

Leonard (Len) MacPhee

GLOBAL FRANCHISE & SUPPLY NETWORK CO-CHAIR

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As the Co-Chair of Polsinelli's Global Franchise and Supply Network practice, Len focuses on franchise, licensing, distribution, and supply chain matters. His litigation and dispute resolution practice includes serving as lead counsel in numerous state and federal courts and domestic and international mediation and arbitration proceedings. He regularly handles cases arising from termination and non-renewal, challenges to system practices, breach of contract, tort, and statutory claims, as well as claims protecting trademarks, trade secrets and trade dress and enforcing non-compete covenants. He also handles vicarious liability and joint employer claims. In addition, Mr. MacPhee analyzes and advises clients on significant franchise, licensing, distribution supply chain and matters on a pre-litigation basis and in connection with business strategies for the roll-out of products and diverse distribution methods and transitions and the wind-down of franchise and dealer network systems.

Capabilities

- Global Franchise & Supply Network
- Commercial Litigation
- International
- Litigation

Education

- Dickinson School of Law (J.D., 1994)
- Messiah College (B.A., *cum laude*, 1990)

Bar Admissions

- Colorado, 1997
- Pennsylvania, 1994

Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals, Tenth Circuit
- U.S. Court of Appeals, Third Circuit
- State of Colorado
- U.S. District Court, District of Colorado
- State of Pennsylvania
- U.S. District Court, Eastern District of Pennsylvania
- U.S. District Court, Middle District of Pennsylvania
- U.S. District Court, Western District of Pennsylvania

Memberships

- Colorado Bar Association
- American Bar Association
 - Forum Committee on Franchising
 - Associate Editor for *The Franchise Lawyer*, 2018-2020
- International Franchise Association
 - Legal Symposium Task Force Committee, 2015-2016; Vice Chair, 2019-2020; Chair, 2021-2022
 - Annual Convention Planning Committee, 2015-2017
 - Franchise Relations Committee
 - Legal Legislative Committee
 - Franchise Business Network, Member
- United States Army Reserve, 1991-1999

Recognition

- Ranked in *Chambers USA: America's Leading Lawyers for Business*, Franchising, USA - Nationwide, 2011-2025
- Selected for *Best Lawyers*® “Lawyer of the Year” in Denver, Colorado, for Franchise Law, 2014, 2017, 2019, 2024
- Selected for inclusion in *Best Lawyers in America*® for:
 - Commercial Litigation, 2023-2024, 2026
 - Franchise Law, 2010-2026
- Selected for Inclusion in Colorado *Super Lawyers*®
 - Franchise/Dealership, 2012-2018
- Recognized as a Legal Eagle by *Franchise Times*, 2019, 2021, 2025

Matters

- Represented California based franchisor and its principals in action filed by former franchisee alleging failure to disclose the pending sale of the franchisor and changes to system, as well as lack of support, and asserting claims for fraudulent and negligent misrepresentation, unjust enrichment, breach of contract, violation of California Franchise Relations Act (CFRA), and related claims. On behalf of the franchisor we compelled arbitration, filed a counter-demand in arbitration, successfully eliminated the CFRA and unjust enrichment claims and then obtained highly favorable settlement in context of former franchisee bankruptcy filing.
- Represent the International Franchise Association in filing an Amicus Curia brief in the United States Circuit Court of Appeals for the 11th Circuit advocating for application of the rule of reason standard to apply to anti-trust challenges to “no hire” or anti-poaching clauses in franchise agreements.
- Represented independent franchisee association in formation of prospective buying group involving over 1,000 franchised units and over \$300,000,000 in annual spend, including structure of purchasing organization, forming corporate entities, and preparing and negotiating agreements with franchisor, participation agreements with members, services agreements with procurement agent, and supply, distribution and warehouse agreements with vendors and suppliers across multiple countries.
- Represented the franchisee of the exclusive rights in the United States and Canada

of an international children amusement park concept in actions arising out of the attempt by the Mexican-based franchisor to terminate the franchise agreements. Obtained a preliminary injunction preventing the termination of the franchise agreement in the United States District Court for the Southern District of New York and thereafter handled the international arbitration before the International Chamber of Commerce.

