

# FRANCHISE MARKS: INTERNATIONAL TRADEMARK REGISTRATION COSTS AND CONSEQUENCES

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Imagine that Fast Food Forever (FFF), a restaurant franchise with a strong domestic presence, wishes to expand its operations internationally. In executing such an expansion, FFF must consider how to best protect its trademark interests against infringement in each country to which it decides to expand. Through a critical examination of the results of multiple economic regression analyses, the authors of this article seek to illuminate the path that future franchisors like FFF may take. The authors conclude by recommending that the World Intellectual Property Organization (WIPO) and the Internal Market Office for Harmonization in the Internal Market of the European Union (OHIM) require countries to comply with a uniform standard of rules in adjudicating trademark applications.

## I. Background

Over the past ten years, the number of international units operated by franchisors has grown by thirty percent.<sup>1</sup> As the trend toward globalization expands,<sup>2</sup> franchise owners must determine the most effective methods to protect their intellectual property rights when globalizing. When registering a trademark internationally, a domestic restaurant franchisor has several options. The franchisor may choose to register its trademark directly through the local trademark office of each country in which it seeks protection.<sup>3</sup> However, country-by-country registration can be an expensive and onerous task for a franchisor that needs to file in many countries simultaneously.<sup>4</sup> If a franchisor is positioned to enter foreign markets immediately, it may pursue a multi-filing application.

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<sup>1</sup> Philip F. Zeidman & Kay Ainsley, *Perspectives in International Franchising*, FRANCHISING WORLD, 8-10, Mar. 2011, available at <http://www.franchise.org/perspectives-in-international-franchising>.

<sup>2</sup> See generally Thomas L. Friedman, *It's a Flat World, After All*, N.Y. TIMES MAGAZINE, Apr. 3, 2005, available at <http://www.nytimes.com/2005/04/03/magazine/its-a-flat-world-after-all> (noting that a massive investment in technology and outsourcing are among the many factors that have contributed to the expansion of globalization).

<sup>3</sup> Each country with the European Community 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. INTELL. PROP. L. REV. 93 (2004). For example, to register a trademark in the United Kingdom, applicants must use either the standard or the "Right Start" application services. Both are online and require nonrefundable fees of either 170 pounds *in toto* (the standard application) or 100 pounds initially and another 100 pounds if the trademark is registered successfully (the "Right Start" application). Both services charge £50 for each additional class. Filers that want the UK Intellectual Property Office to assess the application and issue an examination report before registering the trademark use the "Right Start" application. *Register a Trademark*, GOV'T OF UNITED KINGDOM (Jan. 10, 2015), <https://www.gov.uk/register-a-trademark>.

<sup>4</sup> See, e.g., Norah McCormick, *Considerations in Advising Clients on Foreign Trademark Registration*, 12 J. CONTEMP. LEGAL ISSUES 494, 494 (2001) (explaining that country-to-country trademark registration is burdensome).

The two most prominent multi-filing applications are the European Community Trademark system and the Madrid Protocol system.<sup>5</sup> Pursuing a multi-filing application can save time<sup>6</sup> and money<sup>7</sup>. Franchisors that apply using the European Community Trademark system through the Office for Harmonization in the Internal Market of the European Union (OHIM) have the benefit of a single filing for registration in the twenty-eight<sup>8</sup> European Union member countries at a cost equivalent to filing directly in four or five countries.<sup>9</sup> 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-two<sup>10</sup> countries with a single filing. The United States joined the Madrid Protocol on March 28, 2003.<sup>11</sup> The members of the European Community are also members of the Madrid Protocol.

The primary difference between these two systems is that the application filing for the Madrid Protocol only covers the countries that the applicant chooses, while the application filing for the European Community Trademark is all encompassing. That is to say, one filing fee in the European Community Trademark system secures protection for the registrant in all twenty-eight member countries, regardless of whether the registrant actually seeks to register or use their mark in all countries. 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 through the Madrid Protocol.<sup>12</sup> For example, the Absolute Technology Law Group, LLC in Milwaukee charges \$1,500 as an initial filing fee for the Madrid Protocol system and \$1,700 for the European Community Trademark system.<sup>13</sup> Under the Madrid Protocol, however, franchisors are charged an additional fee between \$700 and \$800 per country that they choose to “elect.”<sup>14</sup>

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because many countries will not accept English language applications and each country imposes individual application fees).

<sup>5</sup> *Types of Protection Fact Sheet*, INT’L TRADEMARK ASS’N, (Mar. 2015),

<http://www.inta.org/TrademarkBasics/FactSheets/Pages/CommunityTradeMarkFactSheet.aspx>.

<sup>6</sup> *Fact Sheet on U.S.-EU Madrid Protocol on Trademark Registration*, WHITE HOUSE OFF. PRESS SECRETARY, May 31, 2000, at A1, available at 2000 WL 704558 (“[N]ational applications can require up to four years processing time. Under the [Madrid] Protocol, members must act upon applications within eighteen months.”).

<sup>7</sup> *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.”).

<sup>8</sup> See appendix.

<sup>9</sup> According to the SMD Country Index, individual application fees range from 50 euros for a single class filing in Cyprus to 359 euros for up to three classes in Austria. *The Trademark Practitioner’s Guide*, SMD D COUNTRY INDEX, [www.country-index.com/country\\_surveys.aspx](http://www.country-index.com/country_surveys.aspx).

<sup>10</sup> See appendix.

<sup>11</sup> *Madrid FAQs*, U.S. PATENT & TRADEMARK OFF., <http://www.uspto.gov/trademarks/law/madrid/madridfaqs.jsp> (last modified Mar. 4, 2013).

