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INSIDE THIS

COSTCO OPIS
REPORT

FRANCHISEE
SEISMIC SHIFT

CFA MEMBERSHIP

NACS APPLICATION

SSFA APPLICATION

LAW FIRM CONTACTS

# Please Fill out and

No One Franchisee is as Strong as All Franchisees Together

## COSTCO DRAWN TO FUEL BUSINESS

Big box retailer Costco reported a significant earnings advance for its third fiscal quarter, and a top executive there reiterated that one of the major drivers for increased traffic at U.S. stores is gasoline.

The comments came from **Costco chief financial officer** Richard Galanti at a conference call covering 12-week earnings for the period ending May 6, 2012. As is customary, the retailer wouldn't comment on specific gasoline margins, but did reveal that fuel margins gained ground from the previous quarter. The higher penetration for gasoline hurts the company in its overall gross margin percentage, but it helps core operations, Galanti said.

**OPIS Retail Fuel Watch moni**tors Costco retail prices and compares the sales numbers to implied purchase price of unbranded rack gas at the closest terminals. The 12 weeks that preceded the close of the latest quarter saw 343 Costco stores fetch an average margin of 3.05cts/gal over cost, compared with a 16.4cts/gal margin for all other competitors. The Costco margin is most likely wider by several cents since the chain is able to garner some of the best rack deals across the country, thanks to high volume buying.

OPIS also measured Costco implied margins for the same 343 sites since the quarter ended, a period of 21 days. It found that Costco gas margins

had widened out to 3.25cts/ gal thanks to cheaper wholesale costs. Competitors saw their margins expand by more than 5cts/gal to 21.76cts/gal in the same period, so the Big Box chain is clearly sacrificing margin gains for the other benefits it derives from cheap gas.

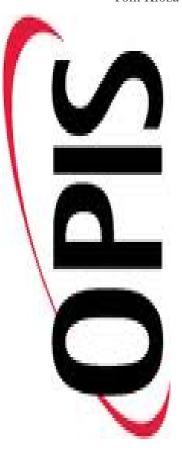
Costco has previously indicated that gasoline is a major reason why the chain has seen year-over-year rises of 4% to 5% in the frequency of customer visits.

In the latest call, the CFO suggested that fuel volume increases are down from 8% to 10% growth last year to something in the 4% to 5% neighborhood, but conceded that management never thought 10% increases were sustainable.

"We know that when gas spikes, it helps our frequency. When gas subsides, it hurts or doesn't help it," Galanti told investment analysts. Separately, OPIS has heard that Costco put out a solicitation for 2012-2013 gasoline supply this spring, as it typically does, but did not reward new contracts. It is not known if historical suppliers were extended through end- 2012 or into 2013 or beyond. In any case, bidders believe that BP and ExxonMobil continue to be among the largest suppliers of unbranded gas to the chain.

U.S. marketers who don't have a Costco nearby don't have to worry about many new store openings this year. The company continues to grow but its

June 2012 Oil Express Tom Kloza



focus is clearly on international expansion. Its development team is on the ground in Australia now, where it has just three stores on the continent. Stores that have opened in Asia see "chart-popping" signup levels. The average member count for Asian stores is about twice the count of stores across the company, for example.

## Seismic Shift in Franchisees Seeking Balance

by Don Sniegowsk

ORLANDO - There is a seismic shift under way in how franchisees approach balance in franchisee/franchisor relationships. It is a multi-pronged strategy headed by the threeyear-old Coalition of Franchisee Associations (CFA) that utilizes market forces, collective bargaining and possible legislation. The start of the shift took place just last month in a dimly lit conference room. Franchisee leaders from some of the country's most recognized brand names convened in one of the many rooms at Marriott's Orlando World Conference Center to hammer out a universal bill of rights draft for franchisees. It may have a profound effect down the road. America's franchisees currently face sizable problems. They struggle for the freedom to associate with other owner-operators in independent franchisee associations. Members fear termination or retaliation by a franchisor for hanging out with the wrong crowd. Store owners want territorial protection against a competing company store or a franchise opening next door, causing lost business and turning his store unprofitable. Franchisees also want audited disclosures on vendor kickbacks. Kickbacks from a vendor to a franchisor can significantly raise the price of goods to franchisees, and they are typically undisclosed. They act as a hidden royalty fee. These are a few protections out of 13 in a bill of rights that has been drafted for restaurateurs, hoteliers, convenience store operators, quick printing owners and all manner of franchisees, no matter what the industry. "The bill of rights was a huge step forward for

"The bill of rights was a huge step forward for us," declares Dave Glodowski of the vote in support of the bill at the Orlando meeting. As chairman of the Coalition of Franchisee Associations and himself a multi-unit owner of Hardee's quick service restaurants in Minnesota, Glodowski says that the franchisee coalition has been gaining traction. The CFA already represents store owners in such giant chains as Subway, Burger King, Hardee's, Meineke Car Care, Supercuts, Dunkin' Donuts and others. Last year the Little Caesars franchisee association joined. This year the giant Asian American Hotel Owners Association signed on.