- Represented franchisor of a national eye lash extension chain in state court in Harris County, Texas, in consolidated cases involving the former franchisor entity, the current franchisee of 6 locations and certain former franchisees of those locations, and the bank that lent money to the former franchisees. The cases involved issues of successor liability, claims of improper approval of the sale of the franchises, and claims of breach of the franchise agreements by the current franchisee. Obtained favorable settlement.
- Part of team representing Franchisee Association of franchisees of a movie theatre concept, in connection with its interactions and negotiations with the franchisor on issues affecting the entire system, including negotiating the terms and conditions of the system-wide adoption and rollout of a subscription-based ticket discount program, negotiating an agreement for film booking services to franchisees, and negotiating an agreement for the reduction and/or waiver of royalties as venues reopen following COVID-19-related shutdowns.
- Represent founder and creator of multiple restaurant brands, including a 20+ chain of large “eatertainment” restaurants offering high-end dining and bars with entertainment, in connection with multiple areas of the business. Representation includes representing founder’s interests in disputes and challenges from minority owners and in connection with adding new investors and corporate control issues, as well as threatened foreclosure by the primary secured lender during mandated government shutdown orders caused by COVID-19, with various issues pertaining to intellectual property and work product rights and use, as well as non-competition and non-solicitation covenants. We further are representing founder in the formation of a holding company for various other brands he is creating, and assisting with corporate formation and governance, capital raising, acquisitions of brands, intellectual property and brand protection, licensing, and real estate and lease issues for multiple new brands it owns and is acquiring, developing and growing.
- Represented the master franchisee for major QSR chain in Sweden and Denmark, in connection with relationship and work-out issues and negotiations with franchisor and parent particularly in connection with royalty relief and related payment and operational issues arising out of the impact from COVID-19 in 2020.
- Represented franchisors and parent company of one of the largest franchised retail vape chains in the United States defending claims brought by former franchisees alleging disclosure violations in connection with the offer and sale of the franchise, as well as alter ego or successor liability. Enforced arbitration clause in franchise agreements by compelling arbitration and obtained a stay in the federal court with respect to the direct and alter ego claims against the partner company.
- Represent international restaurant conglomerate with multiple brands and franchise systems in many countries, and its U.S. subsidiary, in connection with internal investigations and assessment of various supply contracts, and oversee defense of various employment-related claims in California.
- Represented franchisor of a chain of microbrew pubs in multiple lawsuits with current or former franchisees who abandoned their franchise and converted to a competing establishment. The matter included defending claims for pre-sale misrepresentations or omissions (including alleged financial performance representations) and breach of contract and asserting claims for breach of contract, seeking injunctive relief enforcing the non-compete and damages. Successfully struck the jury demand, compelled mediation, defeated a motion to consolidate, and negotiated a favorable settlement.
- Represented franchisor in an action against a franchisee and its principals of the

franchisee in connection with franchisee's announcement of an intent not to renew the franchise but rather to operate a competing business using franchisor's customer data and list. Filed a lawsuit seeking injunctive relief and specific performance regarding the franchisee's contractual obligations (including the post-expiration covenant not to compete), and an arbitration with the American Arbitration Association seeking a declaration regarding rights to customer data and lists. Promptly thereafter negotiated a favorable settlement on behalf of franchisor.

- Represented product supply franchisor in an arbitration and litigation against a franchisee who filed a lawsuit seeking termination of the franchise agreement and damages, among other things, on the basis of alleged misrepresentations in the sales process, material changes to the system model and support and asserting failure of consideration, breach of implied covenant of good faith and fair dealing, constructive termination, or anticipatory breach. Prevailed on a motion to compel arbitration and successfully obtained affirmance in the United States Court of Appeals for the Fifth Circuit, then negotiated a favorable settlement in the context of the arbitration.
- Represent the principal and entities comprising a multi-unit and master franchisee in the Comfort Dental system in connection with a settlement between a master franchisee and the franchisor, and related negotiation of new franchise agreements for multiple locations and development rights in Colorado. Thereafter represented the principal in connection with the acquisition of development rights in Ohio, Arizona, Kansas, and Missouri, and the purchase and opening of new offices in those jurisdictions.
- Represent Colorado-based national franchisor and subsidiary in a dispute with a former franchisee and area developer who filed an arbitration demand alleging fraudulent inducement and breach of contract, among other common law and statutory claims. Franchisor denied the allegations and counterclaimed for breach of the area development agreement. Later the franchisee abandoned the franchise outlet and franchisor amended its counterclaim to assert damages for lost royalties and product sales, among other relief. Thereafter, we negotiated a highly-favorable settlement.
- Represent US based international franchisor as lead counsel in an international arbitration under the American Arbitration Association ICDR Rules against the multi-unit franchisee in Chile, as well various entities and individuals who claim an ownership interest in the franchisee entity, based on unpaid royalties, premature closure of two restaurants, failure to develop other restaurants as required by the franchisee's development obligations, and improper transfers. Negotiated a settlement with some defendants resulting in execution of three new franchise agreements for the remaining restaurants.
- Represented holding company of high-end restaurant chain in an action against a minority owner of the companies and former executive chef of its restaurants in which the minority owner challenged the prior agreement to license the rights to his name, image and likeness to the restaurants. Minority owner asserted claims for fraud, misrepresentation, tortious interference with contracts and prospect business relations, and breach of fiduciary duty and on behalf of client, we asserted claims for moneys due, breach of the assignment agreement, and tortious interference with contract and prospective business relations. Obtained temporary restraining orders preventing Chef from disparaging brands and from using his name and image in the restaurant and food service industry. The parties subsequently reached a settlement.
- Advised manufacturer with system of franchises and distributors in North America in connection with system-wide changes to the model, including advice regarding structure, documentation, communication, and distributor and franchisee relationship issues and disputes arising from the changes, which include cessation of new franchise sales, the potential wind-down of the franchise system, the launch of hybrid retail/commercial stores, and termination of certain distributors.
- Represented national burger franchisor in connection with advice and counseling