<sup>12</sup> There is no comparable system online for the EC trademark. See *The Community Trademark*, OFF. FOR HARMONIZATION INTERNAL MARKET, <http://oami.europa.eu/en/mark/default.htm>.

<sup>13</sup> *Trademark Portfolio Management*, ABSOLUTE TECH. L. GROUP, LLC (2013), <http://www.abtechlaw.com/our-services/>.

<sup>14</sup> It is to be noted 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. *Cutting the Costs of International Trademark Protection*, ABSOLUTE TECH. L. GROUP, (2014), [http://milwaukeepatents.com/files/Cutting\\_the\\_Costs\\_of\\_International\\_Trademark\\_Protection.pdf](http://milwaukeepatents.com/files/Cutting_the_Costs_of_International_Trademark_Protection.pdf). The basic fee for the Madrid application is 653 swiss francs (\$678.63) for a black and white trademark and is 903 swiss francs (\$938.44) for a color trademark. 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.

For example, the International Application Simulator indicates that one trademark application filing can cost as high as \$30,000 through the Madrid system.<sup>15</sup>

Franchisors seeking to expand abroad must also consider the cost and likelihood of their application being rejected in the country or in the multi-filing system where they choose to register. In the European Community Trademark system, successful opposition in a single remote country like Slovenia could prevent the entire European Community Trademark registration from being approved.<sup>16</sup> This veto power is substantial and as such, the European Community Trademark system poses a greater financial risk to franchisors. For example, cancellation and opposition proceedings can cost between \$4,000 and \$5,000 for any given country.<sup>17</sup> Not only are these proceedings costly, but they are also being brought in the already congested dockets of the European Union Trademark Institutions, requiring an even longer time period to resolve the disputes.<sup>18</sup> In the Madrid Protocol system, because country applications are elective, opposition in one country will not bar the mark from being registered in other countries where an application was filed.<sup>19</sup> Marks are evaluated based on both absolute and relative grounds.<sup>20</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>21</sup> Relative grounds include similarity to an existing mark.<sup>22</sup> A country's status as first-to-file may also affect the likelihood that a mark will be accepted in that country. Although high rejection rates for trademark applications are often associated with third world and less developed countries without established franchise laws in place, a number of parties to the Madrid Protocol have issued surprising numbers of rejections to major franchisors in recent years.

In consideration of the multiple systems, this study will weigh the marginal costs and benefits of each trademark registration option and examine some of the factors that influence how and why franchisors pursue the different options. In addition, this study will assess 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 and explore potential implications for franchise law.

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*Schedule of Fees*, WORLD INTELL. PROP. ORG. (2015), <http://www.wipo.int/madrid/en/fees/sched.html>; *Fee Calculator*, WORLD INTELL. PROP. ORG.(2015), <http://www.wipo.int/madrid/en/fees/calculator.jsp>.

<sup>15</sup> *Madrid International Trademark System*, WORLD INTELL. PROPERTY ORG., (2015), [http://www.wipo.int/madrid/en/madrid\\_simulator](http://www.wipo.int/madrid/en/madrid_simulator). One can apply for a European Community Trademark online for 900 euros or via a paper application for 1050 euros. That is as expensive as it can be because there are no extra fees: one does not get to choose the countries. *Fees & Payments*, OFF. FOR HARMONIZATION IN THE INTERNAL MARKET, <https://oami.europa.eu/ohimportal/en/fees-and-payments>.

<sup>16</sup> *Supra* note 5; see William Robinson, Giles Pratt & Ruth Kelly, *Trademark Law Harmonization in the European Union: Twenty Years Back and Forth*, 23 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 731, 758 (2013) (recognizing that the EU has made great strides in harmonizing trademark law but additional reforms are needed before the EU can influence trademark law on a global level).

<sup>17</sup> J.L. DuPré, *Worldwide Trademark Protection*, IP VALUE, 31-33, (2012).

<sup>18</sup> See Robinson, Pratt & Kelly, *supra* note 16, at 758.

<sup>19</sup> *Community Trade Mark and the Madrid Protocol Comparison*, INT'L TRADEMARK ASS'N, <http://www.inta.org/TrademarkBasics/FactSheets/Pages/CTMMadridComparisonFactSheet.aspx>. (last updated 2015).

<sup>20</sup> *Id.*

<sup>21</sup> O'Reilly, *supra* note 3 at 95.

<sup>22</sup> Eugenia Baroncelli et al., *The Global Distribution of Trademarks: Some Stylized Facts*, WORLD BANK (2004), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=610311](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=610311).

## II. Sample

There are two samples used in this study. The first sample consists of 175 domestic restaurant franchisors randomly selected from either the World Intellectual Property Organization<sup>23</sup> or the Office for Harmonization in the Internal Market<sup>24</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)<sup>25</sup> between 1997 and 2013. This sample of 175 franchisors was utilized to test the first seven hypotheses in Section III of this paper.

The second sample consists of 556 observations from the fifty-six countries to which the aforementioned 175 franchisors applied for registration of their trademarks through the Madrid Protocol system. Of the 556 observations made, trademark applications were rejected 111 times in twenty-seven different countries.<sup>26</sup> Franchisors on average applied to 4.35 countries, but the number of countries applied to range from as many as twenty-nine countries to as few as one country.<sup>27</sup> This sample of 556 observations was utilized to test the last four hypotheses tested in Section III of this paper.