A draft of those rights is slated to be published for public comment and support. The intent is to produce a document that can be updated by amendments as franchising evolves. Old-timers in the industry are able to see the development of years of thought in the bill. The Coalition of Franchisee Associations says that these rights have not been developed in a vacuum. The concepts have been advanced through research, debate and

efforts over the last two decades by such franchisee federations as the American Association of Franchisees and Dealers, Asian American Hotel Owners Association, American Franchisee Association and International Association of Franchisees and Dealers.

What is the purpose of the bill of rights?

The head of the lobbying group explains that contracts between franchisors and franchisees were more balanced and fair 30 years ago. "As franchisors become more of legal institutions, franchise agreements have been favoring franchisors to the point where it is now extremely unbalanced," says Glodowski. He acknowledges that franchisor advocates will often say it is a free market and franchisees can simply choose to walk away from abusive franchise agreements. But he points out that this is often not a practical solution. "Franchisees who have been in the system for years and years have to agree to the latest document in order to maintain the franchise moving forward," he states.

The CFA wants franchisees to get their associations to join them in the causes of franchise equity and liberty. It hopes the posting of the universal bill of rights will stimulate a robust discussion from franchisees. For some it may simply result in a better understanding of the franchise environment affecting them

AAHOA chairman Chandrakant "C.K." Patel is excited about the direction in which the CFA is heading. "We are enthused about the continued development of the universal franchisee bill of rights with the CFA. It will serve as a model for all franchisors, no matter which industry or sector, in dealing fairly with their franchisees," he says. Glodowski adds, "We have some ideas in these 13 rights that we want to talk about and put in front of the franchisor and ask, 'How do we make the relationship a little more fair, and a little more balanced?" The CFA hopes to frame a discussion in which franchisee members push their own independent associations to advocate parts of the bill of rights that they feel is necessary in their own agreements with their franchisors.

"There'll be some franchisors who say, 'Absolutely not. Our agreement is what

it is, take it or leave it," says Glodowski. In that case the coalition wants to weigh those responses before deciding on the next step to take.

Franchisees hope that the bill of rights will provide a framework for discussion, negotiation and alliances. The association plans to approach the International Franchise Association, a lobbying group set up by franchisors that now says it represents the needs of both franchisors and franchisees. Glodowski, both a franchisee and a restaurateur, says, "We need to say this is where franchisees are coming from, can you get on board?" The CFA also plans to approach trade organizations like the National Restaurant Association to solicit their support. "We need to see where the conversation leads," he notes.

#### Legislation

The coalition, located on K Street in Washington. D.C., is also eyeing state and federal legislation. Glodowski declares, "We will be looking at some of the statutes on the books and how to put this thing together, and even revisit the Coble-Conyers bill (Small Business Franchise Act) that was introduced approximately ten years ago and kind of see if we can pull some of that language together too. And educate legislators on franchisee rights."

AAHOA's Patel thinks his organization can help. "Our combined group will have a stronger position and a recognized voice in Washington, D.C. and in states around the country to call for necessary changes that will have a beneficial impact for many years to come," he says.

"I understand Congressman [Howard] Coble is still around," notes Glodowski with a smile. Representative Coble is the original sponsor of the Small Business Franchise Act, a fair franchising bill that never made it to law. As North Carolina's longest serving Republican congressman, he's been around for some time.

The bill of rights will be presented to members in Washington, D.C. on CFA Day, June 22-23. "I see the June Capitol Hill event as an introduction and the beginning of an education process, a process that could be a year or two years long," says the chair of the CFA. He further explains, "In June this will be our first round in speaking to our legislators about franchisees on some of the issues we face as small business owners."

PAGE 3 SSFA EST. 2008

## SSFA JOIN CFA as their 18th Member Association...



Current members



























Independent Association of Massage Envy Regional Developers









# Franchisee Bill of Rights

On the subject of "fairness" in franchising, we will try to separate the optimists from the pessimists. Hopefully, we will make an optimist out of even the most cynical readers amongst us.

