

# INTERNATIONAL FRANCHISE TRADEMARK REGISTRATION: LEGAL REGIMES, COSTS, AND CONSEQUENCES

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## INTRODUCTION

For many years, the rise in number of international units operated by U.S. franchisors has outpaced domestic growth.<sup>1</sup> As the trend toward globalization accelerates,<sup>2</sup> franchise owners must determine the most effective methods to protect their intellectual property rights wherever they do business.<sup>3</sup> This Study thus develops an empirical framework to analyze the choices of international franchise networks and to improve the regulatory regimes that all transborder trademark holders encounter.

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1. See *Trends in the Franchise Legal Market: 2015*, WHO'S WHO LEGAL, (Oct. 2015), <http://whoswholegal.com/news/analysis/article/32612/trends-franchise-legal-market>; see also Philip F. Zeidman & Kay Ainsley, *Perspectives in International Franchising*, FRANCHISING WORLD, Mar. 2011, at 8, 8 (noting that the number of international units operated by franchisors grew by over 30% in the previous decade).

2. See *Trends in the Franchise Legal Market: 2015*, *supra* note 1 (“[O]f the 200 largest US-based franchisors, more than one-third of their units were internationally based – this is expected to reach more than half by the end of the decade”); see also Thomas L. Friedman, *It's a Flat World, After All*, N.Y. TIMES MAG. (Apr. 3, 2005), <http://www.nytimes.com/2005/04/03/magazine/its-a-flat-world-after-all.html> (noting that massive investment in technology and outsourcing is among the many factors that have contributed to the expansion of globalization).

3. Cases, uniform laws, and commentary have dealt with numerous intellectual property concepts in the franchising context, such as copyrights, trade secrets, and trademarks, respectively. *Pinnacle Pizza Co. v. Little Caesar Enters., Inc.*, 395 F. Supp. 2d 891, 891 (D.S.D. 2005) (concerning disputed ownership over short phrases between a franchisor and former franchisee); UNIF. TRADE SECRETS ACT (amended 1985), 14 U.L.A. 529 (2005) (covering, *inter alia*, franchise network trade secrets in a form adopted by most states); Robert W. Emerson, *Franchises as Moral Rights*, 14 WAKE FOREST J. BUS. & INTELL. PROP. L. 540, 541 (2014) (discussing trademark law and arguing that franchise law, armed with rules advancing moral rights concepts, can protect a franchisee's name and reputation—its goodwill—and that in fact the entire franchise network may benefit from recognizing a franchise as constituting a form of moral right).

When registering a trademark internationally a domestic franchisor has several options. A franchisor may choose to register its trademark directly through the local trademark office of each country in which it seeks protection.<sup>4</sup> However, this country-by-country registration can be an expensive and onerous task for a franchisor that needs to file in many countries simultaneously.<sup>5</sup> Alternatively, if a franchisor is positioned to enter foreign markets immediately, it may pursue a multi-filing application.

The two most prominent multi-filing applications are the European Union Trademark system (formerly known as the European Community Trademark system) and the Madrid Protocol system.<sup>6</sup> Pursuing a multi-filing application can save time<sup>7</sup> and money.<sup>8</sup> Franchisors that apply using the European Union Trademark system through the European Union Intellectual Property Office (“EUIPO”) have the benefit of filing a single application in the twenty-eight<sup>9</sup> European Union member countries at a cost equivalent to filing directly in four or five countries.<sup>10</sup>

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4. Each country within the European Union System has a national patent office through which applications may be filed, including a Benelux office. Vincent O'Reilly, *The Community Trademark System: A Brief Introduction and Overview*, 8 MARQ. INTEL. PROP. L. REV. 93, 94 (2004). For example, to register a trademark in the United Kingdom, applicants must use either the standard or the “Right Start” application services. *Apply to Register a Trademark*, GOV.UK, <https://www.gov.uk/register-a-trademark> (last updated Apr. 4, 2017). Both are online and require nonrefundable fees of either £170 *in toto* (the standard application) or £100 initially and another £100 if the trademark is registered successfully (the “Right Start” application). *Id.* Both services charge £50 for each additional class. *Id.* Filers that want the UK Intellectual Property Office to assess the application and issue an examination report before registering the trademark should use the “Right Start” application. *Id.*

5. See, e.g., Norah McCormick, *Considerations in Advising Clients on Foreign Trademark Registration*, 12 J. CONTEMP. LEGAL ISSUES 494, 494–95 (2001) (explaining that country-by-country trademark registration is burdensome because many countries do not accept English language applications and each country imposes individual application fees).

6. Andrew Berger, *Registering Your Mark in Europe? Consider These Three Alternatives*, IP IN BRIEF (May 10, 2012), <http://www.ipinbrief.com/register-your-mark-in-europe/>.

7. Press Release, Office of the Press Sec'y, Fact Sheet - U.S.-EU: Madrid Protocol on Trademark Registration (May 31, 2000), <https://clinton4.nara.gov/WH/New/Europe-0005/factsheets/madrid-protocol-on-trademark-registration.html> [hereinafter *Fact Sheet*] (“[N]ational applications can require up to four years processing time. Under the [Madrid] Protocol, members must act upon applications within eighteen months.”).

8. *Id.* (“[A] U.S. trademark owner wishing to register a mark in ten different countries currently needs to file ten separate applications at a cost of at least \$14,000. Under the Madrid Protocol, the total cost would be preset at about \$4,700—a savings of more than 67% in total fees.”).

9. See *infra* Appendix I.

10. According to the SMD Country Index, individual application fees range from €50 for a single class filing in Cyprus to €372 for up to three classes in Austria. *Austria (AT)*, SMD COUNTRY INDEX,

Franchisors that apply using the Madrid Protocol system through the World Intellectual Property Organization (“WIPO”) have the opportunity to receive trademark protection in up to ninety-eight<sup>11</sup> countries with a single filing.<sup>12</sup> The Madrid Protocol system became effective in the United States on November 2, 2003.<sup>13</sup> All European Union nations are also members of the Madrid Protocol.<sup>14</sup>

The primary difference between these two systems is that a filed application for the European Union Trademark is all-encompassing, while a filed application for the Madrid Protocol only covers the countries that the applicant chooses.<sup>15</sup> That is to say, one filing fee in the European Union Trademark system secures protection for the applicant in all twenty-eight member countries, regardless of whether the applicant actually seeks to register or use its mark in all the countries.<sup>16</sup> While the initial filing fee may be less expensive in the Madrid Protocol system, there is an additional charge for each country franchisors “elect” for trademark protection.<sup>17</sup> For example, the Absolute Technology Law Group in Milwaukee, Wisconsin, charges \$1500 as an initial filing fee for the Madrid Protocol system and \$1700 for the European Union Trademark system.<sup>18</sup> Under the Madrid Protocol, however, franchisors are charged an additional fee between \$700 and \$800 per country that they elect.<sup>19</sup> The International Application

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[http://www.country-index.com/country\\_surveys.aspx?ID=4](http://www.country-index.com/country_surveys.aspx?ID=4) (last visited Feb. 14, 2017); Cyprus (CY), SMD COUNTRY INDEX, [http://www.country-index.com/country\\_surveys.aspx?ID=87](http://www.country-index.com/country_surveys.aspx?ID=87) (last visited Feb. 14, 2016).

11. See *infra* Appendix I.

12. *International Applications/Madrid Protocol FAQs*, U.S. PAT. & TRADEMARK OFF., <https://www.uspto.gov/trademark/laws-regulations/Madrid-protocol/international-applicationsmadrid-protocl-faqs#1616> (last modified Aug. 6, 2016).

13. *Id.*

14. *Contracting Parties, Madrid Protocol*, WORLD INTELL. PROP. ORG., [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=8](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=8) (last visited Feb. 14, 2017).

15. *Compare Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, WORLD INTELL. PROP. ORG., [http://www.wipo.int/treaties/en/registration/madrid\\_protocol/](http://www.wipo.int/treaties/en/registration/madrid_protocol/) (last visited Feb. 14, 2017), with *Trade Marks in the European Union*, EUR. UNION INTELL. PROP. OFF., <https://euipo.europa.eu/ohimportal/en/trade-marks-in-the-european-union> (last updated Feb. 2, 2016).

16. *Trade Marks in the European Union*, *supra* note 15.

17. There is no comparable system online for the European Union trademark. *Madrid System: Schedule of Fees*, WORLD INTELL. PROP. ORG., <http://www.wipo.int/madrid/en/fees/sched.html> (last visited Feb. 21, 2017).

18. *Cutting the Costs of International Trademark Protection*, ABSOLUTE TECH. L. GROUP, LLC, [http://milwaukeepatents.com/files/Cutting\\_the\\_Costs\\_of\\_International\\_Trademark\\_Protection.pdf](http://milwaukeepatents.com/files/Cutting_the_Costs_of_International_Trademark_Protection.pdf).

19. Note that these additional fees through the Madrid system are less than the fees to register directly through each nation’s local trademark office. Thus, the additional fees do not detract from the attractiveness of the Madrid system to the point where direct registration would be the preferred option. *Id.*

Simulator indicates that one trademark application filing can cost as much as \$30,000 through the Madrid Protocol system.<sup>20</sup>

Franchisors seeking to expand abroad must also consider the cost and likelihood of their application being rejected in the country or multi-filing system where they choose to register. In the European Union Trademark system, successful opposition in a single, remote country, such as Slovenia, could prevent the entire European Union Trademark registration from being approved.<sup>21</sup> This veto power is substantial and, as such, the European Union Trademark system poses a greater financial risk to franchisors. For example, cancellation and opposition proceedings can cost between \$4000 and \$5000 for any given country.<sup>22</sup> Not only are these proceedings costly, but they are brought in the congested courts of the European Union Trademark institutions, requiring an even longer time period to resolve the disputes.<sup>23</sup>

In the Madrid Protocol system, because country applications are elective, opposition in one country does not bar the mark from being registered in other countries where the franchisor filed an application.<sup>24</sup> Marks are evaluated based on both absolute and relative grounds.<sup>25</sup> Absolute grounds for rejection of a trademark application include a deceptive mark, one that is against public policy, or a mark that is exclusively made up of generic marks or signs.<sup>26</sup> Relative grounds include similarity to an existing mark.<sup>27</sup> A country's status as first-to-file may also affect the likelihood that a

The basic fee for the Madrid application is 653 Swiss francs (\$678.63) for a black and white trademark and 903 Swiss francs (\$938.44) for a color trademark. *Madrid System: Schedule of Fees, supra* note 17. Additional fees then vary by country and may be as low as 95 Swiss francs (\$98.73) to elect to apply to the Philippines or as high as 1543 Swiss francs (\$1603.56) to elect to apply to Uzbekistan when the mark is a collective mark. *Individual Fees Under the Madrid Protocol*, WORLD INTEL. PROP. ORG., [http://www.wipo.int/madrid/en/fees/ind\\_taxes.html](http://www.wipo.int/madrid/en/fees/ind_taxes.html) (last visited Feb. 14, 2017).

20. *International Registration of Marks - Fee Calculation*, WORLD INTEL. PROP. ORG., <http://www.wipo.int/madrid/en/fees/calculator.jsp> (last visited Feb. 14, 2017). One can apply for a European Union Trademark online for €850 or via a paper application for €1000. *Fees & Payments*, EUR. UNION INTEL. PROP. OFF., <https://euipo.europa.eu/ohimportal/en/fees-payable-direct-to-euipo> (last updated Mar. 31, 2016). That is as expensive as it can be because there are no extra fees: the applicant does not get to choose the countries.

21. Berger, *supra* note 6; see William Robinson, Giles Pratt & Ruth Kelly, *Trademark Law Harmonization in the European Union: Twenty Years Back and Forth*, 23 *FORDHAM INTEL. PROP. MEDIA & ENT. L.J.* 731, 758 (2013) (recognizing that the EU has made great strides in harmonizing trademark law, but contending that additional reforms are needed before the EU can influence trademark law on a global level).

22. John L. DuPré, *Worldwide Trademark Protection: Coverage Versus Costs*, 2012 *IP VALUE* 31, 32.

23. See Robinson, Pratt & Kelly, *supra* note 21, at 758.

24. Berger, *supra* note 6.

25. O'Reilly, *supra* note 4, at 95.

26. *Id.*

27. Eugenia Baroncelli et al., *The Global Distribution of Trademarks: Some Stylized Facts* 4 n.4 (World Bank Policy Research, Working Paper No. 3270, 2004), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=610311](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=610311).

mark will be accepted in that country.<sup>28</sup> Although high rejection rates for trademark applications are often associated with third world and less-developed countries without established franchise laws in place, many contracting parties to the Madrid Protocol have issued a surprisingly high number of rejections to major franchisors in recent years.<sup>29</sup>

In consideration of the two systems, this Study weighs the marginal costs and benefits of each trademark registration system and examines some of the factors that influence how and why franchisors pursue the different systems. In addition, this Study assesses some of the factors that contribute to a country's decision to accept or reject a franchisor's trademark registration application through the Madrid Protocol system. Finally, this Study explores potential implications for franchise law.

### I. SAMPLES

There are two samples used for our inquiry. The first sample consists of 175 domestic restaurant franchisors randomly selected from either the WIPO<sup>30</sup> or the EUIPO<sup>31</sup> trademark database. Each franchisor claimed the United States as its Office of Origin and sought international registration through a multi-filing application for its trademark in Nice Class 43 ("Services for providing food and drink; temporary accommodation") between 1997 and 2013.<sup>32</sup> Part III of this Study utilizes this sample of 175 franchisors to test our first seven hypotheses.

The 175 franchisors from the first sample applied to fifty-six different countries through the Madrid Protocol system.<sup>33</sup> These applications generated the second sample, which consists of 556 observations—one observation per application received by any of the fifty-six countries.<sup>34</sup> Of the 556 observations made, trademark applications were rejected 109 times in twenty-seven different

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28. *See id.* at 6.

29. *See infra* text accompanying note 35.

30. *ROMARIN Database*, WORLD INTELL. PROP. ORG., <http://www.wipo.int/romarin/search.xhtml> (last visited Jan. 23, 2017).

31. *eSearch Plus Database*, EUR. UNION INTELL. PROP. OFF., <https://euipo.europa.eu/eSearch/> (last visited Feb. 21, 2017).

32. Excel Spreadsheet, Restaurant Franchisor Raw Data (Mar. 23, 2015) [hereinafter Restaurant Franchisor Raw Data] (on file with author); *see also Class 43*, WORLD INTELL. PROP. ORG., [http://web2.wipo.int/nicepub/edition-20140101/taxonomy/class-43/?pagination=no&lang=en&mode=flat&explanatory\\_notes=hide&basic\\_numbers=show](http://web2.wipo.int/nicepub/edition-20140101/taxonomy/class-43/?pagination=no&lang=en&mode=flat&explanatory_notes=hide&basic_numbers=show) (last modified Jan. 1, 2017).

33. Restaurant Franchisor Raw Data, *supra* note 32.

34. *Id.* An observation is the value, at a particular period, of a particular variable. *Observation*, ORG. FOR ECON. CO-OPERATION & DEV., <https://stats.oecd.org/glossary/detail.asp?ID=6132> (last updated July 12, 2007).

countries.<sup>35</sup> The franchisors on average applied to 4.35 countries, but the number of countries applied to range from as many as fifty-six countries to as few as one country.<sup>36</sup> Part III of this Study utilizes this sample of 556 observations to test our last four hypotheses.