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 with no distortions exists.<sup>28</sup> Within the twenty-seven countries that issued application rejections in the second sample, nine countries have established franchise laws in place.<sup>29</sup> Of these nine countries, four<sup>30</sup> have a negative polity score that indicates low political and economic stability based on government structure, revolution, collapse of central authority and successful recent military coups; the remaining five<sup>31</sup> have a high polity score indicating a stable government and economy.<sup>32</sup> These 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 with low political and economic stability and less developed or undeveloped franchise laws.<sup>33</sup> Ultimately, it begs the question of whether there is a need for franchise law reform.

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<sup>23</sup> *Romarin Database*, WORLD INTELLECTUAL PROP. ORG, <http://www.wipo.int/romarin/> (last visited May 30, 2015).

<sup>24</sup> *eSearch Plus Database*, OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET, <https://oami.europa.eu/eSearch> (last updated 2014).

<sup>25</sup> *Nice classification*, WORLD INTELLECTUAL 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 updated 2014).

<sup>26</sup> For a listing of the countries, see Appendix XXX. 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.

<sup>27</sup> See appendix.

<sup>28</sup> 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).

<sup>29</sup> Azerbaijan, Kazakhstan, Vietnam, China, Australia, Japan, South Korea, Mexico and Russia. <http://www.franchise.org/international-franchising-laws> which has chapters from Getting the Deal Through - Franchise 2014, (contributing editor Philip F Zeidman).

<sup>30</sup> Azerbaijan, China, Kazakhstan, and Vietnam. See Appendix.

<sup>31</sup> Australia, Japan, Mexico, Russia, and South Korea. *Id.*

<sup>32</sup> Monty G. Marshall & Ted R. Gurr, *Individual Country Regime Trends, 1946-2013*, POLITY IV (2013). An enhanced Polity 5 data series has been in development since 2008. This project, about two thirds finished by early 2014, *Research and Development*, CENTER FOR SYSTEMIC PEACE (2014), <http://www.systemicpeace.org/csprandd.html>, remains uncompleted to this date.

<sup>33</sup> These issues are more common in third world countries. Baroncelli, *supra* note 22 at 4.

### III. Dependent Variables

#### *European Community Trademark, Madrid Protocol, Rejection and Countries*

This study uses four dependent variables. The first dependent variable is a dummy variable<sup>34</sup> in which the 108 franchisors that pursue registration through the European Community Trademark system receive a value of 1 and the sixty-seven franchisors that choose an alternative path receive a value of 0.

The second dependent variable is a continuous variable<sup>35</sup> in which the number of countries to which franchisors applied through either the Madrid Protocol or the European Community Trademark system, or through both systems is measured. With the inclusion of the European Union countries, franchisors on average applied to 19.89 countries. However, the number of applications submitted by franchisors through both systems ranged from one country to fifty-six countries.<sup>36</sup> Franchisors may submit applications in over 90 countries. Of course, different tactics or strategy 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 less to a new strategy, but rather depicts 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.

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

The fourth dependent variable is a dummy variable in which countries that reject a franchisor's trademark application receive a value of 1 and countries that accept a franchisor's trademark application receive 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>37</sup> The countries that received the most applications overall and additionally received a mix of 0 and 1 values (had a mixture of acceptance and rejections) were China with

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<sup>34</sup> A dummy variable is an artificial variable created to represent an attribute with two or more distinct categories. Smita Skrivaneek, *The Use of Dummy Variables in Regression Analysis*, MORESTREAM.COM LLC (2009).

<sup>35</sup> 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 updated 2015).

<sup>36</sup> 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), Sweetfrong (4), Naked Pizza (5), Green Mountain (7), Cheesecake Factory (33), Texas Roadhouse (38), Red Robin (42), and Boiling Crab (48). 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 higher are likely in a different ballpark altogether in terms of international growth, or at least plans for growth. Incidentally, all 12 of those franchisors experienced a trademark registration rejection, *see Appendix*, 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.

<sup>37</sup> Iceland and Ukraine each received 11 applications and Norway received 14 applications. See Section XXX of Appendix.

sixty-nine applications, Singapore with sixty-two applications, Japan with fifty-eight applications and Australia with fifty-seven applications.<sup>38</sup> While Australia, Japan and Singapore exhibited rejection rates of 0.11, 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.

#### IV. Independent Variables

##### *Inclusion in QSR Magazine's Annual "Top 50" (QSR 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>39</sup> These rankings are based on domestic system-wide sales, average sales per unit, and number of total units in a given year.<sup>40</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>41</sup> A franchisor that is already financially successful and stable domestically, and as such, has a high domestic projected sales volume, benefits greater from taking risks financially because it possesses a larger expected value of return for its international investment.<sup>42</sup>

Thus, it is hypothesized that the franchisors in the random sample of 175 used in this study (1) qualified for the "QSR Top 50" in any one year between 1999 and 2013,<sup>43</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 Community Trademark system.<sup>44</sup> This registration is because these franchisors are more inclined and better positioned to take such a financial risk.<sup>45</sup>

Also, it is hypothesized that franchisors included in the "QSR Top 50" are even more likely to register through the Madrid Protocol system than are franchisors that did not qualify for

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<sup>38</sup> *Id.*

<sup>39</sup> Sam Oches, *The QSR 50*, QSR MAGAZINE (Aug. 2013), available at <http://www.qsrmagazine.com/reports/qsr50-2013-top-50-chart>.

<sup>40</sup> *Id.*

<sup>41</sup> DuPré, *supra* note 17.

<sup>42</sup> *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 their marks.

<sup>43</sup> Forty-five of the 175 franchisors in our sample were chosen for the QSR 50 at least once between 1999 and 2013 (those with franchisor name followed by an asterisk in data table in Section XXX of Appendix).

