Brand Re-Imaging, Remodeling and Refurbishment Programs in the '*Now Normal*'


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With large, international franchisors leading the way over the last several years, the mandatory re-imaging, remodeling and refurbishment of franchisee units has become more common than ever, a trend that is continuing to grow now as franchisors look to invigorate their systems, increase market share and drive unit sales. Often, these projects are expensive, require substantial capital expenditures and involve strict deadlines.

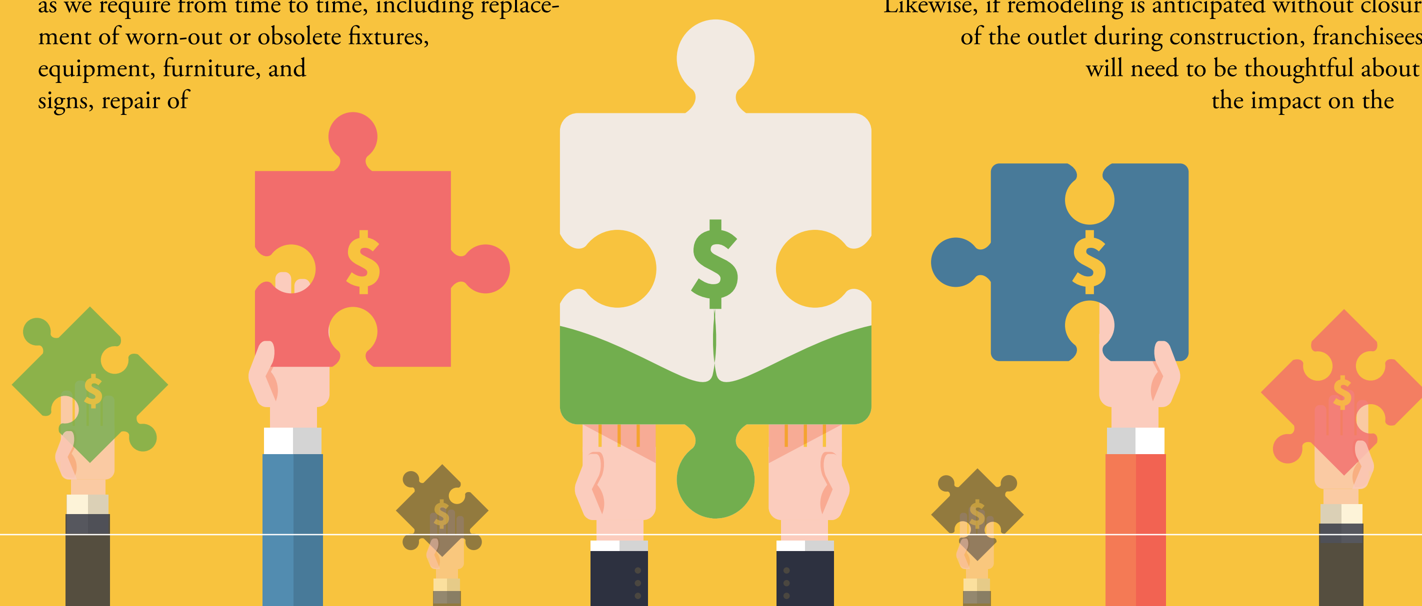
If we have learned anything over the past few months, it is that we should be prepared for everything because anything is possible. As such, it is critical for franchisees to take the time now to evaluate any mandatory re-imaging, remodeling and refurbishment requirements that they might be faced with in the coming months – especially area developers and multiunit operators who may be faced with projects for several outlets simultaneously. In addition to the other business obstacles that franchisees are presently facing, it may be a struggle to find the capital (or desire) to fund such projects. Franchisees should be proactive and discuss with their franchisor any impending re-imaging, remodeling and refurbishment requirements so they can help one another avoid conflict, set reasonable expectations and be in a position to successfully implement these programs.