The disparity between countries in terms of acceptances and rejections of trademark applications is noteworthy because it contradicts franchising experts' claims that a fair and free market exists without distortions.<sup>37</sup> Within the twenty-seven countries that issued application rejections in the second sample, nine countries have established franchise laws.<sup>38</sup> Of these nine countries, four have a negative polity score,<sup>39</sup> which indicates low political and economic stability based on government structure, revolution, collapse of central authority, and successful recent military coups.<sup>40</sup> The remaining five countries have a high polity score<sup>41</sup> indicating a stable government and economy.<sup>42</sup> The nine countries with franchise laws are forced to struggle with the same trademark rejection issues that were thought to be reserved for third world countries having low political and economic stability and less developed or undeveloped franchise laws.<sup>43</sup> Ultimately, it begs the question of whether there is a need for franchise law reform.

35. See *infra* Appendix XII. For a listing of the countries that rejected trademark applications, see *infra* Appendix XII: Australia, Azerbaijan, China, Colombia, Cuba, Czech Republic, Denmark, Germany, Iran, Ireland, Israel, Japan, Kazakhstan, Mexico, New Zealand, North Korea, Poland, Portugal, Russia, Singapore, South Korea, Switzerland, Syria, Turkey, United Kingdom, Uzbekistan, and Vietnam.

36. See *infra* Appendix XIII.

37. See Warren S. Grimes, *Market Definition in Franchise Antitrust Claims: Relational Market Power and the Franchisor's Conflict of Interest*, 67 ANTITRUST L.J. 243, 245 (1999) (discussing the free market system concept).

38. The nations are Australia, Azerbaijan, China, Japan, Kazakhstan, Mexico, Russia, South Korea, and Vietnam. See generally GETTING THE DEAL THROUGH: FRANCHISE 2016 (Philip F. Zeidman ed., 2015) (discussing, among others, the nine countries above with respect to franchise laws).

39. Azerbaijan, China, Kazakhstan, and Vietnam. See *infra* Appendix XII.

40. Monty G. Marshall & Ted Robert Gurr, *Polity IV Individual Country Regime Trends, 1946-2013*, POLITY IV, <http://systemicpeace.org/polity/polity4.htm> (last updated June 6, 2014).

41. Australia, Japan, Mexico, Russia, and South Korea. See *infra* Appendix XII.

42. An enhanced Polity V data series has been in development since 2008. This project, about two-thirds finished by early 2014, remains uncompleted to this date. *Research and Development*, CTR. FOR SYSTEMIC PEACE, <http://www.systemicpeace.org/csprandd.html> (last visited Feb. 21, 2017).

43. These issues are more common in such countries. Baroncelli et al., *supra* note 27, at 8.

## II. DEPENDENT VARIABLES

This Study uses four dependent variables. The first dependent variable is a dummy variable<sup>44</sup> in which the 108 franchisors that pursued registration through the European Union Trademark system received a value of 1 and the 67 franchisors that chose an alternative path received a value of 0.

The second dependent variable is a continuous variable<sup>45</sup> measuring the number of countries to which franchisors applied through either the Madrid Protocol system or the European Union Trademark system or both systems. With the inclusion of the European Union countries, franchisors on average applied to 19.89 countries.<sup>46</sup> However, the number of applications submitted by franchisors through both systems ranged from one country to fifty-six countries.<sup>47</sup> Within the Madrid Protocol system alone, franchisors may submit applications in over ninety countries.<sup>48</sup> Of course, different tactics or strategies may be inferred from franchisors applying to only one or two countries versus applying to multiple countries. It is possible that applicants applying to a number of nations may still be targeting a specific region of the world and have therefore put all or most of their filings in that region. At a certain number, it is likely that the applicant is applying worldwide, and any further number of applications speaks

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44. A dummy variable is an artificial variable created to represent an attribute with two or more distinct categories. Smita Skrivaneck, *The Use of Dummy Variables in Regression Analysis*, MORESTEAM.COM, <https://www.moresteam.com/whitepapers/download/dummy-variables.pdf> (last visited Feb. 21, 2017).

45. A continuous variable can take on any value between its minimum value and its maximum value and is not limited to specific points on a scale. *Statistics and Probability Dictionary*, STAT TREK, [http://stattrek.com/statistics/dictionary.aspx?definition=continuous\\_variable](http://stattrek.com/statistics/dictionary.aspx?definition=continuous_variable) (last visited Feb. 14, 2017).

46. See *infra* Appendix VIII.

47. *Id.* For example, based on the data in the Appendix, we may draw varying, albeit tentative, conclusions about international plans for growth for systems with applications to these numbers of countries: Café Kaila (1), Molecular Bar (1), Shophouse (1), The Meatball Shop (2), Native New Yorker (4), Sweetfrog (4), Naked Pizza (5), Green Mountain (7), Cheesecake Factory (33), Texas Roadhouse (38), Red Robin (42), and Boiling Crab (48). See *infra* Appendix XIII. Surely, distinctions may be hazy at best when looking at the “spread” from Café Kaila to Green Mountain, but it seems the franchisors in the range from Cheesecake Factory and higher are likely in a different ballpark altogether in terms of international growth, or at least plans for growth. *Id.* Incidentally, all twelve of the franchisors just mentioned experienced a trademark registration rejection, which may further support the notion that the likelihood of rejection is not simply a function of the number of applications, but of more franchisor-specific and country-specific factors. See *infra* Appendix IX.

48. See *Contracting Parties, Madrid Protocol, supra* note 14 (identifying ninety-eight contracting parties to the Madrid Protocol); *Countries*, EUR. UNION, [https://europa.eu/european-union/about-eu/countries\\_en](https://europa.eu/european-union/about-eu/countries_en) (last updated Apr. 5, 2017) (identifying twenty-eight member countries to the European Union).

less to a new strategy and more to the continuation of an existing plan for growth seemingly everywhere. As an applicant applies to a higher number of countries it is increasingly probable that it is seeking widespread presence.<sup>49</sup>

The third dependent variable is a dummy variable in which franchisors that pursued registration through the Madrid Protocol system received a value of 1 and franchisors that refrained from pursuing additional registration received a value of 0.

The fourth dependent variable is a dummy variable in which countries that rejected a franchisor's trademark application received a value of 1 and countries that accepted a franchisor's trademark application received a value of 0. Iceland, Norway, and Ukraine were noteworthy due to their 100% acceptance rates despite each receiving numerous applications—more than ten applications each.<sup>50</sup> The countries that received the most applications overall and additionally received a mix of 0 and 1 values (had a mixture of acceptances and rejections) were China with sixty-nine applications, Singapore with sixty-two applications, Japan with fifty-eight applications, and Australia with fifty-seven applications.<sup>51</sup> While Australia, Japan, and Singapore exhibited rejection rates of 0.09, 0.05, and 0.16, respectively, the rejection rate in China was so high that rejections outweighed acceptances, and China was most commonly assigned a value of 1.<sup>52</sup>

### III. INDEPENDENT VARIABLES

#### A. *Inclusion in QSR Magazine's Annual "Top 50" ("QSR Top 50")*

Each year, QSR Magazine, a source of quick-service and fast-casual restaurant news, publishes a list of the fifty most successful quick-service restaurant franchisors.<sup>53</sup> These rankings are based on domestic system-wide sales, average sales per unit, and number of total units in a given year.<sup>54</sup>

Domestic projected sales volume is a major factor to take into consideration when deciding whether the cost of filing for international trademark registration is justified.<sup>55</sup> A franchisor that is already financially successful and stable within the United States, and as such has a high domestic projected sales volume, benefits

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49. See DuPré, *supra* note 22, at 33.

50. See *infra* Appendix XII (indicating that Iceland and Ukraine each received eleven applications and Norway received fourteen applications).

51. *Id.*

52. *Id.*

53. Sam Oches, *The QSR 50*, QSR MAG. (Aug. 2013), <http://www.qsrmagazine.com/reports/qs50-2013-top-50-chart>.

54. *Id.* A unit refers to a particular franchise location run by a franchisee.

55. DuPré, *supra* note 22, at 32.

more from taking risks financially because it possesses a larger expected value of return for its international investment.<sup>56</sup>

Thus, it is hypothesized that the 175 random franchisors used in this Study (1) qualified for the QSR Top 50 in any one year between 1999 and 2013,<sup>57</sup> and (2) are more likely than those who did not qualify for the QSR Top 50 to have registered their trademark using the European Union Trademark system.<sup>58</sup> Registration through the European Union Trademark system is hypothesized because these franchisors are more inclined and better positioned to take such a financial risk.<sup>59</sup>

It is also hypothesized that franchisors chosen for the QSR Top 50 are more likely to register through the Madrid Protocol system than franchisors that did not even qualify for the QSR Top 50. This theory is founded on the fact that the Madrid Protocol system lacks the unity requirement that the European Union Trademark system presents,<sup>60</sup> and the domestic financial success of the franchisors chosen for the QSR Top 50 puts them in a better position to enter the greater number of countries made available through the Madrid Protocol simultaneously.

Furthermore, it is hypothesized that franchisors included in the QSR Top 50 will elect to receive trademark protection in more countries than franchisors not included in the rankings. The reasoning behind this hypothesis is similar to the former two in that franchisors with domestic financial success are better positioned and more inclined to enter more countries simultaneously.

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56. *See id.* The growth potential that lies outside the domestic borders of a franchise far outweigh the costs and risks associated with seeking international protection of its marks. *Id.*

57. Forty-five of the 175 franchisors in our sample were chosen for the QSR Top 50 at least once between 1999 and 2013. *See infra* Appendix XIII (those with franchisor name followed by an asterisk in the data table).

58. Of the forty-five franchisors, twenty-seven registered their trademarks using the European Union Trademark system to get registration in all twenty-seven member countries. *See infra* Appendix VII.

59. The QSR Top 50 list for 2013 was released in August 2014. Overall, for the purposes of this Study, the list of top fifty brands in quick service and fast casual did not change in the entities that appeared on the list. The report offered the following passage in summation of the year's events:

Last year, Panera Bread inched closer to the top 10, while fellow fast casual Chipotle padded its sales by nearly half a billion dollars to climb to spot No. 15. Chick-fil-A put more space between it and competitor KFC, while Starbucks used a product diversification strategy to gain ground on No. 2 brand Subway. Meanwhile, McAlister's Deli entered the top 50 for the first time, Zaxby's crossed the billion-dollar threshold, and McDonald's struggled to find consistency as the growing demand for premium products threatened to steal market share.

*The QSR 50*, QSR MAG. (Aug. 2014), <http://www.qsrmagazine.com/reports/qs50-2014-top-50-chart>.

60. DuPré, *supra* note 22, at 32–33.

These theories are tested using a dummy variable. Franchisors included in the QSR Top 50 from 1999–2013 were assigned a value of 1 and unranked franchisors were assigned a value of 0.

### B. Seniority

The longest continuously run company, according to the Guinness World Records, is Nisiyama Onsen Keiunkan, a hotel in Japan founded in 705.<sup>61</sup> Businesses with many years of experience, such as Nisiyama Onsen Keiunkan, must continuously evolve and adapt. In the restaurant industry, a restaurant franchisor with seniority over others likely has had to evolve and adapt as it works through a multitude of issues and problems over the years.<sup>62</sup> The McDonald's Corporation, for example, has handled countless trademark disputes both domestically and abroad in its sixty years of operation.<sup>63</sup> Likewise, well-seasoned restaurant franchisors—such as Subway, Burger King, and the franchisors operating under the umbrella of Yum! Brands, Inc.—have handled a multitude of infringement actions.<sup>64</sup> Based on the rich history of dispute resolution and problem solving that accompanies senior franchisors, it is hypothesized that franchisors with more years of experience are more likely to register their trademarks using the European Union Trademark system because they are better positioned and better

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61. See *Oldest Hotel*, GUINNESS WORLD RECS., <http://www.guinnessworldrecords.com/world-records/oldest-hotel> (last visited Feb. 14, 2017). By comparison, the oldest franchise system in the United States (not run continuously by one family) is the Singer Sewing Machine Company, which began granting franchises in 1851. *What is the History of Franchising in the United States?*, Spadea Lignana (Sept. 5, 2012), <http://www.spadealaw.com/blog/what-history-franchising-united-states>.

62. See, e.g., William L. Killion, *Balance the Interests of the Franchisor, Franchisee, and System*, 25 FRANCHISE L.J. 106, 106 (2006) (describing the desirability of franchise agreements that protect the right of the franchisor to morph the system to respond to competition and changes in consumer demands).

63. See *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1301 (11th Cir. 1998); *Quality Inns Int'l v. McDonald's Corp.*, 695 F. Supp. 198, 198 (D. Md. 1988); *McCurry Rest. (KL) Sdn Bhd v. McDonald's Corp.*, Civil App. No. W-02-1037-2006, (Ct. of App. (Putraja), Apr. 27, 2009); *McDonald's Corp. v. Joburgers Drive-Inn Rest. (PTY) Ltd.* 1996 (1) SA 1 (SCA) at 2 (S. Afr.). See generally Emily Grant, *Might Makes McRight: McDonald's Corporation's Trademark Strategy*, 19 J. CONTEMP. LEGAL ISSUES 227, 228 (1988) (explaining that McDonald's has extensively pursued trademark infringement claims against companies that have attempted to combine the prefix "Mc" with another name).

64. See, e.g., *Burger King of Fla., Inc. v. Hoots*, 403 F.2d 904, 906 (7th Cir. 1968); *Pizza Hut, Inc. v. Lundy Enters., LLC*, Civil Action No. 3:11-cv-00011-N, 2013 WL 12123949, at \*2 (N.D. Tex. 2013); *Burger King Corp v Hungry Jack's* [2001] NSWCA 187 (21 June 2001) (Austl.); Complaint at 6–7, *Casey's Gen. Stores, Inc. v. Doctor's Assocs. Inc.*, No. 4:11-CV-00064 (S.D. Iowa Feb. 11, 2011), 2011 WL 490519.

prepared to take the risk of registering with all member countries simultaneously.

Also, it is very likely that the success of senior franchisors can be partly attributed to both their continuous monitoring of domestic and international markets for new opportunities to remain competitive<sup>65</sup> and their experience creating cost efficiency.<sup>66</sup> Ilan Alon wrote, “when franchisors without international franchises were asked why their company does not have franchises outside the United States, the number one reason given in 1995 was that the company was too young.”<sup>67</sup> According to Vipin Gupta, this can be explained by the fact that “[e]xperience should make an older firm more cost efficient and, therefore, more competitive in domestic and international markets.”<sup>68</sup> This Study seeks to test whether senior franchisors are more likely to register using the more recently established Madrid Protocol system—perhaps because franchisors are interested in the larger selection of registration countries—or whether franchisors are more likely to use the traditional European Union Trademark system. Stated as a dual hypothesis, the contention is as follows: We hypothesize that franchisors with more years of experience are more likely to register their trademarks using the Madrid Protocol system because the newer system provides a greater number of opportunities for expansion. Furthermore, we theorize that franchisors with more years of experience will opt for trademark protection in a greater number of countries than will fledgling franchisors because franchisors with seniority are better positioned and prepared to seize these additional opportunities and to succeed.<sup>69</sup>

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65. D&E Communications, Inc. represented to the Securities and Exchange Commission that “D&E continues to monitor the level of competition in its franchise service areas to evaluate if the franchise value or economic life of the intangible asset has been impacted or impaired.” Letter from Thomas E. Morell, Senior Vice President, D&E Commc’ns Inc., to Larry Spigel, Assistant Dir., Sec. & Exch. Comm’n (June 15, 2005), <https://www.sec.gov/Archives/edgar/data/1011737/000104303905000027/filename1.htm>. It is likely that most corporations and business entities of this magnitude engage in the same types of market monitoring.