<sup>44</sup> Paul Gereffi, *The QSR 50*, QSR MAGAZINE 42-43, (1999); Paul Gereffi, *The QSR 50*, QSR MAGAZINE 46-47 (2000); Lea Davis et al., *The QSR 50*, QSR MAGAZINE 46-47 (2001); *QSR 50 Historical Data (2004-2012)*, QSR MAGAZINE, [http://pdf.qsrmagazine.com/QSR50\\_history\\_2004-2012.pdf?AWSAccessKeyId=0VD405H56VDT0B0JCY82&Expires=1395603171&Signature=SyH7pD3ExktO5BR5O4WhGE%2FjXVE%3D](http://pdf.qsrmagazine.com/QSR50_history_2004-2012.pdf?AWSAccessKeyId=0VD405H56VDT0B0JCY82&Expires=1395603171&Signature=SyH7pD3ExktO5BR5O4WhGE%2FjXVE%3D).

Of these 45 franchisors, twenty-seven registered their trademark using the European Community Trademark system to get registration in all 27 member countries.

<sup>45</sup> The "QSR Top 50" list for 2013 was recently released in August 2014. Overall, for the purposes of this article, 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.

Special Report, *The QSR 50*, QSR MAGAZINE (Aug. 2014), available at <http://www.qsrmagazine.com/reports/qsr50-2014-top-50-chart>.

the “QSR Top 50.” This theory is founded on the fact that the Madrid Protocol system lacks the unity requirement that the European Community Trademark system presents, and the domestic financial success of the franchisors 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 those 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.

These theories are tested using a dummy variable. Franchisors included in the “QSR Top 50” are assigned a value of 1 and unranked franchisors are assigned a value of 0.

#### *Years of Experience (Seniority)*

The longest continuously run company, according to the Guinness World Records, is Hoshi Ryokan, a hotel in Japan founded in 717 and run by the same family for forty-six generations.<sup>46</sup> Businesses with many years of experience, such as Hoshi Ryokan, have to continuously evolve and adapt. It is likely that a restaurant franchisor with seniority over others has had to evolve and adapt as it works through a multitude of issues and problems over the years.<sup>47</sup> The McDonald’s Corporation, for example, has handled countless trademark disputes both domestically and abroad in its sixty years of operation.<sup>48</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>49</sup> Based on this rich history of dispute resolution and problem-solving, it is hypothesized that franchisors with more years of experience are more likely to register their trademark using the European Community Trademark system because they are better positioned and better 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 the continuous monitoring of domestic and international markets for new opportunities to remain

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<sup>46</sup> Rachel Miller, *The Secrets to 100 Year Old Businesses*, THE MARKETING DONUT (2013), <http://www.marketingdonut.co.uk/marketing/marketing-strategy/the-secrets-of-100-year-old-businesses>. This record has been challenged, as another Japanese hotel, the Nisiyama Onsen Keiunkan, was discovered in 2011 to have been founded in 705. *See Oldest Hotel*, GUINNESS WORLD RECORDS, <http://www.guinnessworldrecords.com/world-records/oldest-hotel> (last visited June 8, 2015).

By comparison, the oldest franchise system in the United States (and not run continuously by one family), is the Singer Sewing Machine Company, which began granting franchises in 1851. Robert W. Emerson, *Franchising and the Collective Rights of Franchisees*, 43 VAND. L. REV. 1503, 1507 (1990) (citing STAN LUXENBERG, *ROADSIDE EMPIRES: HOW THE CHAINS FRANCHISED AMERICA* 12-13 (1985)).

<sup>47</sup> *See, e.g.,* William L. Killion, *Balance the Interests of the Franchisor, Franchisee, and System*, 25 FRANCHISE L.J. 106 (2006) (describing the necessity for franchisors to draft leeway in their franchise agreements to protect the right of the franchisor to morph the system to respond to competition and changes in consumer demands).

<sup>48</sup> *See Quality Inns Int’l v. McDonald’s Corp.*, 695 F. Supp. 198 (D. Md. 1988); *McDonald’s Corp. v. Robertson*, 147 F.3d 1301 (11th Cir. 1998); *McDonald’s Corp. v. Joburgers Drive-Inn Rest.* (Supreme Court of South Africa 1996). Case No. 547/95; *McCurry Rest. v. McDonald’s Corp.* (Court of Appeal of Putrajaya, Malaysia 2009). Civil appeal NO: W-02-1037-2006. *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).

<sup>49</sup> *See Casey’s Gen. Stores, Inc. v. Doctor’s Assocs. Inc.*, No. 11-00064 (S.D. Iowa 2011); *Burger King of Fla., Inc. v. Hoots*, 403 F.2d 904 (1968); *Burger King Corp. v. Hungry Jack’s* (NSWCA 187 2001); *Pizza Hut, Inc. v. Lundy Enters., LLC*, Civil Action No: 3:11-cv-00011 (N.D. Texas 2011).

competitive<sup>50</sup> and partly attributed to their experience creating cost efficiency<sup>51</sup>. Ilan Alon wrote that “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>52</sup> According to Vipin Gupta, this can be explained by the fact that “experience should make an older firm more cost efficient and, therefore, more competitive in domestic and international markets.”<sup>53</sup> The authors wanted to test whether franchisors with more experience 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 Community Trademark system. Stated as a dual hypothesis: It is hypothesized that franchisors with more years of experience are more likely to register their trademark using the Madrid Protocol system (not the older European Community Trademark system) because the newer system provides a greater number of opportunities for expansion. Furthermore, it is hypothesized that franchisors with more years of experience will “elect” to receive trademark protection in a greater number of countries than fledgling franchisors because franchisors with seniority are better positioned and prepared to seize those additional opportunities and to succeed.<sup>54</sup>

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>55</sup> Franchisors that had more than five years of franchising experience when they applied for international registration receive a value of 1, and fledgling franchisors that had less than five years of franchising experience when they applied receive a value of 0.