We begin with a simple question: Which of the following is the most likely to occur first?

- a) America's leading franchisors will voluntarily embrace the "Franchisees' Bill of Rights" that has been published by the Coalition of Franchisee Associations b) The U.S. Congress will pass comprehensive "fair franchising" legislation (or the Federal Trade Commission will enact a new regulation) that effectively implements the Bill of Rights and makes further efforts by franchisee association leaders unnecessary.
- c) The U.S. Supreme Court will decide a "fair franchising" case that establishes, once and for all, that contract provisions to which franchisees usually object are "unconscionable" because they "shock the conscience" of the Court.
- d) None of the above. Here's hoping that you rejected (d),

which obviously would be the pessimistic view, and made your selection among (a), (b) and (c). After all, it is pretty clear from medical science that optimists tend to live longer.

And for all of you optimists out there, I predict that the correct answer is (a), that sooner or later (and hopefully sooner) the franchisor community will voluntarily embrace the Bill of Rights, either as a whole or in substantial part.

#### FREEDOM OF ASSOCIATION

The first of twelve rights that franchisee advocates insist ought to be mandatory for every franchisee is that "A franchisee may freely associate with other franchisees or associations."

This right deserves to be the first one on anyone's list, as it strongly evokes the spirit of the First Amendment in the Bill of Rights to the U.S. Constitution, in which every American is guaranteed the freedom of speech and the right to peaceably assemble and to petition the government for a redress of grievances (in addition to providing for the freedom of the press and for religious liberty). As Americans we sometimes take our fundamental liberties for granted. None of us, I assume, would ever tolerate living in a country in which citizens are denied the right to talk to each other about matters of common interest under the threat of being arrested or worse.

By the same token, why should any franchisee be deprived of the right to speak to other franchisees about matters of common interest and to "peaceably assemble" in an independent association and to "petition" the franchisor to "redress grievances?"

From this perspective, efforts by franchisors to prevent their franchisees from forming independent franchisee associations, which facilitate communications among franchisees and with the franchisor, seem downright un-American. Worse, such efforts often do nothing more than

By Carmen Caruso

drive the franchisees underground, into anonymous Internet chat rooms and the like, where the things that are said in darkness are usually worse, in the sense of being destructive and not constructive, than anything that is said in the light of day.

To be clear, we are talking about the

right of franchisees to form independ-

ent associations that are incorporated under state law and have a legal existence independent of the franchisor. Franchisor-sponsored advisory councils may be fine as far as they go, but often they are no substitute for an association that is truly independent. In its amended franchise rule, the Federal Trade Commission gave the cause of independent franchisee associations a well-needed boost when it provided that franchisors must disclose whether an independent association exists in its system, and on request the franchisor must disclose the contact information for the association as part of Item 20 in the Franchise Disclosure Document. The question every franchisee or potential franchisee should be asking is: Do I want to be in business with a franchisor that is hostile to the very basic right of forming an independent association? And by the same token do I want to be in a system with other franchisees that might be too lazy or timid to

Of course, if the answer is that everyone is too busy making tons of money to bother with an association, you might decide to proceed anyway. But history shows that independent associations play a vital role in good times as well as bad. They are a vital ingredient to healthy franchise systems that no franchisee should be without.

start one?

www.franchiseeBillofRights.org

# Universal Franchisee Bill of Rights

Franchising is one of the most powerful brand building tools ever created. It is reported that franchising is responsible for 760,000 businesses, 18 million jobs, 14 percent of the private sector employment, and over \$500 billion in annual payroll. Total sales by businesses operated by franchisees are projected to reach over \$2 trillion this year. 1 out of every 12 businesses is independently owned and operated by a franchisee<sup>1</sup>.

Over the last 50 years franchisees have invested their capital and hard work in creating some of the most recognized brands in the marketplace. The success of franchising is predicated on the investment by franchisees. This is now at risk because the terms of the franchise agreements have become more one-sided in favor of the franchisors. They have significantly reduced the ability of franchisees to build their businesses and serve their customers.

This Universal Franchisee Bill of Rights<sup>2</sup> is a fairness doctrine. It has been developed by franchisees in multiple systems and industries to identify the basic terms of fairness that are missing in their franchise agreements, and must be restored to ensure the success and growth of the franchise systems.

Freedom of Association: A franchisee may freely associate with other franchisees or associations.

rely on a franchisor's good faith, fairness, exercise of due care, and performance including the administration of advertising, rewards programs, marketing funds, and franchise or development agreements.