66. VIPIN GUPTA, TRANSFORMATIVE ORGANIZATIONS: A GLOBAL PERSPECTIVE 327 (2004).

67. ILAN ALON, THE INTERNATIONALIZATION OF US FRANCHISING SYSTEMS 28 (2014).

68. GUPTA, *supra* note 66, at 327.

69. Gupta wrote:

It is also likely that the older the franchising firm, the more resources it will have. This is because it will have more experience borne out of operating domestically. . . . [E]xperience and knowhow would allow an older franchising firm to successfully transfer the operating system of a franchise to a foreign market with greater ease than a younger franchisor.

These theories are tested using a dummy variable based on the difference between the year in which the restaurant franchise was founded and the year in which the franchisor applied for international trademark registration, as reported in the WIPO trademark database.<sup>70</sup> Franchisors that had more than five years of franchising experience when they applied for international registration received a value of 1 and fledgling franchisors that had less than five years of franchising experience when they applied received a value of 0.

### C. *Registration Using European Union Trademark System Before 2003 ("Pre 03")*

As previously stated, the Madrid Protocol became effective in the United States on November 2, 2003.<sup>71</sup> Before that year, franchisors were limited to direct national registration of their trademarks or use of the European Union Trademark system.<sup>72</sup> The introduction of the Madrid Protocol significantly expanded the number of countries that could be covered with a single filing. However, of the twenty-six member countries of the 2003 European Union Trademark system, twenty-five were covered by the Madrid Protocol.<sup>73</sup> This created a dilemma for the franchisors that had originally registered their marks through the European Union Trademark system before 2003. Additional registration through the Madrid Protocol would be seen as inefficient—an unattractive measure that is unnecessarily redundant and therefore useless. There would be no need to pay twice for registration in any of the twenty-five given countries because these two systems were perfect substitutes.

Under this reasoning, it is hypothesized that franchisors that registered their trademarks through the European Union Trademark system before November 2, 2003, are less likely to have additionally registered through the Madrid Protocol system due to the overlap of the two systems. This theory is tested using a dummy variable in which franchisors that registered through the European Union Trademark system before November 2, 2003, were assigned a value of 1 and those that registered after November 2, 2003, were assigned a value of 0.

### D. *First-to-File Countries*

First-to-file countries are those in which the first franchisor to file for registration gains trademark rights, as opposed to countries

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70. See *ROMARIN Database*, *supra* note 30.

71. *Contracting Parties, Madrid Protocol*, *supra* note 14.

72. See *supra* notes 4–5 and accompanying text.

73. Malta is not currently in the International Registration System. See *Contracting Parties, Madrid Protocol*, *supra* note 14.

in which rights are gained based on use.<sup>74</sup> The system with which rights are awarded plays a role in whether a franchisor's trademark application is accepted or denied. For example, in China (a first-to-file country) trademark application rejection rates are 40% higher than five years ago because new applications must be compared against previously registered trademarks.<sup>75</sup>

Many times trademark applications are rejected as a result of Office Actions, a method used to expedite the process of comparison in first-to-file countries.<sup>76</sup> After a trademark application is filed, a United States Patent and Trademark Office ("USPTO") trademark attorney will examine the application and respond with either an affirmation—officially allowing the applicant to advertise its trademark as "registered"—or an Office Action.<sup>77</sup> This Office Action, known as a nonfinal Office Action, will alert the applicant if there are any issues or flaws in the applicant's application.<sup>78</sup> One key reason for this type of Office Action is that the applicant's proposed trademark resembles an existing trademark.<sup>79</sup> If the USPTO finds that there is sufficient likelihood for confusion, the Office Action will reject the applicant's proposed trademark.<sup>80</sup> However, even if there is no likelihood of confusion based on the physical appearance of the applicant's proposed trademark, a nonfinal Office Action can still be issued.<sup>81</sup> According to Christopher Bussert, a franchise law expert from the law firm of Kilpatrick Townsend & Stockton LLP in Atlanta, Georgia, nonfinal Office Actions may be issued simply because the two marks fall into the same subclass, even if the two marks are distinguishable from one another.<sup>82</sup>

The likelihood of being issued an Office Action (e.g., a rejection) in response to a trademark application would seemingly decrease if the application was for a well-known trademark, even if the well-known trademark application was filed in a first-to-file country where other applications with similar trademarks were already being considered. A mark is considered well-known or famous if it is

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74. DuPré, *supra* note 22, at 31.

75. *China Trademark Registration: Misconception of First Come First Serve*, ORANGEFIELD ICS (Sept. 17, 2013), <http://www.orangefieldics.com/news/2013-09-17-first-come-first-serve>.

76. *Glossary*, U.S. PAT. & TRADEMARK OFF., <http://www.uspto.gov/main/glossary/> (last modified Apr. 5, 2017).

77. *See generally Responding to Office Actions*, U.S. PAT. & TRADEMARK OFF., <https://www.uspto.gov/trademarks-maintaining-trademark-registration/responding-office-actions> (last modified Jan. 14, 2017).

78. *Id.*

79. *Possible Grounds for Refusal of a Mark*, U.S. PAT. & TRADEMARK OFF., <https://www.uspto.gov/trademark/additional-guidance-and-resources/possible-grounds-refusal-mark> (last modified July 11, 2016).

80. *Id.*; *Responding to Office Actions*, *supra* note 77.

81. *Responding to Office Actions*, *supra* note 77.

82. Telephone Interview with Christopher Bussert, Att'y, Kilpatrick Townsend & Stockton LLP (Jan. 24, 2014).

widely recognized by the general consuming public of the United States as a designation of the source of goods or services of the mark's owner.<sup>83</sup> These marks are often given preferential treatment through the well-known marks doctrine.<sup>84</sup> This doctrine allows foreign owners of well-known trademarks the opportunity to bring infringement actions against citizens of other member nations of the Paris Convention using the same or similar marks.<sup>85</sup> "The primary aim of the Paris Convention was to create an agreement between the signatory nations to provide reciprocal treatment with respect to intellectual property rights."<sup>86</sup> The rights of a well-known trademark may vary depending on the country one is in; although, well-known trademarks often are protected even if they are not registered in that country.<sup>87</sup> For example, in China, nonregistered, well-known trademarks are given extensive rights and privileges over trademarks pending for registration such that the applications

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83. Relevant factors to be considered in determining whether a mark qualifies as well-known or famous include the extent of the mark's publicity, the magnitude of sales made using the mark, actual recognition of the mark, and whether the mark was registered. 15 U.S.C. § 1125(c)(2)(A) (2012) (stating a list of nonexclusive factors used to determine whether a mark is famous under a dilution cause of action).

84. See J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS & UNFAIR COMPETITION § 29:61 (4th ed.), Westlaw (database updated Mar. 2017) (explaining that the well-known marks doctrine provides a first user of a globally recognized mark with trademark protection in a foreign country even if the user has not registered or used the mark in that country).

85. See, e.g., Lanham Act, Pub. L. No. 79-489, 60 Stat. 427 (1946) (codified as amended at 15 U.S.C. §§ 1051-1141n (2012)); Brandon Barker, *The Power of the Well-Known Trademark: Courts Should Consider Article 6bis of the Paris Convention an Integrated Part of Section 44 of the Lanham Act*, 81 WASH. L. REV. 363, 367 (2006) (describing how acts by competitors in any of the member nations that serve to create trademark confusion or mislead the public about trademarked goods are strictly prohibited). To protect its trademark, a franchisor "must retain sufficient control over the licensees' dealings in the end product to insure that they will apply the mark to either the same product or to one of substantially the same quality with which the public in the past has associated the product." 9 AM. JUR. 2D *Private Franchise Contracts* § 504, Westlaw (database updated Sept. 2016).

86. Barker, *supra* note 85, at 366.

87. See *Orkin Exterminating Co. v. Pestco Co. of Canada* (1985), 50 O.R. 2d 726 (Can. Ont. C. A.) (enjoining a local company and awarding damages against it for the company's passing itself off as the large American exterminating business, Orkin, which had few customers in Ontario but was nonetheless well-known there). See generally Stephanie Chong, *Protection of Famous Trademarks Against Use for Unrelated Goods and Services: A Comparative Analysis of the Law in the United States, the United Kingdom and Canada and Recommendations for Canadian Law Reform*, 95 TRADEMARK REP. 642 (2005) (arguing for Canadian antidilution legislation); Leah Chan Grinvald, *A Tale of Two Theories of Well-Known Marks*, 13 VAND. J. ENT. & TECH. L. 1 (2010) (analyzing international disparities in well-known marks doctrine).

pending are usually rejected.<sup>88</sup> This makes the registration of a well-known mark less essential because the country's trademark offices are going to prevent similar, easily confusable marks from being registered.<sup>89</sup>

As previously stated, the 175 franchisors that make up the first sample all fall under Nice Class 43, which is used to designate "[s]ervices for providing food and drink" as well as "temporary accommodations."<sup>90</sup> There are thirty subclasses under the umbrella of Nice Class 43.<sup>91</sup> These subclasses, however, are still quite broad and an abundance of marks could fall under one subclass, such as subclass 430024: "cafés."<sup>92</sup> This Study provides research on why these classifications are outdated and calls for a reform of overbroad classifications, such as subclass 430024.

Thus, it is hypothesized that franchisors filing for registration in first-to-file countries as a whole (with or without a well-known trademark) are more likely to have their applications rejected than others because of increased vulnerability to Office Actions resulting from the preferential treatment of well-known trademark rights and privileges. To test this theory, a dummy variable was used where first-to-file countries were assigned a value of 1 and other countries were assigned a value of 0.

### E. Polity Score

Intellectual property rights are less likely to be valued and upheld in high-risk piracy countries.<sup>93</sup> High-risk piracy countries

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88. Jing "Brad" Luo & Shubha Ghosh, *Protection and Enforcement of Well-Known Mark Rights in China: History, Theory and Future*, 7 NW. J. TECH. & INTEL. PROP. 119, 122 (2009).

89. For analysis of how the well-known marks exception can be followed in U.S. domestic law, see Rachel Brook, *The United States' Adoption of the Well-Known Foreign Mark Exception*, 36 FORDHAM URB. L.J. 889, 892–93 (2009). Cf. Ron Lehrman & Carlos Cucurella, *International Protection of Well-Known Marks*, INTERNATIONAL WHO'S WHO OF BUSINESS LAW. 806, 806, [http://www.frosszelnick.com/sites/default/files/20061017163104\\_1\\_PUBLISHED\\_PDF\\_0.pdf](http://www.frosszelnick.com/sites/default/files/20061017163104_1_PUBLISHED_PDF_0.pdf) (outlining the problems facing the holders of well-known marks). See generally Andrew Cook, *Do As We Say, Not As We Do: A Study of the Well-Known Marks Doctrine in the United States*, 8 J. MARSHALL REV. INTEL. PROP. L. 412 (2009) (acknowledging circuit court splits regarding protection of foreign well-known marks).

90. See *Class 43*, *supra* note 32 and accompanying text.

91. In addition to cafés, Nice Class 43 also encompasses hotels, restaurants, and snack bars. *Id.*

92. There were about 20,000 coffee shop businesses in the United States in 2011. *Coffee Shop 2012*, SBDCNET, <http://www.sbdnet.org/small-business-research-reports/coffee-shop-2012> (last visited Feb. 14, 2017).

93. Andrew D. Getsinger, *A New Approach to Combating the Piracy of Intellectual Property: Develop the Rule of Law and Increase the Supply of Legitimate Goods*, 96 J. PAT. & TRADEMARK OFF. SOC'Y 30, 38–39, 48, 50–51 (2014); see PROP. RIGHTS ALL. & AMS. FOR TAX REFORM FOUND., INTERNATIONAL PROPERTY RIGHTS INDEX: 2013 REPORT 16, 25, 30, 32–35, 38 (2013).

often have low political and economic stability.<sup>94</sup> As a result of the prevalence of piracy in such countries combined with weak enforcement efforts,<sup>95</sup> it is predicted that trademarks in high-risk piracy countries are futile as the government is unlikely to issue trademark papers with empty meanings. Thus, on the contrary, it is hypothesized that countries with high political and economic stability are less likely to reject a franchisor's trademark application.

To measure political and economic stability as a continuous variable, the 2010 polity scores from the Polity IV Project Country Reports were used.<sup>96</sup> This project measures each country's governing authority with a range of scores corresponding to fully institutionalized autocracies, mixed or incoherent authority regimes, and fully institutionalized democracies.<sup>97</sup> In the project, a score of 10 would represent a fully institutionalized democracy, such as the United States, while a score ranging from -5 to -10 would represent an autocratic form of authority, such as China with a score of -7.<sup>98</sup> Special classifications are given to countries whose central forms of government have failed or are unstable (relatively low political and economic stability).<sup>99</sup> Every country to which a franchisor from the first sample in this Study submitted a trademark application has a polity score between -10 and 10, except Bosnia, which holds a score of -66, signifying an "interruption"—a time of transition when foreign powers have intervened to assist in the re-establishment of political order.<sup>100</sup>

#### F. *Gross Domestic Product, per Worker ("GDP per worker")*

As GDP per worker (or average wage rate) grows, workers' budget constraints shift outward and they have more discretionary income available to spend.<sup>101</sup> It follows that with more income at

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94. Getsinger, *supra* note 93, at 37–39, 49–51; see PROP. RIGHTS ALL. & AMS. FOR TAX REFORM FOUND., *supra* note 93, at 16, 30–31, 33–36, 38.

95. Getsinger, *supra* note 93, at 38–39.

96. Marshall & Gurr, *supra* note 40. The enhanced data series, Polity V, in development since 2008, is close to completion. See *Research and Development*, *supra* note 42.

97. MONTY G. MARSHALL & KEITH JAGGERS, POLITY IV PROJECT: DATASET USERS' MANUAL 12–17 (2007), [http://home.bi.no/a0110709/PolityIV\\_manual.pdf](http://home.bi.no/a0110709/PolityIV_manual.pdf).

98. *Id.* at 14–16; *Polity IV Country Report 2010: China*, CTR. FOR SYSTEMIC PEACE, <http://www.systemicpeace.org/polity/China2010.pdf> (last visited Feb. 14, 2017); *Polity IV Country Report 2010: United States of America*, CTR. FOR SYSTEMIC PEACE, <http://www.systemicpeace.org/polity/UnitedStates2010.pdf> (last visited Feb. 14, 2017).

99. MARSHALL & JAGGERS, *supra* note 97, at 17, 19.

100. *Id.* at 19. Since Somalia did not receive any applications from the franchisors in our sample, we did not use it as a polity score example.

101. See Adam Jones, *Why US Gross Domestic Product Growth Impacts Restaurants*, MKT. REALIST (Feb. 26, 2015), <http://marketrealist.com/2015/02/us-gross-domestic-product-growth-impacts-restaurants>.

their disposal, these workers will be able to afford, and consequently demand, a higher quality and greater selection of restaurants.<sup>102</sup> Of course, there is some variance on food spending from country to country.<sup>103</sup> Assuming that local governments are receptive to individual preferences, it is hypothesized that as GDP per worker increases, a franchisor's trademark application is less likely to be rejected because the people of the country would prefer a wider variety of restaurant choices.

