

Fox Rothschild Podcast

Franchise Fundamentals: Positive Contributions to Society Are a Key to Financial Success (Part 2)

Featuring John Gotaskie

Narrator: We're talking today on Fox Rothschild's Franchise Fundamentals Podcast with [John Gotaskie](#) in Pittsburgh. Our topic today is part two of John's insights into Environmental, Social and Governance, known as "ESG" for short. John represents clients in a variety of corporate, venture finance, franchising, licensing and distribution as well as in bankruptcy and commercial litigation. He's also editor of Fox's [Franchise Law Update blog](#). John, good morning again.

John Gotaskie: Thank you. Love talking about this.

Narrator: John, in part one of this podcast, you covered how ESG trends are sweeping into businesses from the context of broader society, largely due to pressure from stakeholders, including investors. Could we now take a deeper dive into each of the individual components of ESG? For starters, please tell our listeners more about the "E," the "environmental" concept.

John Gotaskie: Sure. The "E" takes into account a whole bunch of items that you might expect: Climate impact, carbon emissions, renewable energy, water consumption, biodiversity, raw materials, packaging and reducing waste.

Narrator: What about the "S," the social part of the equation?

John Gotaskie: The "S" encompasses a wide range of human rights. Things like employee welfare, diversity, product liability, information and data security, customer relationships. Finally, the supply chain, which we all know has been in the top of headlines over the past year or even more as delays in the global supply system have really wreaked some havoc.

Narrator: What about the "G," which stands for governance?

John Gotaskie: The "G" aspect covers a wide range of perception and the reality of a business' ethics and compliance. This is really where the rubber hits the road: Executive compensation, board diversity, financial and accounting systems, and overall corporate transparency.

Narrator: With all that in mind, how does ESG impact a franchisor's brand strength?

John Gotaskie: That's a really good question for this industry. ESG is important to brand strength because it talks about and talks to long-term financial performance and company/brand reputation, which ultimately fuels growth. As we've discussed, ESG can minimize risks to a

company's sustainability, reduce risks to a company's brand and improve its overall public reputation. ESG can help a franchisor unlock value in a host of ways. Those ways can range from top-line revenue growth and cost reductions – which is really important at this point of high inflation – to reduced regulatory and legal intervention and employee productivity.

Narrator: How does a franchisor go about developing and implementing an ESG profile?

John Gotaskie: There's a lot to consider. Let's start with examples of environmental considerations. Franchisors can implement responsible and local sourcing of ingredients and furnishings. They can include earth-friendly design such as natural, sustainable building materials and energy-efficient buildings, lights and appliances. They also can involve use of renewable energy resources to reduce the amount of waste going to landfills, incorporate recycling such as turning cooking oil into biofuels, and reduction of water use through things as simple as automatic water valves.

Narrator: What about the social aspect of ESG for a franchisor?

John Gotaskie: The social aspect takes shape starting with training and education designed to produce aware and responsive employees. It fosters a diverse, equitable and inclusive environment, including an appropriate code of conduct for the employees. It embraces community involvement, and it factors in the all-important safety for all. This will mean different things for each brand. For example, for hotels, training and awareness for their franchisees and the franchisee's employees regarding human trafficking should be very high on the list.

Narrator: What about governance considerations?

John Gotaskie: Here we are really talking about internal compliance controls. These can range from creating written integrity and ethical standards to establishing an internal team hotline for reporting violations. Governance also encompasses strong social media policies covering both corporate and franchisee users. Other factors include policies over non-fraternization, conflicts of interest, insider trading, lobbying and political contributions. These strong governance programs also utilize audited financials, cybersecurity practices and franchise advisory councils.

Narrator: What are the downsides or exposure risks for franchisors in not having an ESG culture in place?

John Gotaskie: The risks basically fall into three categories from a legal perspective: consumer protection claims, government and regulatory enforcement, and shareholder and derivative claims.

Narrator: How do consumer protection risks arise?

John Gotaskie: All 50 states have consumer protection laws. Consumer protection claims typically arise from ESG statements on product labels or packaging, omissions from product

labels or packaging, or ESG statements on company websites, sustainability reports and marketing or advertising materials.

The claims from a consumer protection point of view typically turn on the nature of the statement in question. Some examples are making aspirational, forward-looking statements where there's no liability, or in making specific, verifiable statements where potential liability can arise.

Greenwashing claims are on the rise. State Attorneys general are looking out for them. Greenwashing is the practice of claiming that products or services are environmentally friendly when they are not, or at least not to the extent claimed on a label. Several important court decisions have already helped shape this issue.

Narrator: What about regulatory enforcement risks?

John Gotaskie: Right now, a host of governmental and regulatory bodies have units in place that are tasked with oversight of ESG issues. They include the SEC Division of Enforcement's Climate and ESG Task Force, where new rules require climate-related disclosures, the NASDAQ Board Diversity Requirements, the New York Legislature's proposed Fashion Sustainability Law and California's Transparency in Supply Chains Act.

Narrator: John, let's address one concluding question for this podcast: How a franchisor can mitigate enterprise risks by including ESG in its overall corporate management strategy.

John Gotaskie: That's a fair question. The top four are when making public statements. Be truthful. Be concise. Avoid over-disclosing. Avoid embellishments.

The bottom line is that we find that many companies already engage in many risk-management practices that actually constitute elements of an ESG plan. The thing is, they just don't do it in a systematic, tracked manner. The challenge is for brands to be systematic about their plan, consistently involve key stakeholders, rigorously measure the results and treat disclosures and statements as seriously as disclosures made to any prospective franchisee.

Narrator: Well, unfortunately, we're about out of time for today. John, thank you for your time today. Listeners, be sure to check out part one of John's podcast on ESG. To confidentially discuss how your organization might benefit from incorporating ESG into its management strategy, you may contact John Gotaskie in Pittsburgh at 412.394.5528 or at jgotaskie@foxrothschild.com.