concerning, termination and non-renewal, alleged encroachment and alternate channels of distribution and advice and counsel on delivery system matters.

- Represented the franchisor of fitness studio system in an arbitration and post arbitration litigation in Colorado state court, regarding enforcement of post expiration covenants and protect of trade secrets, as well as franchisor's right of first refusal, post-termination sales rights, and other rights against a purported third-party purchaser. Cases resulted in favorable confidential settlement.
- Represented the franchisor of fitness studio system in dispute with a former multi-unit operator, who filed a demand for arbitration seeking to invalidate two contractual non-compete covenants. After three-day evidentiary hearing obtained highly favorable ruling that the non-compete covenants were valid under state law and rejecting the claims advanced by the claimants, including claims for lack of system-wide support, breach of contract, and breach of the covenant of good faith and fair dealing.
- Represented national franchisor in its complaint for injunctive relief and damages against two non-franchisee third parties, in actions in federal court in Colorado and Nevada, in which the franchisor sought to enjoin an infringing retail outlet in Nevada, which had formerly been operated as an authorized franchised location. Claims included infringement of federally-protected trademarks and trade dress and sought injunctive relief and monetary damages. In response, Defendants undertook substantial efforts to fully de-identify the retail outlet in Nevada, and the parties entered into a confidential settlement.
- Represented franchisor of the major restaurant system in connection with an indemnification claim against a franchisee with respect to settlement of employment-related claims brought by an employee of that franchisee, which claims were asserted against both the franchisor and franchisee under joint employer and agency theories.
- Represented major manufacturer and retailer with dealer network in negotiations and drafting of a design services agreement and a contract manufacturing and supply agreement for the design and manufacture of smart technology sleep monitoring devices consisting of a proprietary textile-based sensor material and control board to collect and transmit data to the cloud; the design, development and maintenance of a mobile application; and development and on-going support of cloud data storage, data management and interpretation using proprietary algorithms for sale by authorized dealers and licensees. Representation included drafting and negotiation of the contracts, which addressed complicated issues of intellectual property ownership and licensing, as well as minimum purchase requirements tied to sales and license restrictions (both industry and geography), and cross-border manufacturer and sales arrangements.
- Represented national franchisor of multiple brands defending an action brought by the sellers of a franchise system to a partially-owned subsidiary. The case was filed in the U.S. District Court for the Northern District of Oklahoma. The plaintiffs claimed the subsidiary owed it approximately \$2,000,000 in payments plus interest under the asset purchase agreement and claimed that parent company was liable for that obligation as an alter-ego, among other things. The court granted defendant's motions for summary judgment.
- Represented national franchisor in an action against former California-based franchisees to enforce the post-termination covenant not-to-compete. District Court for La Plata County, Colorado granted a preliminary injunction after over a day of hearing and argument, enforcing the covenant not to compete. Thereafter the parties reached agreement to dismiss the case with the former franchisor in full compliance with all post-termination covenants, including the non-compete provision.
- Represented major manufacturer and retailer with dealer network in connection with structuring, negotiating, and drafting for a competitive set participation program involving multiple manufacturers and licensees whereby participants were offered the ability to increase volume and proportional share of the total business with respect to the manufacture and supply of numerous products based on multiple performance

metrics. Advised on structuring and negotiating the global sales and market share contracts with various participants in the competitive set. The contracts and arrangements involve complicated licensing, manufacturing, transportation, and anti-trust laws and issues with multiple parties across multiple international jurisdictions in European Union, Asia and North America.

- Part of team representing a family office investment group in connection with its acquisition of a majority interest in a franchise system of 1000+ sushi bars and Asian hot food bars in special venues, including in grocery stores, airports, university campuses, and other non-traditional venues. Team investigated, analyzed, and advised the investment group regarding potential U.S. and international franchise, purchasing, joint employer, immigration, litigation risks, and operational issues related to the business model and special venues. We advised the investment group regarding system-wide changes and improvements to implement moving forward.