The data for this continuous variable were found in Penn World Table 7.1 (released November 30, 2012) at the University of Pennsylvania's Center for International Comparisons.<sup>104</sup> Individuals qualified as workers based on whether they reported themselves as "economically active" in 2008.<sup>105</sup>

### G. Gross National Income, per Capita ("GNI per capita")

Similar to GDP per worker, as GNI per capita increases, the nation's budget constraint shifts outward and the country has more discretionary income available to spend.<sup>106</sup> According to David Abler, "households with higher incomes consume a greater number of distinct food products."<sup>107</sup> More wealth at the individual household level will inevitably lead to citizens trying new restaurants and increasing the demand for variety in the restaurant business.<sup>108</sup> Thus, it is hypothesized that as GNI per capita increases, a franchisor's trademark application is less likely to be

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102. For example, in the United States, the U.S. Bureau of Economic Analysis has found that as personal disposable income rises, restaurants such as Chipotle Mexican Grill, Shake Shack, Taco Bell, and Darden Restaurants see higher revenues. Adam Jones, *Restaurant Indicator: Savings Rate and Disposable Income Increase*, MKT. REALIST (Feb. 26, 2015), <http://marketrealist.com/2015/02/restaurant-indicator-savings-rate-and-disposable-income-increase/>.

103. "On average, U.S. consumers spend only about 10% of disposable personal income on food; Canadian consumers spend approximately 14% of personal disposable income on food; and in Mexico, consumers spend an average 27% of total expenditures on food." Helen H. Jensen, *Consumer Issues and Demand*, 21 CHOICES 165, 165 (2006), <http://www.choicesmagazine.org/2006-3/animal/2006-3-09.htm>.

104. Alan Heston et al., *Penn World Table Version 7.1*, GRONINGEN GROWTH & DEV. CTR., <http://www.rug.nl/ggdc/productivity/pwt/pwt-releases/pwt-7.1> (last modified Sept. 12, 2016).

105. *Id.*; see also *Economically Active Population*, ORG. FOR ECON. CO-OPERATION & DEV., <https://stats.oecd.org/glossary/detail.asp?ID=730> (last updated July 29, 2002).

106. See *Gross National Income (GNI)*, INVESTOPEDIA, <http://www.investopedia.com/terms/g/gross-national-income-gni.asp> (last visited Feb. 14, 2017).

107. DAVID ABLER, DEMAND GROWTH IN DEVELOPING COUNTRIES 13 (2010).

108. See *id.*

rejected because a wealthier country would demand more variety in restaurant services.<sup>109</sup>

The data for this continuous variable were found in the World Bank database, in which GNI is defined as the sum of value added by all resident producers plus any product taxes (less subsidies) not included in the valuation of output plus net receipts of primary income (compensation of employees and property income) from abroad.<sup>110</sup> This value is converted to U.S. dollars and divided by the midyear population.<sup>111</sup> These figures are from 2012.<sup>112</sup>

#### IV. METHOD

This Study includes nine regressions. A regression analysis is a statistical process for estimating the relationship between a dependent variable and one or more independent variables, such as those described above.<sup>113</sup> The first and second regressions individually tested the effect that inclusion in the QSR Top 50 and seniority had on whether the franchisor was willing to take additional risk and register using the European Union Trademark system.<sup>114</sup> The two variables had to be individually tested because, although the QSR Top 50 variable did not show any sensitivity to dilution, the seniority variable demonstrated a tendency to be washed out.

The third regression tested the effect that inclusion in the QSR Top 50 had on registration through the Madrid Protocol.<sup>115</sup> The fourth regression tested the effect that previous registration through the European Union Trademark system and seniority had on registration through the Madrid Protocol system.<sup>116</sup> As in the first and second regressions, the QSR Top 50 and seniority variable had to be separated between the third and fourth regressions to prevent dilution.

109. "As income increases, the demand for a more diverse diet increases." *Id.* (citing Silke Thiele & Christoph Weiss, *Consumer Demand for Food Diversity: Evidence for Germany*, 28 *FOOD POL'Y* 99, 108 (2003)).

110. *GNI Per Capita, Atlas Method (Current US\$)*, WORLD BANK, <http://data.worldbank.org/indicator/NY.GNP.PCAP.CD> (last visited Feb. 23, 2017) (explaining the methodology under the "details" link).

111. *Id.*

112. *Id.*

113. Alan O. Sykes, *An Introduction to Regression Analysis* 1 (Coase-Sandor Inst. for Law & Econ., Working Paper No. 20, 1993), [http://www.law.uchicago.edu/files/files/20.Sykes\\_Regression.pdf](http://www.law.uchicago.edu/files/files/20.Sykes_Regression.pdf); Deborah R. Abrams, *Introduction to Regression*, PRINCETON U. LIBR., [http://dss.princeton.edu/online\\_help/analysis/regression\\_intro.htm](http://dss.princeton.edu/online_help/analysis/regression_intro.htm) (last visited Feb. 15, 2017).

114. *See infra* Appendix III–IV.

115. *See infra* Appendix V.

116. *See infra* Appendix VI.

The fifth regression tested the effect of inclusion in the QSR Top 50 on the number of countries applied to through the Madrid Protocol system and/or the European Union Trademark system.<sup>117</sup> The sixth regression tested the effect of seniority on the number of countries to which franchisors applied.<sup>118</sup>

The seventh regression tested the effect of a country's first-to-file status and polity score on a country's likelihood to reject or accept a multi-filing trademark application.<sup>119</sup> Finally, the eighth and ninth regressions individually tested the effects of GDP per worker and GNI per capita, respectively, on a country's likelihood to reject or accept a multi-filing trademark application.<sup>120</sup> These last two variables were individually tested for the purpose of determining the stronger indicator of a country's wealth.

For each regression, impact assessments were conducted to determine whether one of the variables had an impact on the other. The impact of a variable is calculated by multiplying the standard deviation by the coefficient.<sup>121</sup> These assessments assisted in standardizing the effect of each independent variable on its corresponding dependent variable through the use of common units. It should be noted that these impact assessments were only applied to continuous variables. Dummy variables were interpreted using solely the coefficient.<sup>122</sup>

## V. RESULTS

### A. *Inclusion in QSR Top 50*

The QSR Top 50 variable proved statistically significant for the first regression and demonstrated a positive correlation. This positive correlation, consistent with the authors' hypothesis, suggests that franchisors with high domestic sales volumes are more likely to take the financial risk of registering through the European Union Trademark system. Specifically, franchisors included in the QSR Top 50 have a 0.42 higher probability of registering their trademark through the European Union Trademark system.<sup>123</sup>

The QSR Top 50 variable proved statistically significant for the third regression as well. However, the variable demonstrated a negative correlation, inconsistent with the original hypothesis. The

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117. See *infra* Appendix VII.

118. See *infra* Appendix VIII.

119. See *infra* Appendix IX.

120. See *infra* Appendix X–XI.

121. *Interpreting Regression Coefficients in Tornado Graphs*, PALISADE, <http://kb.palisade.com/index.php?pg=kb.page&id=138> (last modified July 6, 2015).

122. It would not be sensible to try to standardize a dummy variable because it represents a category rather than a numeric value. See JOHN FOX, *APPLIED REGRESSION ANALYSIS AND GENERALIZED LINEAR MODELS* 140 (2d ed. 2008).

123. See *infra* Appendix III.

results suggest that franchisors included in the QSR Top 50 have a 0.61 lower probability of registering their trademark through the Madrid Protocol system.<sup>124</sup> A possible explanation for this phenomenon is that older franchisors typically registered through the European Union Trademark system before the Madrid Protocol was even an option. The idea that franchisors would not seek additional registration through the Madrid Protocol after registering through the European Union Trademark is explored in the fourth regression.

The QSR Top 50 variable proved statistically significant for the fifth regression and demonstrated a strong positive correlation consistent with the authors' theory. This suggests that franchisors with high domestic sales volumes apply to a greater number of countries simultaneously through a multi-filing application. Specifically, franchisors included in the QSR Top 50 apply to approximately 4.40 more countries than franchisors that are not included in the QSR Top 50.<sup>125</sup>

### *B. Seniority*

As predicted, the seniority variable exhibited a positive correlation and was marginally statistically significant under a one-tailed test in the second regression. It can be concluded that seniority plays a marginal role in a franchisor's decision to register its trademark through the European Union Trademark system. This is reflected in the impact assessment, which shows that a one standard deviation increase in seniority leads to a 0.14 increase in the probability of registration through the European Union Trademark system.<sup>126</sup>

In the fourth regression, seniority was again marginally significant under a one-tailed test. However, the seniority variable demonstrated a negative correlation inconsistent with the original hypothesis. Instead, the impact assessment suggests that a one standard deviation increase in seniority leads to a 0.11 decrease in the probability of registration through the Madrid Protocol system,<sup>127</sup> such that franchisors with more seniority were actually less likely to register through the Madrid Protocol system. It is possible that the cause of the contradictory signs in the fourth regression can be explained by the theory behind the Pre 03 variable discussed in Subpart V.C. Specifically, older franchisors are discouraged from registering through the Madrid Protocol because they already registered through the European Union Trademark system prior to the development of the Madrid Protocol.

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124. See *infra* Appendix V.

125. See *infra* Appendix VII.

126. See *infra* Appendix IV.

127. See *infra* Appendix VI.

In the sixth regression, seniority once more was marginally significant under a one-tailed test. The variable demonstrated a positive correlation consistent with the hypothesis, which suggests that franchisors with more experience will submit international applications to register their trademarks in a greater number of countries than franchisors that are less experienced. Specifically, a one standard deviation increase in seniority leads to an increase of 1.93 countries to which applications are made.<sup>128</sup>

### C. *Pre 03*

The Pre 03 variable proved statistically significant and demonstrated a negative correlation consistent with the hypothesis. This suggests that prior registration through the European Union Trademark system does indeed serve as a deterrent to additional registration. Specifically, franchisors that registered their trademarks using the European Union Trademark system before 2003 are 0.27 less likely to additionally register their marks using the Madrid Protocol system.<sup>129</sup>

### D. *First-to-File Countries*

The first-to-file variable proved statistically significant and exhibited the positive correlation predicted by the authors' hypothesis. This suggests that there is a positive correlation between first-to-file status and the trademark application rejection rate. Specifically, first-to-file countries are 0.16 more likely to reject a franchisor's trademark application.<sup>130</sup>

### E. *Polity Score*

The polity score variable proved statistically significant and demonstrated a negative sign. This negative sign, consistent with the original hypothesis, suggests that there is a negative correlation between a country's polity score and its trademark application rejection rate. This is reflected in the impact assessment, which shows that a one standard deviation increase in polity score leads to a 0.12 decrease in the probability of an application's rejection.<sup>131</sup>

### F. *GDP per worker*

The GDP per worker variable proved statistically significant and exhibited the predicted negative sign. This suggests that there is a negative correlation between the wage rate of workers and the trademark rejection rate in a given country. This was reflected in the impact assessment, which showed that a one standard deviation

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128. See *infra* Appendix VIII.

129. See *infra* Appendix VI.

130. See *infra* Appendix IX.

131. See *infra* Appendix X.

increase in GDP per worker in a country led to a 0.12 decrease in the probability of rejection.<sup>132</sup> When compared to GNI per capita, the GDP per worker variable had a higher R-squared value,<sup>133</sup> meaning that this regression model was a more accurate fit to the data and a slightly better indicator of the wealth of a nation.

### G. *GNI per capita*

The GNI per capita variable proved statistically significant and demonstrated a negative sign, consistent with the original hypothesis. This suggests that there is a negative correlation between the income of a nation and the trademark rejection rate of that country. A one standard deviation increase in GNI per capita led to a 0.11 decrease in the probability of rejection.<sup>134</sup>

## VI. ANALYSIS

The results of this Study demonstrate that domestic sales volume and prior registration through the European Union Trademark system are two of the more statistically significant factors contributing to a franchisor's decision between, and level of commitment to, the registration alternatives when globalizing its trademark. A franchisor's seniority also has a marginally significant impact.

Furthermore, as explained in Part V (Results), while the system in which trademark rights are gained seems to be the most important factor in trademark application rejection rates per country, the country's polity score as well as the GDP per worker and GNI per capita of the country also play a role. However, when comparing the effects of the last two variables, GDP per worker should be given more weight as it is shown to be a more accurate measure—a better fit to the data—of the wealth of a nation than GNI per capita.

This Study observed 175 domestic restaurant franchisors and measured the effects of seven different variables. As such, it can serve as a baseline assessment for franchisors considering international trademark registration. However, further research with a more expansive data set and a wider range of independent variables would certainly enhance franchisors' understanding of which factors concerning international trademark registration procedures should be considered prior to globalizing their trademarks. For example, while sales revenue is one way to

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132. See *infra* Appendix X.

133. "R-squared is a statistical measure of how close the data are to the fitted regression line." Jim Frost, *Regression Analysis: How Do I Interpret R-squared and Assess the Goodness-of-fit?* MINITAB BLOG (May 30, 2013), <http://blog.minitab.com/blog/adventures-in-statistics/regression-analysis-how-do-i-interpret-r-squared-and-assess-the-goodness-of-fit>.

134. See *infra* Appendix XI.

measure growth, inclusion in the QSR Top 50 may not be the most accurate measure of either a franchisor's domestic financial success and sustainability or its ability to maintain the franchise abroad. With more time and better access to particular franchise data, one could measure the growth of each franchise by examining the number of new franchisees and number of new unit openings each year.

## VII. EXAMINATION OF REJECTING NATIONS

The fact that countries with varying polity scores still issued a significant number of trademark rejections to franchise applicants is the most surprising and unexpected result.<sup>135</sup> The data support the hypothesis that a need for franchise law reform exists, specifically in the five countries with high polity scores that still issued multiple rejections.<sup>136</sup> The numerous rejections from Australia, Japan, South Korea, Mexico, and Russia—nations with large economies and a significant number of applications—serve as proof that even developed countries with existing franchise laws struggle with the same trademark application rejection issues that were thought to be reserved for third world countries without franchise laws in place.<sup>137</sup> The data illustrate clear weaknesses in the established laws that need to be addressed.<sup>138</sup>

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135. ALAN S. GUTTERMAN, BUSINESS TRANSACTIONS SOLUTIONS § 90:82, Westlaw (database updated Mar. 2017) (“A recent survey indicates that law[s] regulating franchise sales and/or the franchise relationship have been adopted in Australia, Belgium, Brazil, Canada (Alberta, New Brunswick, Ontario and Prince Edward Island Provinces), People’s Republic of China, the European Union, France, Indonesia, Italy, Japan, Kazakhstan, Lithuania, Malaysia, Mexico, Romania, Russia, South Korea, Spain, Sweden, Taiwan, Venezuela and Vietnam. While the European Union has traditionally regulated franchising from a competition law perspective, other countries are taking an approach similar to that used in the US and adopting franchising laws that focus on pre-sale disclosures by a franchisor. In countries following this regulatory scheme, franchisors must prepare and provide to prospective franchisee a disclosure document containing certain required information before a sale of the franchise can be completed. Some countries also require that the disclosure document be filed with a governmental agency along with a copy of the executed franchise agreement and a list of the trademarks that are being used in connection with the franchising arrangement. In some cases, countries will supplement disclosure requirements with provisions that regulate specific aspects of the franchising arrangement.”).

136. Australia and Japan have a polity score of 10, and South Korea and Mexico both have a score of 8, while Russia has a score of 4. *Polity IV Country Reports 2010*, CTR. FOR SYSTEMIC PEACE, <http://www.systemicpeace.org/p4creports.html> (last visited Feb. 15, 2017).