*Registration using European Community Trademark System before 2003 (Pre 03)*

As previously stated, the United States joined the Madrid Protocol on March 28, 2003. Before that year, franchisors were limited to direct national registration of their trademarks or use of the European Community Trademark system. 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 Community Trademark system, twenty-five were covered by the Madrid Protocol.<sup>56</sup> This left franchisors that had originally registered their marks through the European Community Trademark system before 2003 with a dilemma. Additional registration through the Madrid Protocol would be seen as

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<sup>50</sup> 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 impair.” ¶ 0001043039-05-000027 D&E COMMUNICATIONS, INC. (PUBLIC AVAILABILITY DATE: JUNE 1, 2006), 2006 WL 6523097. It is likely that most corporations and business entities of this magnitude engage in the same types of market monitoring.

<sup>51</sup> VIPIN GUPTA, VIPIN. TRANSFORMATIVE ORGANIZATIONS A GLOBAL PERSPECTIVE 327 (2004).

<sup>52</sup> ILAN ALON, THE INTERNATIONALIZATION OF US FRANCHISING SYSTEMS 29 (1999).

<sup>53</sup> VIPIN GUPTA, VIPIN. TRANSFORMATIVE ORGANIZATIONS A GLOBAL PERSPECTIVE 327 (2004).

<sup>54</sup> Gupta wrote:

It is 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.

*Id.*

<sup>55</sup> ROMARIN Database, *supra* note 23.

<sup>56</sup> Malta is not currently in the International Registration System. See Appendix II.



unattractive, inefficient, and redundant, as 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 trademark through the European Community Trademark system before March 28, 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 Community Trademark system before March 28, 2003 are assigned a value of 1 and those that registered after March 28, 2003 are assigned a value of 0.

*Status as a First-to-file Country (First-to-File)*

First-to-file countries are those in which the first franchisor to file for registration gains trademark rights, as opposed to countries in which rights are gained based on use.<sup>57</sup> The system with which rights are awarded plays a role in whether a franchisor's trademark application will be accepted or denied. For example, in China (a first-to-file country), trademark application rejection rates are forty percent higher than five years ago because new applications must be compared against previously registered trademarks that have accumulated creating existing trademarks.<sup>58</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>59</sup> These rejections are typically based on the likelihood of confusion because the two marks are too similar. According to Christopher Bussert, a franchise law expert from the law firm of Kilpatrick Townsend & Stockton LLP in Atlanta, these 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>60</sup>

The likelihood of being issued an Office Action or rejection of trademark application would seemingly decrease if the application were for a well-known trademark. A mark is considered well-known or famous if it is widely recognized by the general consuming public of the United States as a designation of the source of goods and services of the mark's owner.<sup>61</sup> These marks are often given preferential treatment through the well-known marks doctrine<sup>62</sup>, where foreign owners of well-known trademarks are able to bring infringement actions against citizens of other member nations of the Paris Convention using the same or similar trade names.<sup>63</sup> The aim of the Paris Convention was to create an agreement between signatory nations

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<sup>57</sup> DuPré, *supra* note 17.

<sup>58</sup> *China Trademark Registration: Misconception of First Come First Serve*. ORANGEFIELD ICS NEWS. (Sept. 17, 2013), <http://www.orangefieldics.com/news/2013-09-17-first-come-first-serve>.

<sup>59</sup> *Glossary*, THE U.S. PATENT AND TRADEMARK OFFICE, <http://www.uspto.gov/main/glossary/> (last visited May 30, 2015).

<sup>60</sup> Telephone Interview with Christopher Bussert, Attorney, Kilpatrick Townsend & Stockton LLP, Atlanta, Georgia (Jan. 24, 2014).

<sup>61</sup> 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) (2014) (stating a list of non-exclusive factors to determine whether a mark is famous under a dilution cause of action).

<sup>62</sup> See J. Thomas McCarthy, MCCARTHY ON TRADEMARKS & UNFAIR COMPETITION § 29:61 (4th ed. 2009) (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).

<sup>63</sup> See, e.g., 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, 366 (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 provide reciprocity with respect to intellectual property rights.<sup>64</sup> The rights of a well-known trademark may vary depending on the country one is in; although, often well-known trademarks are protected even if they are not registered in a country.<sup>65</sup> For example, in China, nonregistered well-known trademarks are given extensive rights and privileges over trademarks pending for registration, such that the applications pending are usually rejected.<sup>66</sup> This makes the registration of a well-known mark less essential if the country's trademark offices are going to prevent similar, easily confusable marks from being registered.<sup>67</sup>

As previously stated, the 175 franchisors that make up the first sample all fall under Nice Class 43, which is used to designate services for providing food and drink as well as temporary accommodations. There are thirty subclasses under the umbrella of Nice Class 43.<sup>68</sup> These subclasses, however, are still quite broad and an abundance of marks could fall under one subclass, such as subclass 430024: "cafés."<sup>69</sup> This study provides research on why these classifications are outdated and calls for a reform of over-broad classifications such as subclass 430024.

Thus, it is hypothesized that franchisors filing for registration in first-to-file countries are more likely to have their applications rejected than others because of increased vulnerability to Office Actions. To test this theory, a dummy variable is used where first-to-file countries are assigned a value of 1 and other countries are assigned a value of 0.