UFFOR Uniform Application of Brand Standards:

Franchisors shall maintain consistent operating standards under a specific franchise system brand name and uniformly apply such standards in a non-discriminatory manner.

Franchisees: A franchisor shall make available to the franchisee all records of marketing, rewards programs, and related fees that have been paid by franchisees, vendors, suppliers, and licensees.

Right to Price: A franchisee may establish the price of goods and services it sells.

Fair Sourcing of Goods and Services: A franchisee, or franchisee purchasing cooperative, may purchase from any vendor, goods and services that meet the formally established standards of the franchisor.

Right to Renew the Franchise: A franchisee may renew its franchise under terms free of unreasonable costs and or stipulations.

Right to Transfer: A franchisee shall have a right to transfer its franchise to a qualified purchaser, including, but not limited to, family members or business partners, without unreasonable costs, stipulations or penalties.

**Encroachment:** A franchisee shall have specific market protection wherein the franchisor shall not materially impact the franchisee's business, or allow another entity with the same or a similar brand to operate.

Termination Rights: Notice of significant Change; Franchisee Termination Rights: Notice of significant change to the franchise system shall be given in a reasonable time prior to required changes. A franchisee may terminate without penalty, or liquidated damages, if a change to the franchise system would cause substantial negative impact or if the franchisee is experiencing substantial financial hardship. Under such termination any noncompetition covenant shall be void.

Default; Franchise Termination Rights: Prior to franchise agreement termination, the franchisee shall be given detailed reasons for alleged default and reasonable time to cure. Termination shall not occur without good cause, and termination shall not compel payments of liquidated damages or early termination fees. All franchise agreement rights shall remain in full effect for any franchisee not in default or that cured a default. A default under one franchise agreement shall not constitute a default under a different franchise agreement.

elect to have all dispute resolution proceedings and legal action occur in the local venue of the franchisee and shall not be required to submit to mandatory binding arbitration.

- Statistics quoted are from "The Economic Impact of Franchised Businesses: Volume III, Results for 2007", released by the International Franchise Association Educational Foundation
- 2. The "Universal Franchisee Bill of Rights" is a hybrid compilation from significant work that has been done by the AAFD, AAHOA, AFA, CFA Fair Franchising Committee, individuals from those prominent organizations, and other friends and supporters of franchisees. It is the intent that we create a "Universal Franchisee Bill of Rights" that no one organization or individual can claim as their own, but members of the greater franchise community can endorse.



#### 2012 NACS Retail Membership for SSFA

1600 Duke Street • Alexandria, Virginia 22314-3436 • (703) 684-3600 • FAX: (703) 836-4564 • Federal Tax ID #95-2237749 membership@nacsonline.com • nacsonline.com

-	INFORMATION			
Company Name				
Doing Business As				
Corporate Mailing Address	Address			
	City	State Zip Code		
	Telephone ( ) FAX ( )	Web Address		
	Total stores (4 or fewer stores) Total stores selling fuel (4 or fewer stores)			
Key Contact	Mr./Ms./Mrs.	Informal Name		
to receive NACS mailings	Job Title			
and dues invoices	Telephone ( ) FAX ( )	E-mail		
Key Contact mailing address	Address			
if different from corporate	<u>City</u>	State Zip Code		
1	Special NACS Membership	offer for SSFA Members.		
Join NACS at a special membership rate of \$40 for the remainder of 2012. This offer applies only to first-time NACS members operating 4 or fewer convenience stores.		Membership in NACS is NOT tax-deductible as a Charitable Contribution, but a portion is deductible as a business expense. Since NACS engages in lobbying, under federal laws, 58% of your dues is non-deductible.		
Membership will be current through December 31, 2012. Renewal notices will be sent for 2013 in December.		NACS Magazine subscription price of one year (\$70) is included in dues and members may not deduct subscription price from dues.		
		DUES AMOUNT: \$40.00		
PAYMENT				
	osed a check made payable to NACS in U.S. funds drawn by dues to the the following credit card:	on a U.S. Bank.  VISA AMEX		
Card #	Exp. Da	te Authorized Signature		
	form agrees to accept and pay all applicable charges, including s NACS to charge any such amounts to the credit card reference	adjustments to reflect correction of arithmetical error. Moreover, the signatory and on this form.		

Membership type: Retailer - Domestic - Association



### SERVICE STATION FRANCHISE ASSOCIATION, INC. MEMBERSHIP FORM

()Yes I want to add my voice and join the Service Station Franchise Association, Inc.