137. See generally Baroncelli et al., *supra* note 27 (analyzing data regarding trademark applications and registrations for countries based on the strength and stature of their economy).

138. 1 THE LAW OF TRANSNATIONAL BUSINESS TRANSACTIONS § 5:24 (Ved P. Nanda et al. eds., 2016) (“Many countries regulate investment by

### A. *Australia*

In 1993, Australia adopted a Franchising Code of Practice—a voluntary form of self-regulation<sup>139</sup>—which was soon followed by an actual regulation (a “Code of Conduct”) in 1998, and amendments in 2001 and 2008.<sup>140</sup> On January 1, 2015, a new Franchising Code of Conduct superseded these prior enactments.<sup>141</sup>

The new code requires presale franchise disclosure<sup>142</sup> and imposes a seven-day “cooling off” period for the franchisee to renege on a franchise agreement.<sup>143</sup> The Australian Competition and Consumer Commission administers the law through regulations made under the Competition and Consumer Act of 2010.<sup>144</sup> Registration is voluntary, with the private sector incentivizing franchisors to register.<sup>145</sup> For instance, financial institutions registered as service providers agree to offer customized franchisee financing and service packages only to franchisors that have current registration numbers.<sup>146</sup>

This latest voluntary code has failed to achieve a significant level of franchisor participation and address serious franchise

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foreigners. One of the important advantages of franchising is that it is sometimes viewed more favorably by foreign authorities than direct activity, and can thus be a way to avoid restrictions on foreign investment and local ownership requirements. Sometimes, however, local law, practice or a franchisor’s own business requirements may require the establishment of a local entity, in which case foreign investment laws must be carefully considered. Such laws affect the type of business organizational vehicle used by a franchisor, and may impose local ownership requirements. Countries that regulate foreign investment almost always require the advance approval of an administrative body. Such bodies often have wide discretion to vary a franchise relationship. Restrictions in areas such as fees, length of the agreement, termination, and rights to technology upon termination are frequently imposed.”)

139. KEITH J. KANOUSE, *FRANCHISING INTERNATIONALLY* 24 (1996).

140. Katharina Wurm, *Franchising Legislation—A Global Overview*, in *INTERNATIONAL FRANCHISING: A PRACTITIONER’S GUIDE* 59, 59 (Marco Hero ed., 2010).

141. Stephen Giles & Penny Ward, *Australia*, in *INTERNATIONAL FRANCHISE SALES LAWS* 1, 4 (Andrew P. Loewinger & Michael K. Lindsey eds., 2015).

142. *Id.* at 7–22.

143. *Id.* at 26; see Robert W. Emerson, *Franchisees as Consumers: The South African Example*, 37 *FORDHAM INT’L L.J.* 455, 465–72 (2014) (discussing franchise “cooling-off” periods in Australia, China, and South Africa).

144. *Competition and Consumer Act 2010* (Cth) pt. IVB (Austl.). The industry code is a regulation under Section 51AE of the Act. Giles & Ward, *supra* note 141, at 4; E-mail from Andrew Terry, Professor of Bus. Regulation, Univ. of Sydney Bus. Sch., to Robert W. Emerson (Mar. 1, 2016, 19:16 EST) (on file with author).

145. Giles & Ward, *supra* note 141, at 22.

146. Philip Colman & John Sier, *Australia*, in *GETTING THE DEAL THROUGH: FRANCHISE* 2016, 12, 12 (Philip F. Zeidman ed., 2015).

problems.<sup>147</sup> However, Australia's Trademark Practices Regulations are, as one would expect, more specific than the voluntary code.<sup>148</sup> These regulations maintain that inappropriate use of any franchisor's intellectual property, including a franchisor's trademark not conforming to the franchisor's indications,<sup>149</sup> constitutes grounds for franchise termination "provided an opportunity was given to remedy and the franchisee failed to do so or committed a subsequent breach."<sup>150</sup>

Australian applications should be made through IP Australia, the government agency charged with administering intellectual property laws.<sup>151</sup> In the time frame of the collected data (1997–2013), Australia received fifty-seven applications and issued five rejections: Naked Pizza in 2010, the Cheesecake Factory and the Boiling Crab in 2011, and the Meatball Shop and ShopHouse Southeast Asian Kitchen in 2013.<sup>152</sup> All five applications were rejected based on the Australian Trade Marks Act 1995, which describes conflicting trademarks in Section 44 and those incapable of being distinguished from one another due to similarity in Section 41.<sup>153</sup>

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147. Interview with Jenny Buchan, Assoc. Professor of Commercial Law, Univ. of New South Wales, in Oviedo, Spain (June 16, 2015); Interview with Andrew Terry, Professor of Bus. Regulation, Univ. of Sydney Bus. Sch., in Oviedo, Spain (June 15, 2015).

148. *Trade Marks Regulations 1995* (Cth) (Austl.).

149. A contractual bar on franchisee misuse of the franchise network's trademark is nearly a universal provision in franchise contracts, at least in the United States. Robert W. Emerson, *Franchise Contract Interpretation: A Two-Part Standard*, 2013 MICH. ST. L. REV. 641, 693 app. § C(9)(b) [hereinafter, Emerson, *Franchise Contract Interpretation*] (noting that in surveys of franchise contracts in 1993 and 2013, 95% or more of the agreements restricted the franchisee's use of the franchisor's trademark). The author has surveyed over 300 franchise termination cases in the United States and found that a principal reason that courts have accepted as "good cause" for terminating a franchise agreement has been—in about 8% of the cases—misuse of trademark (others being, *inter alia*, failure to pay fees or royalties, and failure to meet performance standards). Robert W. Emerson, *Franchise Terminations: "Good Cause" Decoded*, 51 WAKE FOREST L. REV. 130, 134 (2016).

150. Tony Conaghan et al., *Country Report Australia*, in INT'L DISTRIBUTION INST., FRANCHISING COUNTRY REPORTS 9 (2014). The regulations require franchisees to remove and stop using their franchisor's trademarks once the franchise contract has ended. *Id.* at 10.

151. There is information about the application process through the Madrid Protocol at IP AUSTRALIA, [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au) (last visited Feb. 15, 2017).

152. ROMARIN Database, WORLD INTELL. PROP. ORG., <http://www.wipo.int/romarin/search.xhtml> (search in applicable search bars for Nice Classification "43" and Office of Origin "US"; then locate the specific restaurant under the "Mark" column of the search result; then follow the "PDF" hyperlink on the right of the applicable restaurant row) (last visited Feb. 15, 2017); see also Restaurant Franchisor Raw Data, *supra* note 32.

153. *Trade Marks Act 1995* (Cth) pt IV div 2 (Austl.).

## B. Japan

As in all societies, Japan has business norms based on more than just positive law. Therefore, one must look to customs, not just Japanese laws, when conducting business in Japan.<sup>154</sup> The Japanese code of ethics, for instance, lists specific factors that franchisors should consider in selecting qualified franchisees, including the candidate's ability, personality, financial resources, and motivation.<sup>155</sup> As for the law, franchisors must provide a disclosure document to prospective franchisees under Japan's Medium and Small Retail Business Promotion Act<sup>156</sup> ("Japan's Retail Act") and the Japan Fair Trade Commission's Guidelines Concerning Administrative Guidance Under the Antimonopoly Act<sup>157</sup> ("Japanese Franchising Guidelines"). For foreign-based franchisors, there are few legal restrictions on their investments and in their repatriating of profits.<sup>158</sup>

Although U.S. franchisors can open wholly-owned subsidiaries, many, if not most, U.S. franchisors contract through a master franchise agreement with a Japanese company that becomes the American business's subfranchisor in Japan.<sup>159</sup> The Japanese-based subfranchisor then subfranchises the U.S. franchising concept to Japanese franchisees.<sup>160</sup> As the master franchise agreement is

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154. Kate O'Reilly, *When Law and Culture Collide: The Uniform Application of European Private Law* 4 (Maastricht European Private Law Inst., Working Paper No. 2015/3, 2015), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2571318](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2571318) ("While their legal system is largely considered to be western such a classification does not apply for Japanese culture, which has retained its traditional character even in the globalised world of today."). Citing numerous sources, O'Reilly comments that modern Japan's "transplanted Minpō Code is western and specifically European in nature, [but] rests upon centuries of traditional Japanese culture and Confucian ideals as perpetuated by the Tokugawan shogunate. Today, the Japanese are a patriarchal society of people strictly governed by cultural variables, which dictate correct and acceptable Japanese behaviour." *Id.* at 5.

155. Joseph Y. Adler, *The Ethics of Franchising: How Codes of Ethics Compare and What to Consider in Deciding Whether to Subscribe to Them*, 29 *FRANCHISE L.J.* 74, 76 (2009).

156. Law No. 101 of 1973 (Japan); see also Etsuko Hara, *Telling it Like it Is: A Franchisor's Disclosure Obligations*, *INT'L L. OFF.* (July 6, 2010), [https://www.amt-law.com/pdf/bulletins3\\_pdf/100708\\_1742.pdf](https://www.amt-law.com/pdf/bulletins3_pdf/100708_1742.pdf).

157. FAIR TRADE COMMISSION, *GUIDELINES CONCERNING THE FRANCHISE SYSTEM UNDER THE ANTIMONOPOLY ACT* 3-4 (2002), [http://www.jftc.go.jp/en/legislation\\_gls/imonopoly\\_guidelines.files/franchise.pdf](http://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines.files/franchise.pdf); see also Souichirou Kozuka & Takashi Kanai, *Japan*, in *INTERNATIONAL FRANCHISE SALES LAWS* 263, 266 (Andrew P. Loewinger & Michael K. Lindsey eds., 2015).

158. KANOUSE, *supra* note 139, at 21. Historically, quotas, impact duties, and other trade barriers have been the "major impediment to doing business in Japan." *Id.* ("Certain segments, like the food service industry, have little problem with this area, while other segments, like automotive and computers, have major obstacles.")

159. *Id.* at 19.

160. *Id.*

considered a “technical assistance agreement,”<sup>161</sup> it is unlikely to be covered under Japan’s Retail Act or the Japanese Franchising Guidelines.<sup>162</sup> “A technical assistance agreement between a U.S. company and a resident of Japan is subject to the Foreign Exchange and Foreign Trade Control Law (the ‘FECL’).”<sup>163</sup> When the period of agreement or of payment is more than one year, which is the case for almost all franchise agreements,<sup>164</sup> the foreign licensor and Japanese licensee concluding such an agreement must both obtain validation under the FECL.<sup>165</sup>

In the data collection time frame (1997–2013), Japan received fifty-eight applications and issued three rejections: to Green Mountain Coffee and Café Kaila in 2013 and Sweetfrog in 2014.<sup>166</sup> Applications are made through the Japan Patent Office.<sup>167</sup> The applications were refused based on Japanese Trademark Law<sup>168</sup> Articles 3(1), 4(1)(xi), and 6(1), which respectively detail using a vague description of the trademark, conflicting identical

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161. *Id.* This terminology is not unusual, given that a key focus of franchising, in practice and in law, is the continuing transfer of know-how. Robert W. Emerson, *Franchise Savoir Faire*, 90 TUL. L. REV. 589, 589 (2016). Other countries also have similar terminology to Japan. In South Korea, for example, the master franchise arrangement is termed a “technology inducement agreement” (“TIA”). KANOUSE, *supra* note 139, at 21–22 (noting that South Korea’s Foreign Capital Inducement Law makes the TIA subject to governmental approval, to determine, *inter alia*, whether it complies with Korea’s Franchise Business Act).

162. Kozuka & Kanai, *supra* note 157, at 263, 266–67. A medium- or small-scale enterprise is any business that has capital (i.e., net worth) of not more than fifty million yen and employing not more than fifty persons. *Id.* at 266. This law applies only to businesses selling products to ultimate consumers, not to service businesses. *Id.* In 2013, there were approximately 4.19 million businesses meeting this definition. See SMALL & MEDIUM ENTER. AGENCY, JAPAN’S POLICY ON SMALL AND MEDIUM ENTERPRISES (SMEs) AND MICRO ENTERPRISES 6 (2013), [http://www.chusho.meti.go.jp/sme\\_english/outline/04/20131007.pdf](http://www.chusho.meti.go.jp/sme_english/outline/04/20131007.pdf).

163. KANOUSE, *supra* note 139, at 19 (“The FECL requires the filing of the master franchise agreement with the Japanese Fair Trade Commission, which reviews the agreement to ensure that its provisions do not violate various laws regarding monopolization, unreasonable restraints of trade and unfair business practices.”).

164. Emerson, *Franchise Contract Interpretation*, *supra* note 149, at 694 (a 2013 study of 100 U.S. franchise agreements found that 17% had a term of twenty years, 7% were for fifteen years, over two-thirds (68%) had a ten-year term, and 8% were for five years).

165. In the rare case where such periods are for less than one year, only the licensee is required to obtain permission under the FECL. See WORLD TRADEMARK LAW AND PRACTICE 3 JPN § 8 (*Licensing and Assignments*) (2015).

166. ROMARIN Database, *supra* note 152; see *infra* Appendix XII.

167. FAQs, JAPAN PAT. OFF., <http://www.jpo.go.jp/english/faqs/index.html> (last visited Feb. 15, 2017).

168. Shōhyō-hō [Trademark Act], Law No. 127 of 1959 (Japan), translated in Japan, WORLD INTELL. PROP. ORG., <http://www.wipo.int/wipolex/en/details.jsp?id=6957> (last visited Feb. 23, 2017).

trademarks, and creating doubt as to whether the trademark would be put into use in the foreseeable future.<sup>169</sup>

### C. South Korea

“South Korea’s pattern of regulation began with its Franchising Guidelines adopted in 1997 by the South Korean Fair Trade Commission,” which were replaced by the Fair Transactions in Franchise Business Act (“Franchise Business Act”)<sup>170</sup> (effective in 2002, amended in 2008, 2010, and 2014).<sup>171</sup> As in Japan and many other countries, a U.S. franchisor frequently enters the South Korean market through a master franchise agreement with a local business entity, which in turn subfranchises to other South Koreans.<sup>172</sup>

In addition to Korea’s Franchise Business Act, its Unfair Competition Prevention and Trade Secret Protection Act<sup>173</sup> is also “available to protect well-known unregistered trademarks, trade secrets and know-how.”<sup>174</sup> Indeed, while a trademark application remains pending, the applicant’s warning letter “to a person who uses an identical or similar mark on goods that are identical or similar to the goods for which the application has been filed” may effectively serve to backdate the applicant’s rights from “the date the written warning was received by such person up to the registration date of the trademark.”<sup>175</sup>

169. These general issues are distinct from the more pointed, specific concerns associated with infringement of a trademark. Japan follows the usual approach in holding that when the display of a franchisor’s trademark fails to conform to the franchisor’s intentions a substantial breach is present. *Id.* art. 4, para. xix; *see also id.* art. 51, para. 1. In one example from October 8, 1986, the Osaka District Court found a breach of contract when the franchisee disobeyed the franchisor’s instructions about the presentation of bento lunchbox sales via photos, signs, and wrapping paper. Souichirou Kozuka & Jun Kanda, *Country Report Japan*, in *FRANCHISING COUNTRY REPORTS*, at 13–14 (2011) (noting that clauses require franchisees, upon franchise contract termination, to remove and cease using their franchisors’ trademarks).

170. Peulaenchajjeu sa-eob beob [Franchise Business Act], Act. No. 6704, May 13, 2002, *amended by* Act. No. 12094, Feb. 14, 2014 (S. Kor.), *translated in* Korea Legislation Research Institute online database, [http://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=29441&lang=ENG](http://elaw.klri.re.kr/eng_service/lawView.do?hseq=29441&lang=ENG).