In an effort to avoid complications and impediments several years after a franchise agreement or development agreement is signed, the Franchise Disclosure Document and franchise agreement typically address the re-imaging, remodeling and refurbishment requirements, along with the broad, explicit rights and controls that the franchisor has to implement such programs. By way of example, one recent form of the Planet Fitness® franchise agreement states:

> 9.4 CONDITION OF YOUR BUSINESS. You must maintain your BUSINESS's condition and appearance so that it is attractive, clean and efficiently operated in accordance with the Operations Manual. You agree to maintain your BUSINESS's condition and appearance and to make such modifications and additions to its layout, decor, operations, and general theme as we require from time to time, including replacement of worn-out or obsolete fixtures, equipment, furniture, and signs, repair of the interior and exterior and appurtenant parking areas, and periodic cleaning and redecorating… (1) We reserve the right to require you to replace and update at your BUSINESS: (a) all cardio equipment not more often than every five (5) years, as we determine, in our reasonable discretion, based on usage and brand standards, and (b) all other exercise and amenity equipment not more often than every seven (7) years, as we determine, in our reasonable discretion, based on usage and brand standards, and as further specified in the Operations Manual or otherwise in writing from time to time. You must also periodically upgrade and/or remodel your BUSINESS premises pursuant to our plans and specifications, provided, however, that with the exception of signage, we will not require substantial remodeling more often than every five (5) years. We will advise you at least six (6) months prior to requiring any substantial remodeling or replacement of your exercise or other equipment…

From a practical standpoint, in connection with the implementation of a program of this nature, franchisees should assess whether the program is consistent with the current health of the business and should take into consideration other costs of complying with the health and safety upgrades that will now be required post-COVID-19. Such upgrades should be viewed by the franchisor and the franchisee from a business perspective, and discussions should be had with respect to whether special accommodations can be made to assist the franchisees with the implementation of the program, including creative incentives and/or franchisor-backed financing for such projects.

Likewise, if remodeling is anticipated without closure of the outlet during construction, franchisees will need to be thoughtful about the impact on the



customers during this time – especially given the prior closures due to COVID-19 and all the new changes stemming from the current health and safety issues. Franchisees should take the time to evaluate and develop programs that minimize business interruption and customer inconvenience.

Finally, franchisees should also carefully review with counsel whether the re-imaging, remodeling and refurbishment program to be implemented violates any state relationship laws. For example, does the re-imaging or refurbishment plan constitute an "unreasonable standard of performance" on the franchise under the New Jersey Franchise Practices Act? Or, for example, does the mandate run afoul of the Minnesota Franchise Act, Rule 2860.4400(G), which prohibits a franchisor from imposing "any standard of conduct that is unreasonable" on a franchisee? A careful assessment and analysis of each of these issues is imperative prior to the implementation of a re-imaging, remodeling or refurbishment program.

Franchisees should also consider whether limitations and/or modifications to the franchise agreement with respect to the issue of re-imaging, remodeling and refurbishment can be negotiated with the franchisor in light of the current situation in the post-COVID-19 marketplace. Many franchisors are working with franchisees on developing a recovery plan and renegotiating certain provisions in the franchise agreement that makes sense for both the brand and the franchisees alike. Notably, and by way of example, Planet Fitness implemented systemwide relief to all franchisees in the United States and Canada as follows:

• All ADA schedules will be amended to extend the new store opening dates by 12 months.

• All mandatory re-equip dates associated with existing clubs will be pushed back by 12 months.

• All mandatory remodel dates associated with the 2020 franchise agreement renewals will be pushed back 12 months.

• All mandatory remodel dates associated with previously approved ownership transfers will also be pushed back 12 months.

• Discounts on certain equipment if purchased by specific dates.

Further, franchisees entering into new franchise agreements should consider during the negotiation phase, among other things: how soon and how often such projects should be required; whether there will be any cap on the expenditure required; and whether any creative means of funding, such as deferred royalty payments or reduction in ad fund contributions, could be offered to offset any of the related expenses of such programs.

Re-imaging, remodeling and refurbishment programs are required under most every franchise agreement. Franchisees should carefully weigh – along with the franchisor – the impact of such provisions in the current economic landscape. It is crucial that franchisees and franchisors are proactive in addressing these specific issues in the post-COVID-19 "now normal" to ensure that not only is the brand protected, but that the franchisees can sustain the expense and burden of these programs alongside their many other business goals and concerns as operators just trying to get back to business.

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Photo courtesy of Planet Fitness - Louisville, KY