology License Agreements with Peoples Republic of China," Presentation to Sinotechmart: China Technology Market Management and Promotion Center of the State Science and Technology Commission, Los Angeles, Calif., Oct. 9, 1995
- "Emerging Technology Issues," 28th Annual IFA Legal Symposium, Washington, D.C., May 22, 1995
- "What you Can/Can't Expect From International Franchising," 35th Annual IFA International Franchise Convention, San Juan, Puerto Rico, Jan. 22, 1995
- "Government Regulation or Self-Regulation: Which is the Answer for International Franchising," 38th Congress of the Union Internationale des Avocats, Marrakesh, Morocco, Oct. 28-30, 1994
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- "Applicability of Franchise Laws to Distributorships," Comments before Century City Bar Association, 1987
- "Advanced Registration and Disclosure Issues: A Franchisor's Duty to Amend," 17th Annual IFA Legal Symposium, May 1986

## RELATED INSIGHTS

Awards

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