

When Franchisees Innovate: Discussing The “Big Mac” Provision

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During the life of a franchise system, franchisees are often the source of new product and service offering ideas. Franchisors often find that some of the best-selling products are created by franchisees. For example, some of the most popular sandwiches (including the Big Mac, Filet-o-Fish, and Egg McMuffin) at McDonald’s were created by franchisees. Indeed, the Big Mac is one of the all-time innovation success stories, having been created by franchisee [Jim Delligatti](#) in the 1960s and finally adopted by McDonalds in 1968 (the sandwich quickly became one of the chain’s best sellers, accounting for 19 percent of all sales). These success stories encourage franchising companies to carefully consider permitting franchisees to create new or different products.

That having been said, franchisors have to balance the idea of product innovation with the need to maintain uniformity and consistency across all units. Allowing franchisees to create and sell

maintain system uniformity and system standards. Allowing franchisees free reign to create and sell new items can create customer confusion (when they can't find a particular item they liked at all locations) and an erosion of goodwill. This is particularly true where the new item isn't up to the franchise company's brand and quality standards. As a result, franchisors will ensure that their contract clearly prohibits a franchise from selling new or different products unless they are first approved by the franchisor. That was true in the case of the Big Mac, where franchisee Delligatti's creation was subjected to a rigorous approval process by McDonald's that took several years of evaluation and consumer testing before the sandwich was finally added to the menu.

Equally as important to a franchise company is that the ownership of products created by franchisees is undisputed. Where a new item has the potential to be successful and attractive to consumers, the franchisor wants to be sure that the product can be offered at all locations. As a result, a careful franchisor will ensure that its franchise agreement clearly addresses the handling of innovations with a provision that explicitly states that any franchisee creations or breakthroughs will be considered the exclusive property of the franchisor. I like to call this type of franchise agreement provision a "Big Mac" provision, in honor of the granddaddy of all franchisee innovations.

Prospective franchise buyers often ask whether the franchisor will agree to modify its own "Big Mac" provision by providing for compensation to the franchisee for his or her creations. This is a bad idea for the franchise company. Franchise systems benefit, as a whole, when they are able to capitalize on the shared resources and innovative thinking of all franchisees. If an improvement is made to the franchise company's system, it should be useable and used by everyone if the franchisor determines that it materially enhances the overall value of the system and its operations. Franchisors who permit or encourage innovation generally take the position that building compensation into the "Big Mac" provision will ultimately discourage the sharing of new ideas between and among franchisees. This is because the franchisee who comes up with a good idea may hesitate to share it with others unless a compensation plan is in place. If franchisees get possessive about their ideas and refuse to share them unless they get paid for the ideas, no one benefits.

A well-written "Big Mac" provision will require the franchisee who created the new item to assist the franchisor in obtaining and enforcing intellectual property rights to any such innovation, or, if the rights can't be secured by the franchisor, then to grant the company a fully-paid up and irrevocable license to use the product, without having to compensate the franchisee-innovator for its creation. By controlling the ownership of such intellectual property, a franchise company can ensure that any improvements — be they widgets or Big Macs — can be rolled out across all of its locations, thereby creating uniformity system-wide.

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