#### *Political and Economic Stability (Polity Score)*

Intellectual property rights are less likely to be valued and upheld in high-risk piracy countries.<sup>70</sup> These high-risk piracy countries often have low political and economic stability as well.<sup>71</sup> Thus, it is hypothesized that countries with high political and economic stability are less likely to reject a franchisor's trademark application.

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<sup>64</sup> *Id.* at 366.

<sup>65</sup> See *Orkin Exterminating Co. v. Pestco Co. of Canada*, 5 C.P.R. (3d), 433, 438 (Ont. C. A. 1985) (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); 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), available at [http://www.inta.org/TMR/Documents/Volume%2095/Vol95\\_no3\\_a4.pdf](http://www.inta.org/TMR/Documents/Volume%2095/Vol95_no3_a4.pdf);

Leah Chan Grinvald, *A Tale of Two Theories of Well-Known Marks*, 13 VAND. J. ENT. & TECH. L. 1 (2010).

<sup>66</sup> Jing "Brad" Luo & Shubha Ghosh, *Protection and Enforcement of Well-Known Mark Rights in China: History, Theory and Future*, 7 NW. J. TECH. & INTELL. PROP. 119, 122 (2009).

<sup>67</sup> 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 (2009); 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. INTELL. PROP. L. 412 (2009); cf. Ron Lehrman & Carlos Cucurella, *International Protection of Well-Known Marks*, THE INTERNATIONAL WHO'S WHO OF BUSINESS LAWYERS 806, available at [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).

<sup>68</sup> In addition to cafes, Nice class 43 also encompasses hotels, restaurants and snack-bars. WIPO, *Class 43*, <http://www.wipo.int/classifications/nivilo/nice/index.htm>

<sup>69</sup> There were about 20,000 coffee shop businesses in the United States in 2011. SBDC NET, *Coffee Shops Quarterly Update* (Hoover's, Inc. Austin.)

<sup>70</sup> *International Property Rights Index 2013 Report*. PROPERTY RIGHTS ALLIANCE & AMERICANS FOR TAX REFORM FOUND. (last updated 2013).

<sup>71</sup> *Id.*

To measure political and economic stability as a continuous variable, the 2010 polity scores from the Polity IV Project Country Reports are used.<sup>72</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>73</sup> In the project, a score of 10 would represent a fully functioning institutionalized democracy such as the United States, while a score ranging from -5 and -10 would represent an autocratic form of authority, such as in China with a score of -7. Special classifications are given to countries whose central form of government have failed or are unstable (relatively high political and economic instability). Every country to which a franchisor from the sample in this paper applied has a polity score between -10 and 10 except Bosnia, which was labeled -66, signifying an "interruption," a time of transition when foreign powers have intervened to assist in the re-establishment of political order.<sup>74</sup>

*Gross Domestic Product, per worker (GDP per worker)*

As GDP per worker (or average wage rate) grows, the worker's budget constraint shifts outward and workers have more discretionary income available to spend. It follows that with more income at their disposal, these workers will be able to afford and consequently demand a higher quality and greater selection of restaurants.<sup>75</sup> Of course, there is some variance on food spending from country to country.<sup>76</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 was found in Penn World Table 7.1 (released November 30, 2012) at the University of Pennsylvania's Center for International Comparisons.<sup>77</sup> Individuals qualified as workers based on whether they reported themselves as "economically active" in 2008.<sup>78</sup>

*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. According to David Abler, households with higher incomes consume a greater number of distinct food

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<sup>72</sup> Marshall, *supra* note 32. The enhanced data series – Policy V- in development since 2008 – is close to completion. *See supra* note 32.

<sup>73</sup> *Id.*

<sup>74</sup> Monty G. Marshall and Keith Jagers, Polity IV Project, *Dataset User's Manual* (2007). [http://home.bi.no/a0110709/PolityIV\\_manual.pdf](http://home.bi.no/a0110709/PolityIV_manual.pdf). Since Somalia did not receive any applications from the franchisors in our sample, we did not use it as a polity score example.

<sup>75</sup> 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, *Why US Gross Domestic Product Growth Impacts Restaurants*, MARKET REALIST (Feb. 26, 2015), available at <http://marketrealist.com/2015/02/us-gross-domestic-product-growth-impacts-restaurants>.

<sup>76</sup> 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*, CHOICES, 2006, <http://www.choicesmagazine.org/2006-3/animal/2006-3-09.htm>.

<sup>77</sup> Alan Heston et al., *Penn World Table Version 7.1*, CENTER FOR INT'L COMPARISONS OF PRODUCTION, INCOME & PRICES, U. PA. (2012), [https://pwt.sas.upenn.edu/php\\_site/pwt\\_index.php](https://pwt.sas.upenn.edu/php_site/pwt_index.php).

<sup>78</sup> *Id.*

products.<sup>79</sup> Thus, it is hypothesized that as GNI per capita increases, a franchisor's trademark application is less likely to be rejected because a wealthier country would demand more variety in restaurant services.<sup>80</sup>

The data for this continuous variable was 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. This value is converted to U.S. dollars and divided by the midyear population.<sup>81</sup> These figures are from 2012.<sup>82</sup>

## V. Method

Nine regressions were run in this study. 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>83</sup> The first and second regressions individually tested the effect that inclusion in the "QSR Top 50" and the effect that years of experience had on whether the franchisor was willing to take additional risk and register using the European Community Trademark system. The two variables had to be individually tested because although the QSR 50 variable did not show any sensitivity to dilution, the Seniority variable did demonstrate 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. The fourth regression tested the effect of previous registration and years of experience through the European Community Trademark system on registration through the Madrid Protocol system. As in the first and second regression, the QSR 50 and Seniority variable had to be separated in the third and fourth regression to prevent dilution.