171. Philip F. Zeidman, *With the Best of Intentions: Observations on the International Regulation of Franchising*, 19 *STAN. J.L. BUS. & FIN.* 237, 258 (2014).

172. KANOUSE, *supra* note 139, at 21.

173. Unfair Competition Prevention and Trade Secret Protection Act, Act. No. 911, Dec. 30, 1961, *amended by* Act No. 11963, July 30, 2013 (S. Kor.), *translated in* Korea Legislation Research Institute online database, [http://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=39690&lang=ENG](http://elaw.klri.re.kr/eng_service/lawView.do?hseq=39690&lang=ENG).

174. Jae Hoon Kim & Sun Chuang, *Korea*, in *GETTING THE DEAL THROUGH: FRANCHISE 2013*, at 121, 121 (Philip F. Zeidman ed., 2012).

175. *Id.*

The Korean Fair Trade Commission has broad powers to require changes to the master franchise agreement or otherwise levy penalties or impose corrective orders as a condition to approval and enforcement.<sup>176</sup> Moreover, the most recent Franchise Business Act amendments, effective February 2014, place more obligations on franchisors in South Korea, including (1) a duty to pay at least 20% of the costs related to improvement of a franchised unit (at least 40% if the improvement involves expansion or relocation), (2) a prohibition on encroachment upon the franchisee's business territory, (3) a responsibility to provide information on sales revenue projections, and (4) a ban on unreasonable imposition of night-time business hours (e.g., due to operating losses at a franchise location or the illness of the franchisee).<sup>177</sup>

From 1997 through 2013, South Korea received thirty-two applications and issued two rejections: to Green Mountain Coffee and Sweetfrog in 2013.<sup>178</sup> The applications were rejected on the grounds of a conflicting prior registration and a vague trademark description under Articles 7(1)(vii) and 10(1), respectively, of the Franchise Business Act.<sup>179</sup> Note that South Korea is a first-to-file country and applications should be made through the Korean Intellectual Property Office.<sup>180</sup>

#### D. Mexico

The North American Free Trade Agreement ("NAFTA") has opened in Mexico numerous business opportunities for U.S. franchisors.<sup>181</sup> The Mexican market for franchising, both domestic franchise networks and those originating from abroad, represents a tremendous growth engine for the nation's economy. In recent

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176. Jae Hoon Kim & Brendon Carr, *Korea*, in INTERNATIONAL FRANCHISE SALES LAWS 289, 293 (Andrew P. Loewinger & Michael K. Lindsey eds., 2015).

177. *Id.* at 306–08. For analysis of encroachment issues (obligation 2) in the United States, see Robert W. Emerson, *Franchise Encroachment*, 47 AM. BUS. L.J. 191, 192–93 (2010). Territorial issues of expectations in the comparative law setting are examined in Robert W. Emerson, *Franchise Contracts and Territoriality: A French Comparison*, 3 OHIO ST. ENTREPRENEURIAL BUS. L.J. 315, 316 (2009) (comparing exclusivity and encroachment law in France and the United States), and in Robert W. Emerson, *Franchise Territories: A Community Standard*, 45 WAKE FOREST L. REV. 779, 779–80 (2010) (containing evidence from surveys). For examination of likening franchisees to consumers and the rights thereby accorded to franchise owners and operators (obligation 4), see Emerson, *supra* note 143, at 457.

178. *ROMARIN Database, supra* note 152; see *infra* Appendix XII.

179. *ROMARIN Database, supra* note 152.

180. *Application Procedure for Trademarks*, KOREAN INTELL. PROP. OFF., <http://www.kipo.go.kr/kpo/user.tdf?a=user.english.html.HtmlApp&c=30103&catmenu=ek30103> (last updated Sept. 30, 2016).

181. KANOUSE, *supra* note 139, at 9.

years, franchising has expanded at almost three times the overall rate of growth for Mexico's gross domestic product.<sup>182</sup>

In 1991, Mexico modernized its franchising policies by replacing the Transfer of Technology Law, which required the registration of all franchise agreements, with the Law for the Promotion and Protection of Industrial Property ("Industrial Property Law").<sup>183</sup> The new law completely overhauled the legal and regulatory framework that stifled technological development in Mexico.<sup>184</sup>

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182. Lorelee P. Dodge, *Opportunity for US-Based Franchises in Mexico: Legal Overview and Potential Pitfalls*, 20 LAW & BUS. REV. AM. 55, 55 (2014). The largest sector among these franchises is the food and beverage sector, with approximately one-third of the market. *Id.*

183. Ley de la Propiedad Industrial [LPI], Diaro Oficial de la Federación [DOF] 28-06-1991, últimas reformas DOF 28-06-2010 (Mex.); see also Dodge, *supra* note 182, at 56. The 1982 Mexican Transfer of Technology Law ("TTL") may even be seen as a continuation of Mexico's traditional hostility toward foreign activity in its economy. See Alexander C. Hoagland, Jr., *Mexico*, in SURVEY OF FOREIGN LAWS AND REGULATIONS AFFECTING FRANCHISING 1-2 (Philip F. Zeidman ed., 1990); Enrique A. Gonzalez & Joyce G. Mazero, *Franchising in Mexico: Breaking with Tradition*, 7 FRANCHISE L.J. 3, 3 (1987). Only in time has foreign investment grown. See Brandon Batt, *Private Foreign Investment: Why Mexico's Economic Future Depends on It*, 41 ARIZ. ST. L.J. 1111, 1113, 1116 (2009); Robert M. Kossick, Jr. & Julian Fernandez Neckelmann, *Structuring Private Equity Transactions in Mexico*, 6 NAFTA L. & BUS. REV. AM. 105, 117-18 (2000).

184. Gabriela Campos de Pablo et al., *Mexico*, in INTERNATIONAL FRANCHISING, at MEX/1, MEX/2-3, MEX/9-11 (Dennis Campbell ed., Juris Publishing, 2d ed. 2015). In 1990, new Regulations were issued under the 1982 TTL, which substantially liberalized the climate for franchising. See John B. Knight & Carlos Muggenburg, *Mexico Redoubles Efforts to Attract Foreign Franchisors*, 9 FRANCHISE L.J. 3, 4 (1990). The Regulations contained three major provisions. First, there was a definition of the term franchise agreement. *Id.* at 4. The inclusion of a specific definition had the salutary effect of differentiating franchise agreements from other transfers of technology agreements and recognized that franchising as a means of distribution was beneficial for the Mexican economy. *Id.* Second, the Regulations provided for a blanket exemption from all the specific grounds for denial of registration (except the "Calvo" requirement that a franchise agreement be subject to Mexican law and jurisdiction), provided that a franchise agreement benefits Mexico in any one of nine broadly stated ways. See *id.* at 5. Finally, the Regulations restricted the ability of the administrative authorities to deny registration for a number of reasons. See *id.* at 6. In 1991, the Industrial Property Law was enacted and repealed the Transfer of Technology Law and the Regulations. See Gonzalo Ulloa, *Spanish Franchise Association Lists Information Subject to Presale Disclosure*, Bus. Franchise Guide (CCH) ¶7342, at 13,097 (1996). The Industrial Property Law reflected the government's decision to move away from controlling technology entering the country and toward the deregulation of the Mexican economy. Campos de Pablo et al., *supra*, at MEX/2-3, MEX/10-11. It indicates that franchisors must provide prospective franchisees with the license of trademarks and the technology knowledge or assistance for the uniform manufacture or sale of goods and/or services to maintain the quality and image of the products or services. *Id.* Trademark rights that are a part of the franchise may be transferred from the trademark holder to the licensee through registration with the Mexican Ministry of Commerce and Industrial

Hence, franchisors were no longer required to register franchise agreements.<sup>185</sup> The most significant amendments to the new law were promulgated in 2006, with the franchisor now required to provide a more substantial set of disclosures to potential franchisees at least thirty days before the execution of a franchise agreement.<sup>186</sup> The 2006 amendments also include provisions against discrimination and unfair competition.<sup>187</sup>

During the data collection time frame (1997–2013), Mexico received four applications for trademark protection and rejected three of those applications.<sup>188</sup> The 2013 rejections were for applications from Red Robin Gourmet Burgers & Brews, Native New Yorker, and Molecular Bar.<sup>189</sup> The right to a trademark's exclusive use in Mexico is obtained through registration with the Mexican Institute of Industrial Property ("IMPI").<sup>190</sup> Registration with the IMPI occurs upon a successful application for registration.<sup>191</sup> Article 90 of the Industrial Property Law<sup>192</sup> lists the only legal grounds to reject a trademark application in Mexico. Red Robin Gourmet Burgers & Brews, Native New Yorker, and Molecular Bar's applications were rejected because they had violated provision XVI of Article 90, which prohibits "[a] trademark that is identical or confusingly similar to another in respect of which an application has been filed earlier and is awaiting registration or to another that is already registered and in force, and is applied to the same or similar products or services."<sup>193</sup>

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Development, which has a very restricted right of denial. See Eryck Armando Castillo Orive & Jimena Chi Barrales, *Country Chapters: Mexico*, WORLD TRADEMARK REV., <http://www.worldtrademarkreview.com/Intelligence/Yearbook/2016/Country-chapters/Mexico> (last visited Feb. 15, 2017).

185. Campos de Pablo et al., *supra* note 184, at MEX/4.

186. *Id.* at MEX/4–6. There are various administrative remedies for violations, including actions by the would-be franchisee. *Id.* at MEX/9–11.

187. *Id.* at MEX/6–9. See generally Robert W. Emerson, *Franchise Discrimination and Goodwill: An American and Comparative Law Perspective*, in COMMERCIAL DISTRIBUTION (Pierre Demolin, Leonard Hawkes & Benoit Simplaere eds., 2016) (reviewing states' anti-discrimination franchise statutes).

188. See *infra* Appendix XII.

189. ROMARIN Database, *supra* note 152.

190. Orive & Barrales, *supra* note 184.

191. See generally Alvaro Ramirez Bonilla, *Trademark Registration Process in Mexico*, HG LEGAL RESOURCES, <http://www.hg.org/article.asp?id=25823> (last visited Feb. 15, 2017) (discussing the process for applying for trademark registration).

192. Ley de la Propiedad Industrial [LPI] art. 90, Diario Oficial de la Federación [DOF] 28-06-1991, últimas reformas DOF 28-06-2010 (Mex.). Mexico's franchise law itself is in another statutory section. See Zeidman, *supra* note 171, at 253–54.

193. Ley de la Propiedad Industrial [LPI] art. 90 (XVI); ROMARIN Database, *supra* note 152; see also Jorge Mondragon, Mexico, in *Getting the Deal Through: Franchise 2014*, at 116, 117 ("There is no legal obligation for franchisors or franchisees to register a franchise agreement with the IMPI;

### E. *Russia*

In 1996, the Russian legislature enacted a chapter<sup>194</sup> on franchise transactions in Part II of its new Civil Code.<sup>195</sup> This chapter dictates the contents of a franchise relationship and thus has major practical implications.<sup>196</sup> The drafters identified both consumer protection and antitrust concerns as reasons for codifying franchise transactions law.<sup>197</sup> Consumer interests are safeguarded by: (a) the obligatory registration of each separate franchise transaction;<sup>198</sup> (b) the franchisee's obligations to inform consumers of its use of the franchisor's name and trademarks pursuant to a franchise agreement and to ensure quality conformance of the manufactured goods, services rendered, and work performed under the franchise contract;<sup>199</sup> and (c) the franchisor's liability for claims filed against the franchisee.<sup>200</sup>

Besides the usual requirements that all contracts must meet,<sup>201</sup> a franchise agreement is valid under Russian law only through

however, foreign franchisors should consider making such a registration for the purposes of proving the use of their trademarks and protecting their industrial property rights against third parties . . .”).

194. GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] [Civil Code] arts. 1027–1040 (Russ.).

195. Natalia Iordanova, *Russia*, in INTERNATIONAL FRANCHISING, at RUS/1, RUS/1 (Dennis Campbell ed., Juris Publishing, 2d ed. 2015); Corinna M. Wissels, *Can Franchising Prosper Under New Russian Law?*, Bus. Franchise Guide (CCH) ¶ 7352 (1996).

196. Wissels, *supra* note 195. The Russian franchising chapter does not appear to have harmed the growth of franchising in Russia and may in fact have facilitated it. From only a few franchisors in big cities, such as Moscow and St. Petersburg, in the mid-1990s franchising grew tremendously. *Id.* As of 2011, there were over 20,000 franchises and about 485 franchisors. Iordanova, *supra* note 195, at RUS/12.

197. Wissels, *supra* note 195.

198. GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] [Civil Code] art. 1028(2) (Russ.). The granting of the rights to use trademarks is registered with the Federal Service for Intellectual Property Patents and Trademarks. See Elena Kvartnikova, *Country Report Russia*, in INT'L DISTRIBUTION INST., FRANCHISING COUNTRY REPORTS 17 (2015).

199. GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] [Civil Code] art. 1032 (Russ.).

200. *Id.* art. 1034; see Iordanova, *supra* note 195, at RUS/8–9 (discussing joint liability of franchisor and franchisee toward injured third parties). Franchisor-franchisee joint liability is a current, extremely controversial topic in U.S. franchise law. See Browning-Ferris Indus. of Cal., Inc., 362 N.L.R.B. No. 186 (2015) (holding that two entities—in effect, the franchisor and franchisee—are joint employers of, say, a franchised unit's employees if a franchisor has reserved authority to control the essential terms and conditions of that employment—setting wages and hours, the number of employees, the scheduling, manner, and type of work, and operating instructions—even if this power of the franchisor is not exercised and the actual control of employment matters is communicated to workers through the franchisee).

201. The general rules on contract in Part I of the Civil Code apply. Wissels, *supra* note 195 (noting that, for example, the following basic requirements of

compliance with special Civil Code provisions. Civil Code Article 1028 requires the commercial concessions (franchise) contract to be in written form<sup>202</sup> and registered with “the federal executive power body on intellectual property.”<sup>203</sup> The franchise law statutory section of the Russian Civil Code, Part II (Chapter 54), prescribes two mandatory obligations for a franchisor.<sup>204</sup> The first is an obligation to transfer to the franchisee technical and commercial documentation, to provide information necessary for the franchisee to exercise its rights under the contract, and to instruct the franchisee and its employees on issues related to the execution of these rights.<sup>205</sup> The second is an obligation to issue all licenses stipulated in the contract,<sup>206</sup> and to comply with all legal formalities, that may be required under current intellectual property laws.<sup>207</sup> In addition, Chapter 54 also enumerates a number of dispositive obligations,<sup>208</sup> such as the franchisor’s duty to supervise the franchisee’s quality of goods, work, or services.<sup>209</sup> The Russian Civil Code primarily introduces dispositive norms that may be set aside by the contracting parties’ mutual agreement.<sup>210</sup>

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contracts law must be met: an offer and an acceptance on all essential terms and conditions; both parties competent to contract and having reached agreement by their free will; and a contract that neither contravenes principles of legal order or morality, nor violates mandatory law). The Civil Code principles apply equally with respect to franchisors or suppliers, and likewise with franchisees or distributors. For consistency, the authors maintained the use of franchisors and franchisees.

202. GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] [Civil Code] art. 1028(1) (Russ.).

203. *Id.* art. 1028(2).