Section I (All franchisees comple separate sheet)	ete Section I, if you are a multi unit owner, attach	site numbers on a
Site Contract Number(s)	Number of Sites	
Business Name on Franchise Agree	ement	=
Name of Franchisee on Franchise	Agreement	c.
Address:		
Telephone Number:	Cell :	
Email		
Signature:	Date	_
Section II (only complete if Repres	entative is different than franchisee of record)	
Designated Representative:		
	Franchisee identified above (or in the case of multiple ak and vote for it/them with respect to the Service Sta	
Name:		
Address:	*	
Telephone Number:		
Email		-
Signature:	Date	
_ <u>Dues:</u> Dues are \$125/per store/pe	er year, make check payable to SSFA, Inc. (Due 3 enclosed is our check for \$	0 days after signing)
	MAILING ADDRESS SSFA MEMBERSHIP	

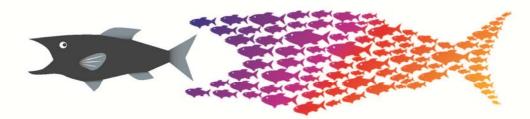
23261 CAJALCO EXPRESSWAY, PERRIS CALIFORNIA 92571 FOR MORE INFORMATION VISIT OR EMAIL US ON THE WEB WWW.ONLINESSFA.ORG EMAIL: INFO@ONLINESSFA.ORG

NO ONE FRANCHISEE IS AS STRONG AS ALL FRANCHISEES TOGETHER

# MEMBERSHIP DOES NOT COST, IT PAYS.



### **DON'T PANIC**



### **ORGANIZE!**

# IS NOW

- Increase Profits
- Benefit Co-op Purchasing Power
- Decrease Expenses
- Join the Lobbying of Gov't Agencies
- Be Heard One Strong, Collective Voice
- Solve Business Day-to-Day Issues
- · Share & Learn from Online Community
- Receive Ongoing Support from Fellow SSFA Members
- Got Questions? We Have Answers.
- Benefit from Industry Alliances;
   National Association of Convenience
   Stores (NACS), American Franchise
   Association (AFA) and others.

#### DON'T BE ALONE - BE AN SSFA MEMBER!



**Building Together a Better Future** 

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**Building Together a Better Future** 

Service Station Franchise Association, Inc.

Sam Hariz

President

Ali Mazarei Ryan Farsai

Vice President

Treasurer

**James Brown** 

Secretary

Communications Questions

Please Contact

**Erwin Randhawa** 

info@onlinessfa.org

The mission of the Service Station Franchisee Association is to give BP ARCO AM/PM Franchisees an Independent credible voice in the BP Global System to protect and preserve franchisee rights, enhancing members investments, profitability and strengthening the brand.



### No One Franchisee is as Strong as All Franchisees Together

Join us online at www.onlinessfa.org Endorse the Universal Franchisee Bill of Rights at www.franchiseeBillofRights.org

#### YOUR FUTURE IS IN YOUR OWN HANDS.

### YOUR REPRESENTATIVES on the SSFA BOARD

Sam.Hariz@onlinessfa.org Sam Hariz, President Ali.Mazarei@onlinessfa.org Ali Mazarei, VP Ryan.Farsai@onlinessfa.org Ryan Farsai, Treasurer James Brown, Secretary James.Brown@onlinessfa.org Kiran.Asher@onlinessfa.org Kiran Asher Daljit.Bains@onlinessfa.org **Daljit Bains** Gaby.Jabbour@onlinessfa.org **Gaby Jabbour** Joe.Johal@onlinessfa.org Joe Johal **Robert Juckniess** Robert.Juckniess@onlinessfa.org Tom.Kim@onlinessfa.org Tom Kim **Erwin Randhawa** Erwin.Randhawa@onlinessfa.org

Class Action—Federal



Los Angeles | Silicon Valley | Orange County

601 S. Figueroa St. | Suite 4025 Los Angeles, California 90017

tel: 213-612-3737 | fax 213-612-3773 dir: 213-612-8910

### SEEGERWEISSLLP

New York NY Newark, NJ Philadelphia, PA Tulsa, OK

Mass Action—Los Angeles

#### Richard L. Kellner | Partner

Historic Fire Engine Co. No. 28 Building 644 South Figueroa Street, Los Angeles, CA 90017 T: 213.217.5000 www.kbklawyers.com

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GERAGOS & GERAGOS

A PROFESSIONAL CORPORATION

**Bill Rowley** 

Amin Salkhi

**Marc Strauch** 

Bill.Rowley@onlinessfa.org

Amin.Salkhi@onlinessfa.org

Marc.Strauch@onlinessfa.org