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 Community Trademark system. The sixth regression tested the effect of years of experience on the number of countries to which franchisors applied.

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. 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. These last two variables were individually tested for the purpose of determining the stronger indicator of a country's wealth.

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<sup>79</sup> David Abler, *Demand Growth in Developing Countries*, OECD Food, Agriculture and Fisheries Papers, No. 29, OECD Publishing. <http://dx.doi.org/10.1787/5km91p2xcsd4-en>.

<sup>80</sup> As income increases, the demand for a more diverse diet increases (Thiele and Weiss 2003). Studies of developed countries indicate that households with higher incomes consume a greater number of distinct food products.

Abler, *supra* note 79, at 14, available at <http://www.oecd-ilibrary.org/docserver/download/5km91p2xcsd4.pdf?expires=1427150714&id=id&accname=guest&checksum=0BD8A377CA28BE84E460DDB01FA9D1AD>

<sup>81</sup> *Countries and Economies*, WORLD BANK, <http://data.worldbank.org/country> (last updated 2015).

<sup>82</sup> *Id.*

<sup>83</sup> Deborah R. Abrams, *Introduction to Regression*, PRINCETON U. LIBR. (2007), [http://dss.princeton.edu/online\\_help/analysis/regression\\_intro.htm](http://dss.princeton.edu/online_help/analysis/regression_intro.htm); Alan O. Sykes, COASE-SANDOR INST. L. & ECON., *An Introduction to Regression Analysis* (Dec. 1 1992), [http://www.law.uchicago.edu/files/files/20.Sykes\\_.Regression.pdf](http://www.law.uchicago.edu/files/files/20.Sykes_.Regression.pdf).

For each regression, impact assessments were conducted to better interpret the results, that is, 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>84</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 those variables which were continuous. Dummy variables were interpreted using solely the coefficient.<sup>85</sup>

## VI. Results

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

The QSR 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 volume are more likely to take the financial risk to register through the European Community Trademark system. Specifically, franchisors included in QSR Magazine's Annual "Top 50" have a 0.42 higher probability of registering their trademark through the European Community Trademark system.

The QSR 50 variable proved statistically significant for the third regression as well. However, the variable demonstrated a negative correlation, inconsistent with the original hypothesis. The 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. A possible explanation for this phenomenon is that many of the franchisors included in the "QSR Top 50" have taken time to develop name recognition and domestic financial success. Consequently, many of these franchisors are older and previously registered through the European Community Trademark system before the Madrid Protocol was an option. The idea that franchisors would not seek additional registration through the Madrid Protocol after registering through the European Community Trademark is explored in the fourth regression.

The QSR 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 volume 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."

### *Years of Experience (Seniority)*

The Seniority variable exhibited a predicted positive correlation and was marginally statistically significant under a 1-tailed test in the second regression. It can be concluded that years of experience play a marginally significant role in a franchisor's decision to register its trademark through the European Community 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 Community Trademark system.

In the fourth regression, Seniority was again marginally significant under a 1-tailed test. However, the variable demonstrated a negative correlation inconsistent with the original

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<sup>84</sup> *Interpreting Regression Coefficients in Sensitivity Reports*, PALISADE (2014), <http://kb.palisade.com/index.php?pg=kb.page&id=138>

<sup>85</sup> It would not be sensible to try to standardize a dummy variable because it represents a category rather than a numeric value. See page 21 of [http://www.sagepub.com/upm-data/21120\\_Chapter\\_7.pdf](http://www.sagepub.com/upm-data/21120_Chapter_7.pdf).

hypothesis. Instead, the impact assessment suggests that a one standard deviation increase in Seniority leads to a 0.11 decrease in the probability of registering through the Madrid Protocol system, 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 both the third and fourth regressions can be explained by the theory behind the Pre 03 variable. Specifically, older franchisors are discouraged from registering through the Madrid Protocol because they had already registered through the European Community Trademark system prior to the development of the Madrid Protocol.

In the sixth regression, Seniority was again marginally significant under a 1-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.

*Registration using European Community Trademark System before 2003 (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 Community Trademark system does indeed serve as a deterrent to additional registration. Specifically, franchisors that register their trademark using the European Community Trademark system before 2003 are 0.27 less likely to additionally register their mark using the Madrid Protocol system.

*Status as a First-to-file Country (First-to-File)*

The First-to-File variable proved statistically significant and exhibited the positive correlation predicted by the theory. This suggests that there is a positive correlation between a country's first-to-file status and its trademark application rejection rate. Specifically, first-to-file countries are 0.16 more likely to reject a franchisor's trademark application.

*Political and Economic Stability (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 political and economic stability 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.

*Gross Domestic Product, per worker (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 increase in GDP per worker in a country led to a -0.12 impact on the probability of rejection. When compared to GNI per capita, this variable had a higher R-squared value,<sup>86</sup> meaning that this regression model better fit the data and was a slightly better indicator of the wealth of a nation.

*Gross National Income, per capita (GNI per capita)*

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<sup>86</sup> 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 (2013), <http://blog.minitab.com/blog/adventures-in-statistics/regression-analysis-how-do-i-interpret-r-squared-and-assess-the-goodness-of-fit>.

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 impact on the probability of rejection.

## VII. Analysis

The results of this study demonstrate that domestic sales volume and prior registration through a certain system are a couple of the more significant factors that contribute to a franchisor's decision between, and level of commitment to, the registration alternatives when globalizing its trademark. Nevertheless, the years of experience factor also adds a marginally significant impact.