204. Wissels, *supra* note 195.

205. GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] [Civil Code] art. 1031 (Russ.); *see also* Bryan Schwartz & Leandro Zylberman, *International Franchise Regulation*, 8 ASPER REV. INT’L BUS. & TRADE L. 317, 341 (2008) (discussing the Russian commercial concessions law’s interplay between contract principles and intellectual property interests).

206. GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] [Civil Code] art. 1031(1) (Russ.).

207. *Id.* art. 1031(2) (referring, *inter alia*, to the franchisor’s duty to provide “technical and consultative assistance for the user [the franchisee], including assistance in the training and upgrading the skill of workers”). More comprehensive and all-encompassing than trademark rights is know-how. The franchisor’s obligation to develop and provide for the franchisee the system’s know-how (*savoir faire*) is a continuing duty throughout the life of a franchise under the law in most civil law regimes, such as France. *See* Emerson, *supra* note 161, at 589.

208. Wissels, *supra* note 195.

209. GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] [Civil Code] art. 1031(2) (Russ.); Iordanova, *supra* note 195, at RUS/6.

210. Wissels, *supra* note 195.

On the other hand, a franchisee also has obligations under the Civil Code.<sup>211</sup> These include the following duties: to heed the franchisor's instructions about use of exclusive rights, including directions about interior and exterior design of the premises;<sup>212</sup> to maintain the secrecy of know-how and the confidentiality of other private commercial information;<sup>213</sup> to render all additional services that customers expect when purchasing the goods, services, or work directly from the franchisor;<sup>214</sup> and to inform buyers (e.g., with signs) of the nature of its business as a franchisee.<sup>215</sup> Furthermore, if a franchisor's trademarks are protected in Russian territory, then a franchisee can use those trademarks on the franchisee's website only under and in compliance with a commercial concession or license.<sup>216</sup>

Russian law permits the exhaustion of exclusive trademark rights for goods imported into Russia or any member state of the Eurasian Economic Union.<sup>217</sup> In court practice, importation of goods with trademarks is deemed to be an alternative trademark use that a trademark rights holder must permit.<sup>218</sup> On the other hand, in Russia the parallel import of goods (meaning that the trademark rights holder is importing the goods while another party also tries to import the same goods) is not lawful, even though these "parallel" goods have the trademark on them, if performed without the consent of the rights holder.<sup>219</sup>

The two legitimate ways to transfer trademark rights are types of contracts: commercial concessions and licenses.<sup>220</sup> Via a concession, the principal may grant trademark rights usage only ancillary to the provision of other exclusive rights.<sup>221</sup> Alternatively,

211. GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] [Civil Code] art. 1032 (Russ.).

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.* (referring to the franchisor's duty "to inform the buyers (customers) by the most patent method that he uses the firm's name, the commercial designation, trademark, service mark or any other means of individualization of virtue of the contract of the commercial concession.").

216. Kvartnikova, *supra* note 198, at 16. The one exception is to permit the use of a trademark for goods that have been introduced in civil-law transactions in Russian Federation territory directly by another party holding rights and giving consent. *Id.*

217. *Id.* The five national member-states of the Eurasian Economic Union are Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia. *About the Union*, EURASIAN ECON. UNION, <http://www.eaeunion.org/?lang=en#about> (last visited Feb. 15, 2017).

218. Kvartnikova, *supra* note 198, at 16.

219. *Id.*

220. *Id.* at 22. Commercial concession contracts are, in effect, franchise contracts. GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] [Civil Code] art. 1027 (Russ.); Iordanova, *supra* note 195, at RUS/1-4.

221. Kvartnikova, *supra* note 198, at 22.

through a license agreement, the franchisor may separately grant the trademark rights.<sup>222</sup>

Part IV of the Russian Civil Code sets out a limited list of grounds for canceling a trademark registration, which does not include any contractual duties prohibiting the trademark registration.<sup>223</sup> Franchisors may cancel a trademark registered by franchisees when that trademark is identical or confusingly similar to the franchisor's trademark, but only if the franchisor's trademark is already protected in Russia with a national or international registration.<sup>224</sup> Competition authorities can (1) examine a franchisee's actions in acquiring and using these exclusive trademark rights, (2) declare these actions to be unfair competition, and (3) in effect, enjoin this misbehavior.<sup>225</sup>

From 1997 through 2013, Russia received twenty-one applications but only rejected one from Texas Roadhouse in 2013.<sup>226</sup> The Law of the Russian Federation on Trademarks, Service Marks, and Appellation of the Origin of Goods governs Russian trademarks.<sup>227</sup> Registration of a trademark confers exclusive propriety rights.<sup>228</sup> Some U.S. proponents argued that the trademark rejection was based on Russia's unwillingness to protect well-known American trademarks.<sup>229</sup> However, since Texas Roadhouse's rejection in 2013, Russia's Federal Service for

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222. *Id.* Civil Code Article 1235 governs intellectual property licenses. GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] [Civil Code] art. 1235 (Russ.).

223. GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] [Civil Code] art. 1235 (Russ.); Iordanova, *supra* note 195, at RUS/4.

224. Kvartnikova, *supra* note 198, at 23.

225. *Id.*

226. *ROMARIN Database*, *supra* note 152; *see infra* Appendix XII. Russia also rejected an application for well-known status outside the 1997–2013 time frame from Ford Motor Company in 2014. *Ford's Application for 'Well-Known' Status Rejected in Russia*, WORLD INTELL. PROP. REV. (Oct. 28, 2014), <http://www.worldipreview.com/news/ford-s-application-for-well-known-status-rejected-in-russia-7336>.

227. Zakon Rossiiskoi Federatsii "O Tovarnikh Znakakh, Znakakh Obsluzhivaniya i Naimenovaniyakh Mest Proiskhozhdeniya Tovarov" [Law of the Russian Federation on Trademarks, Service Marks and Appellation of the Origin of Goods], SOBR. ZAKONOD [RF] 2002, No. 3520-1 (Russ.). The Russian trademark registration process can be found at Nikolay Bogdanov, *Protection of Trademarks in Russia*, LAW FIRM GORODISSKY & PARTNERS, <https://www.gorodissky.com/publications/articles/protection-of-trademarks-in-russia/> (last visited Mar. 5, 2017).

228. *See* Bogdanov, *supra* note 227.

229. Lucas Michels, *Brand Tough?: Ford Denied Well-Known Trademark Protection in Russia*, IPKAT (Nov. 6, 2014), <http://ipkitten.blogspot.com/2014/11/brand-tough-ford-denied-well-known.html>.

Intellectual Property has also

rejected [Ford Motor Company's ("FMC")] well-known trademark petition due to FMC's failure to provide evidence of the company's extensive use of the logo in Russia, citing both a lack of FMC's operations in Russia and a failure to establish continued uniform use of the FMC name and logo in the country.<sup>230</sup>

FMC's experience in Russia suggests that the WIPO and EUIPO should require countries to comply with a uniform standard of rules in adjudicating trademark applications before the countries are allowed to take advantage of the inflow of franchisors that apply through the Madrid Protocol and European Union Trademark systems.

#### VIII. CONCLUSION

This Study focuses on restaurant franchisors and the rejection rate using the Madrid Protocol system.<sup>231</sup> Further research could expand the data set to include hotel franchisors, which make up the other half of Nice Class 43,<sup>232</sup> and could explore and characterize the countries that most commonly reject applications through the European Union Trademark system thus causing the entire registration to fail.

An important aspect of trademarks still to be explored is duration. A trademark registration lasts for ten years.<sup>233</sup> The franchisors that registered their trademarks through the European Union Trademark system before 2003, because no other or perhaps better option existed at the time, have likely been exploring the possibilities of renewal using the Madrid Protocol versus the European Union Trademark system. An interesting analysis could be conducted on franchise law reform, specifically in the five countries with a high polity score that still issued multiple rejections. The numerous rejection cases from Australia, Japan, South Korea, Mexico, and Russia serve as proof that even developed countries with existing franchise laws struggle with the same trademark application rejection issues that were thought to be reserved for third world countries without franchise laws. This Study exposes a clear weakness in the established laws that must be addressed.

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230. *Id.*

231. *See supra* notes 30 and 52 and accompanying text.

232. *See supra* text accompanying note 32.

233. 15 U.S.C. § 1058(a) (2012).

## APPENDIX

I. EUROPEAN UNION TRADEMARK 28 MEMBER COUNTRIES\*<sup>234</sup>

Austria, Belgium,\* Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia,\* Finland, France,\* Germany, Greece, Hungary, Ireland, Italy,\* Latvia,\* Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania,\* Slovakia, Slovenia, Spain,\* Sweden,\* and the United Kingdom.

II. MADRID PROTOCOL 98 MEMBER COUNTRIES\*<sup>235</sup>

African Intellectual Property Organization (“OAPI”), Albania,\* Algeria, Antigua and Barbuda, Armenia, Australia,\* Austria, Azerbaijan,\* Bahrain, Belarus,\* Belgium,\* Bhutan, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Cambodia, China,\* Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia,\* European Union (“EU”), Finland, France,\* Gambia, Georgia,\* Germany, Ghana, Greece, Hungary, Iceland, India, Iran, Ireland, Israel, Italy,\* Japan,\* Kazakhstan,\* Kenya, Kyrgyzstan,\* Lao People’s Democratic Republic, Latvia,\* Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Mexico,\* Moldova,\* Monaco, Mongolia,\* Montenegro, Morocco, Mozambique, Namibia, Netherlands, New Zealand, North Korea, Norway, Oman, Philippines, Poland, Portugal, Romania,\* Russia,\* Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Sierra Leone, Singapore, Slovenia, South

\* Indicating a nation with specific franchise legislation.

234. *Member Countries of the EU (Year of Entry)*, EUR. UNION, [https://europa.eu/european-union/about-eu/countries\\_en](https://europa.eu/european-union/about-eu/countries_en) (last updated Feb. 24, 2017). Croatia joined last (so there were 28 countries as of 2013). *Id.* Statistics here are based upon the 27 member countries—all but Croatia—with applications being pre-Croatia’s 2013 admission. For a map showing nations with franchise laws, see *International Franchising Laws*, INT’L FRANCHISE ASS’N, <http://www.franchise.org/international-franchising-laws> (last visited Feb. 24, 2017).

\* Indicating a nation with specific franchise legislation.

235. *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, WORLD INTELL. PROP. ORG. (Jan. 13, 2017), [http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/madrid\\_marks.pdf](http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/madrid_marks.pdf). Seven nations with franchise regulations that are not Madrid Protocol signatories are Angola, Brazil, Canada, Indonesia, Malaysia, South Africa, and Taiwan. Zeidman, *supra* note 171, at 252–61 (discussing the franchise laws of thirty-five countries). In effect, there are thirty-four nations with franchise legislation, with twenty-seven being Madrid Protocol nations and six that are not. *Id.* This Study does not include Antigua and Barbuda, Barbados, Saudi Arabia, and Venezuela, as those countries’ franchise laws do not necessarily depend on a party’s characterization as a franchise. See *id.* at 261.

Korea,\* Spain,\* Sudan, Swaziland, Sweden,\* Switzerland, Syria, Tajikistan, Tunisia,\* Turkey, Turkmenistan,\* Ukraine,\* United Kingdom, United States,\* Uzbekistan, Vietnam,\* Zambia, and Zimbabwe.

### III. REGRESSION 1: EFFECT OF INCLUSION IN THE QSR TOP 50 ON EUROPEAN UNION TRADEMARK REGISTRATION

#### SUMMARY OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.375182
R Square	0.140762
Adjusted R Square	0.135795
Standard Error	0.453173
Observations	175

#### ANOVA

	<i>Df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	1	5.820292	5.820292	28.3411	3.13E-07
Residual	173	35.52828	0.205366		
Total	174	41.34857			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	0.51145	0.039594	12.9174	3.70E-27	0.433301	0.5896
QSR Top 50	0.420368	0.078963	5.323636	3.13E-07	0.264514	0.576222

#### SUMMARY STATISTICS

<i>European Union Trademark</i>		<i>QSR Top 50</i>	
Mean	0.617143	Mean	0.251429
Standard Error	0.03685	Standard Error	0.032889
Median	1	Median	0
Mode	1	Mode	0
Standard Deviation	0.487479	Standard Deviation	0.435079
Sample Variance	0.237635	Sample Variance	0.189294
Kurtosis	-1.78417	Kurtosis	-0.6718
Skewness	-0.48616	Skewness	1.155859

Range	1	Range	1
Minimum	0	Minimum	0
Maximum	1	Maximum	1
Sum	108	Sum	44
Count	175	Count	175

IMPACT ASSESSMENT

	Coefficient	Standard Deviation	Impact
QSR 50	0.420368	N/A	0.420368

IV. REGRESSION 2: EFFECT OF SENIORITY ON EUROPEAN UNION TRADEMARK REGISTRATION

SUMMARY OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.119427
R Square	0.014263
Adjusted R Square	0.008565
Standard Error	0.485387
Observations	175

ANOVA

	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	1	0.589744	0.589744	2.503155	0.115445
Residual	173	40.75883	0.2356		
Total	174	41.34857			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	0.512195	0.075805	6.756777	2.07E-10	0.362574	0.661816
Seniority	0.137059	0.086629	1.582136	0.115445	-0.03393	0.308044

SUMMARY STATISTICS

<i>European Union Trademark</i>		<i>Seniority</i>	
Mean	0.617143	Mean	0.765714
Standard Error	0.03685	Standard Error	0.032109
Median	1	Median	1

Mode	1	Mode	1
Standard Deviation	0.487479	Standard Deviation	0.424767
Sample Variance	0.237635	Sample Variance	0.180427
Kurtosis	-1.78417	Kurtosis	-0.40307
Skewness	-0.48616	Skewness	-1.26557
Range	1	Range	1
Minimum	0	Minimum	0
Maximum	1	Maximum	1
Sum	108	Sum	134
Count	175	Count	175

## IMPACT ASSESSMENT

	Coefficient	Standard Deviation	Impact
Seniority	0.137059	N/A	0.137059

## V. REGRESSION 3: EFFECT OF QSR TOP 50 ON MADRID PROTOCOL REGISTRATION

## SUMMARY OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.736988
R Square	0.543151
Adjusted R Square	0.54051
Standard Error	0.24556
Observations	175

## ANOVA

	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	1	12.40247	12.40247	205.681	3.04E-31
Residual	173	10.43182	0.0603		
Total	174	22.83429			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	1	0.021455	46.60996	7.3E-100	0.957653	1.042347
QSR Top 50	-0.61364	0.042787	-14.3416	3.04E-31	-0.69809	-0.52918

## SUMMARY STATISTICS

<i>Madrid</i>		<i>QSR Top 50</i>	
Mean	0.845714	Mean	0.251429
Standard Error	0.027384	Standard Error	0.032889
Median	1	Median	0
Mode	1	Mode	0
Standard Deviation	0.362259	Standard Deviation	0.435079
Sample Variance	0.131232	Sample Variance	0.189294
Kurtosis	1.747537	Kurtosis	-0.6718
Skewness	-1.93072	Skewness	1.155859
Range	1	Range	1
Minimum	0	Minimum	0
Maximum	1	Maximum	1
Sum	148	Sum	44
Count	175	Count	175

## IMPACT ASSESSMENT

	Coefficient	Standard Deviation	Impact
QSR 50	-0.61364	N/A	-0.61364

## VI. REGRESSION 4: EFFECT OF PRE 03 AND SENIORITY ON MADRID PROTOCOL REGISTRATION

## SUMMARY OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.374354
R Square	0.140141
Adjusted R Square	0.130143
Standard Error	0.337865
Observations	175

## ANOVA

	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	2	3.200021	1.600011	14.01641	2.29E-06
Residual	172	19.63426	0.114153		
Total	174	22.83429			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	0.995711	0.052956	18.80275	1.42E-43	0.891185	1.100238
Seniority	-0.10979	0.061759	-1.77764	0.07723	-0.23169	0.012118
Pre 03	-0.27472	0.061248	-4.48535	1.33E-05	-0.39562	-0.15383

## SUMMARY STATISTICS

	<i>Madrid</i>	<i>Seniority</i>	<i>Pre 03</i>
Mean	0.845714	Mean 0.765714	Mean 0.24
Standard Error	0.027384	Standard Error 0.032109	Standard Error 0.032377
Median	1	Median 1	Median 0
Mode	1	Mode 1	Mode 0
Standard Deviation	0.362259	Standard Deviation 0.424767	Standard Deviation 0.428309
Sample Variance	0.131232	Sample Variance 0.180427	Sample Variance 0.183448
Kurtosis	1.747537	Kurtosis -0.40307	Kurtosis -0.49756
Skewness	-1.93072	Skewness -1.26557	Skewness 1.228113
Range	1	Range 1	Range 1
Minimum	0	Minimum 0	Minimum 0
Maximum	1	Maximum 1	Maximum 1
Sum	148	Sum 134	Sum 42
Count	175	Count 175	Count 175

## IMPACT ASSESSMENT

	Coefficient	Standard Deviation	Impact
Seniority	-0.10979	N/A	-0.10979
Pre 03	-0.27472	N/A	-0.27472

VII. REGRESSION 5: EFFECT OF QSR TOP 50 ON NUMBER OF COUNTRIES

SUMMARY OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.317939
R Square	0.101085
Adjusted R Square	0.095889
Standard Error	13.1463
Observations	175

ANOVA

	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	1	3362.181	3362.181	19.45423	1.81E-05
Residual	173	29898.76	172.8252		
Total	174	33260.94			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	17.35115	1.148597	15.10638	2.01E-33	15.08408	19.61821
QSR Top 50	10.1034	2.29066	4.410695	1.81E-05	5.582162	14.62464

SUMMARY STATISTICS

<i>Countries</i>		<i>QSR Top 50</i>	
Mean	19.89143	Mean	0.251429
Standard Error	1.045138	Standard Error	0.032889
Median	27	Median	0
Mode	27	Mode	0
Standard Deviation	13.82587	Standard Deviation	0.435079
Sample Variance	191.1548	Sample Variance	0.189294
Kurtosis	-1.36748	Kurtosis	-0.6718
Skewness	-0.25648	Skewness	1.155859
Range	55	Range	1
Minimum	1	Minimum	0
Maximum	56	Maximum	1
Sum	3481	Sum	44
Count	175	Count	175

## IMPACT ASSESSMENT

	Coefficient	Standard Deviation	Impact
QSR 50	10.1034	0.435079	4.395777169

## VIII. REGRESSION 6: EFFECT OF SENIORITY ON NUMBER OF COUNTRIES

## SUMMARY OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.139499
R Square	0.01946
Adjusted R Square	0.013792
Standard Error	13.7302
Observations	175

## ANOVA

	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	1	647.2546	647.2546	3.433376	0.065595
Residual	173	32613.68	188.5184		
Total	174	33260.94			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	16.41463	2.144297	7.655019	1.3E-12	12.18228	20.64699
Seniority	4.54059	2.450482	1.852937	0.065595	-0.2961	9.377281

## SUMMARY STATISTICS

<i>Countries</i>		<i>Seniority</i>	
Mean	19.89143	Mean	0.765714
Standard Error	1.045138	Standard Error	0.032109
Median	27	Median	1
Mode	27	Mode	1
Standard Deviation	13.82587	Standard Deviation	0.424767

Sample Variance	191.1548	Sample Variance	0.180427
Kurtosis	-1.36748	Kurtosis	-0.40307
Skewness	-0.25648	Skewness	-1.26557
Range	55	Range	1
Minimum	1	Minimum	0
Maximum	56	Maximum	1
Sum	3481	Sum	134
Count	175	Count	175

IMPACT ASSESSMENT

	Coefficient	Standard Deviation	Impact
Seniority	4.54059	0.424767	1.928692793

IX. REGRESSION 7: EFFECT OF FIRST-TO-FILE STATUS AND POLITY SCORE ON REJECTION

SUMMARY OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.374933
R Square	0.140575
Adjusted R Square	0.137467
Standard Error	0.371574
Observations	556

ANOVA

	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	2	12.48866	6.244331	45.22669	6.43E-19
Residual	553	76.35127	0.138067		
Total	555	88.83993			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	0.165674	0.025657	6.457322	2.34E-10	0.115278	0.216071
First-to-File	0.163006	0.031924	5.106041	4.53E-07	0.100298	0.225713
Polity Score	-0.01461	0.001953	-7.48273	2.88E-13	-0.01845	-0.01078

## SUMMARY STATISTICS

<i>Rejection</i>		<i>First-to-File</i>		<i>Polity Score</i>	
Mean	0.19964	Mean	0.56295	Mean	3.955036
Standard		Standard		Standard	
Error	0.016968	Error	0.021055	Error	0.344168
Median	0	Median	1	Median	8
Mode	0	Mode	1	Mode	10
Standard		Standard		Standard	
Deviation	0.40009	Deviation	0.496468	Deviation	8.11537
Sample		Sample		Sample	
Variance	0.160072	Variance	0.246481	Variance	65.85924
Kurtosis	0.271656	Kurtosis	-1.94223	Kurtosis	18.0084
Skewness	1.506881	Skewness	-0.25451	Skewness	-2.70524
Range	1	Range	1	Range	76
Minimum	0	Minimum	0	Minimum	-66
Maximum	1	Maximum	1	Maximum	10
Sum	111	Sum	313	Sum	2199
Count	556	Count	556	Count	556

## IMPACT ASSESSMENT

	Coefficient	Standard Deviation	Impact
First-to-File	0.163006	N/A	0.163006
Polity Score	-0.01461	8.11537	-0.118565556

## X. REGRESSION 8: EFFECT OF GDP PER WORKER ON REJECTION

## SUMMARY OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.301079
R Square	0.090649
Adjusted R Square	0.089007
Standard Error	0.38187
Observations	556

ANOVA

	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	1	8.053224	8.053224	55.2255	4.1E-13
Residual	554	80.7867	0.145824		
Total	555	88.83993			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	0.399831	0.031432	12.72059	1.05E-32	0.338091	0.461571
GDP per worker	-4E-06	5.36E-07	-7.43139	4.1E-13	-5E-06	-2.9E-06

SUMMARY STATISTICS

<i>Rejection</i>		<i>GDP per worker</i>	
Mean	0.19964	Mean	50213.01
Standard Error	0.016968	Standard Error	1281.369
Median	0	Median	54315
Mode	0	Mode	11929.47
Standard Deviation	0.40009	Standard Deviation	30214.23
Sample Variance	0.160072	Sample Variance	9.13E+08
Kurtosis	0.271656	Kurtosis	-1.1724
Skewness	1.506881	Skewness	0.120527
Range	1	Range	96368.54
Minimum	0	Minimum	4725.758
Maximum	1	Maximum	101094.3
Sum	111	Sum	27918435
Count	556	Count	556

IMPACT ASSESSMENT

	Coefficient	Standard Deviation	Impact
GDP per worker	-0.0000039868	30214.23	-0.120458092

## XI. REGRESSION 9: EFFECT OF GNI PER CAPITA ON REJECTION

## SUMMARY OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.273939
R Square	0.075043
Adjusted R Square	0.073373
Standard Error	0.385132
Observations	556

## ANOVA

	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	1	6.666798	6.666798	44.94664	5E-11
Residual	554	82.17313	0.148327		
Total	555	88.83993			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	0.338408	0.026367	12.83467	3.4E-33	0.286617	0.390198
GNI per capita	-4.6E-06	6.82E-07	-6.70423	5E-11	-5.9E-06	-3.2E-06

## SUMMARY STATISTICS

<i>Rejection</i>		<i>GNI per capita</i>	
Mean	0.19964	Mean	30347.55
Standard Error	0.016968	Standard Error	1016.51
Median	0	Median	24455
Mode	0	Mode	5720
Standard Deviation	0.40009	Standard Deviation	23968.95
Sample Variance	0.160072	Sample Variance	5.75E+08
Kurtosis	0.271656	Kurtosis	-0.17841
Skewness	1.506881	Skewness	0.64164
Range	1	Range	97310
Minimum	0	Minimum	1550
Maximum	1	Maximum	98860
Sum	111	Sum	16873240
Count	556	Count	556

## IMPACT ASSESSMENT

	Coefficient	Standard Deviation	Impact
GNI per capita	-0.0000045729	23968.95	-0.109607611

**XII. DATA FROM COUNTRIES THAT RECEIVED TRADEMARK APPLICATIONS FROM THE 175 FRANCHISORS SAMPLED**

Countries	2010 Polity Score	Applications Received from 1997–2013	Applications Rejected from 1997–2013
Armenia	5	6	0
Australia	10	57	5
Austria	10	4	0
Azerbaijan	-7	1	1
Bahrain	-7	1	0
Belarus	-7	2	0
Bosnia	-66	2	0
Bulgaria	8	2	0
China	-7	69	48
Colombia	7	3	3
Croatia	9	4	0
Cuba	-7	4	1
Cyprus	10	3	0
Czech Republic	8	1	1
Denmark	10	1	1
Estonia	9	4	0

Finland	10	1	0
France	10	2	0
Georgia	6	8	0
Germany	10	5	1
Hungary	10	3	0
Iceland	10	11	0
Iran	-7	1	1
Ireland	10	7	1
Israel	10	9	1
Italy	10	2	0
Japan	10	58	3
Kazakhstan	-6	5	2
Latvia	8	1	0
Lithuania	10	1	0
Mexico	8	4	3
Mongolia	10	3	0
Morocco	-6	5	0
New Zealand	10	4	1
North Korea	-9	1	1
Norway	10	14	0
Oman	-8	1	0
Poland	10	3	1
Portugal	10	3	1

Romania	9	3	0
Russia	4	22	2
Serbia	8	3	0
Singapore	-2	62	10
Slovenia	10	2	0
South Korea	8	32	2
Spain	10	5	0
Sweden	10	3	0
Switzerland	10	10	1
Syria	-7	16	6
Turkey	7	34	5
Turkmenistan	-9	1	0
Ukraine	7	11	0
United Kingdom	10	22	2
Uzbekistan	-9	1	1
Vietnam	-7	13	4

## XIII. NUMBER OF COUNTRIES APPLIED TO PER FRANCHISOR

<u>Franchise</u>	<u>Number of Countries Applied To</u>
Ago	3
Annapurna's	4
Applebees	33
Arby's*	27
Auntie Anne's	27
Austin Grill	35
Banzai Bowls	30
Barcade	2
Baskin Robbins*	31
Beef O'Brady's	1
Benihana	28
Bill's Bar & Burger	2
BJ's	30
Boa	27
Boba Time	5
Bob's Steak & Chop House	3
Bojangles*	27
Boston Market*	27
Bouchon	1
Built Burgers	2
Burger King*	27

BYO Pizza	3
Café Fair	1
Café Kaila	1
Cantina Laredo	31
Carl's Jr.*	32
Checkers*	27
Chester's	38
Chez Panisse	31
Chick Fil-A*	27
Chipotle Mexican Grill*	31
Chop't	2
Church's Chicken*	31
Clinton St.	1
Cold Stone Creamery*	27
Craft Restaurant	3
Cups Frozen Yogurt	27
Dagwood's Sandwich Shop	35
Dairy Queen*	27
Daphne's California Greek	2
Dean & DeLuca	6
Del Taco*	27
Doc Popcorn	34

Doggie Diner	1
Domino's Pizza*	27
Dos Caminos	30
Duka Restaurant	1
Dunkin' Donuts*	33
Einstein Bros. Bagels*	27
El Chico	6
EZ Take Out Burger	1
Fat Tuesday	33
Fire of Brazil	29
Firehouse Subs	32
Five Guys*	27
Freeman's	29
Fresh Healthy Café	1
Freshens	2
Genji	1
Georgetown Cupcake	29
Green Mountain Coffee	7
Grimaldi's Pizzeria	42
Haagen-Dazs	1
Hardee's*	27
Heart Attack Grill	3

Herbivore the Healthy Grill	27
III Forks	30
In-N-Out Burger*	27
Jack in the Box*	28
Jamba Juice*	31
Jason's Deli*	27
Jersey Mike's	31
Jimmy John's*	35
Johnny Rocket's	5
Katana	27
Kenny Rogers Roasters	9
KFC*	27
Koa Pancake Express	4
Koi Restaurant	27
Krispy Kreme*	27
Kyotofu	1
L&L Hawaiian Barbeque	3
La Salsa	29
Lavo	33
Lippi	1
Little Caesar's*	1
Long John Silver's*	27
Lucky Fish	1

Lyfe Kitchen	28
Maui Wowi	2
McDonald's*	27
Melting Pot	30
Moe's Southwest Grill	2
Molecular Bar	1
Mooyah Burgers	2
Naked Pizza	5
Native New Yorker	4
Nikki Beach	33
Ninja Frog	3
Orange Leaf	2
Organic to Go	27
Osteria Mozza	3
Palm Restaurant	29
Panda Express*	31
Panera*	27
Papa John's Pizza*	33
Papa Murphy's*	27
Payard	29
Peacock Alley	30
Penguin's Frozen Yogurt	2
People's Organic Coffee	3

Pho Hoa	5
Piada Italian Street Food	27
Piperno	28
Pizza Hut*	27
Pizza Rustica	1
PizzaVito	27
Pizzeria Mozza	4
Pollo Loco*	27
Pollo Tropical	33
Popeye's*	27
Potbelly Sandwich Works	31
Project Pie	4
Qdoba Mexican Grill*	29
Quaker Steak & Lube	30
Quiznos*	36
Red Robin	42
Restaurant Du Cap	29
Round Table Pizza	31
Ruth's Chris Steak House	6
Sbarro*	27
Schlotsky's	4
Sea Dog Brewing Co.	31
Senor Pico's	31

Shake Shack	33
Shakey's	1
Shophouse SE Asian Kitchen	1
Smashburger	40
Starbucks*	27
Steak 'n Shake*	7
STK	11
Strip House	30
Subway*	56
Sugar Factory	4
Sushi Roku	29
Sweet Street	3
Sweetfrog	4
Taco Bell*	27
Tahitian Noni Café	29
TCBY	29
Tea Station	1
Teddy's Bigger Burgers	2
Texas Land & Cattle Steak House	32
Texas Roadhouse	38
The Boiling Crab	48
The Cheesecake Factory	33

The Original Pancake House	28
Three Floyds	27
Tilted Kilt Pub & Eatery	35
TMS- The Meatball Shop	2
Trader Vic's	35
True Food Kitchen	27
Tully's Coffee	29
Tunuru	27
U.S. Prime	4
UMami Burger	35
Uno Chicago Grill	33
Wendy's*	27
White Castle*	27
Wildfire	1
Wingstop*	11
World of Beer	2
Yogurtking	30
Yogurtland	9
Yogurtlush	27

\* Chosen by QSR Magazine, a source of quick-service and fast-casual restaurant news, for inclusion in the QSR Top 50 at least once between 1999 and 2013.

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