Furthermore, as was explained in Section V of this paper, while the system in which trademark rights are gained seems to be the most important factor in trademark application rejection rates per country, it can be seen that the political and economic stability and both the GDP per worker and the 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 of the wealth of a nation, a better fit to the data, than the GNI per capita measure.

This study observed 175 domestic restaurant franchisors and measured the effect of seven different variables. As such, this study can serve as a baseline assessment for franchisors when 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 with their trademark.

For example, while sales revenue is one way to measure growth, inclusion in the "QSR Top 50" may not be the most accurate measure of a franchisor's domestic financial success and *sustainability*, or ability to maintain the franchise abroad. With more time and better access to individual 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.

## VIII. Case Studies

While there are multiple hypotheses that were not supported by the regression data, the countries with varying polity scores still issued a significant number of rejections to franchise applications appears to be the most surprising and unexpected result.<sup>87</sup> The data supports the

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<sup>87</sup> Alan S. Gutterman, Business Transactions Solutions § 90:82 (updated July 2015). A recent survey indicates that law 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,

hypothesis that a need for franchise law reform exists, specifically in the five countries with a high polity score that still issued multiple rejections.<sup>88</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>89</sup> This study illustrates clear weaknesses in the established laws resulting in rejections that needs to be addressed.<sup>90</sup>

In 1993, Australia adopted a form of voluntary self-regulation of franchising with the Australian Franchising Code of Practice.<sup>91</sup> The Code requires pre-sale franchise disclosure and registration, imposes a seven-day “cooling off” period, provides for mediation of disputes, and relies on private sector incentives for compliance.<sup>92</sup> It also established the Franchising Code Administration Council to administer its terms.<sup>93</sup> A franchisor's noncompliance with the Code can result in revocation of its registration.<sup>94</sup> The incentive to register and maintain registration is intended to come from the private sector.<sup>95</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>96</sup> The voluntary Code has failed to achieve a significant level of participation by franchisors and has failed to address serious franchise problems.<sup>97</sup>

In the time frame of the collected data (1997-2013), Australia received fifty-seven applications and issued five rejections to Naked Pizza in 2010, The Cheesecake Factory and The Boiling Crab in 2011, and The Meatball Shop and ShopHouse Southeast Asian Kitchen in 2013. Australian applications should be made through IP Australia.<sup>98</sup> All five applications were rejected based on the Australian Trade Marks Act 1995, which describes conflicting trademarks in Section 44 and those not capable of being distinguished from one another due to similarity in Section 41.<sup>99</sup>

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countries will supplement disclosure requirements with provisions that regulate specific aspects of the franchising arrangement.

<sup>88</sup> Australia and Japan have a polity score of 10. South Korea and Mexico both scored an 8, while Russia has a score of 4. *Polity IV Country Reports 2010*, CENTER FOR SYSTEMIC PEACE (2010), <http://www.systemicpeace.org/p4creports.html>.

<sup>89</sup> Baroncelli, *supra* note 33.

<sup>90</sup> Many countries regulate investment by foreigners. 1 Transnational Business Transactions § 5:24. 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. *Id.* 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. *Id.* Such laws affect the type of business organizational vehicle used by a franchisor, and may impose local ownership requirements. *Id.* Countries that regulate foreign investment almost always require the advance approval of an administrative body. *Id.* Such bodies often have wide discretion to vary a franchise relationship. *Id.* Restrictions in areas such as fees, length of the agreement, termination, and rights to technology upon termination are frequently imposed. *Id.*

<sup>91</sup> FRANCHISING INTERNATIONALLY, FLP FL-CLE 13-1, 35.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> There is information about the application process through the Madrid Protocol on [www.ipaustralia.gov](http://www.ipaustralia.gov).

<sup>99</sup> *Trade Marks Act 1995* (Cth) pt IV div 2 (Austl.).



Japan has a bustling economy with a legal structure not as complex or all-encompassing as that of the United States.<sup>100</sup> Japanese customs, not just Japanese laws, have to be taken into account when conducting business in Japan.<sup>101</sup> Although foreign investment is not substantially restricted and a U.S. franchisor can open a branch or subsidiary, most U.S. franchisors enter into a master franchise agreement with a Japanese company.<sup>102</sup> This company acts as the sub-franchisor of the U.S. franchisor's concept in Japan and sub-franchises to Japanese franchisees.<sup>103</sup> The master franchise agreement is considered a “technical assistance agreement.”<sup>104</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 (FECL).<sup>105</sup> 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.<sup>106</sup> The filing must be made within thirty days after execution of the agreement.<sup>107</sup> Japan enacted the Law Concerning the Development of Middle- and Small-Scale Retailers of 1973 (the Retailers Law) to protect and assist medium and small businesses.<sup>108</sup>

A disclosure document given by a franchisor to a prospective franchisee is a voluntary, not a mandatory, requirement in Japan.<sup>109</sup> However, the Japanese Franchise Association (JFA) requires its members to comply with the requirement; and as a benefit of membership, the JFA connotes that the company can be trusted by others.<sup>110</sup> While few legal restrictions on foreign investments and repatriating profits exist, trade barriers such as impact duties and quotas are the major impediment to doing business in Japan.<sup>111</sup> Certain segments, like the food service industry, have little problem with this area, while other segments, like automotive products and computers, have major obstacles.<sup>112</sup> A lessening of these trade barriers is required to make Japan more accessible to U.S. franchisors.<sup>113</sup>

In the data collection time frame (1997-2013), Japan received fifty-eight applications and issued three rejections to Green Mountain Coffee and Sweetfrog in 2012, and Cafe Kaila in 2013. Applications should be made through the Japan Patent Office.<sup>114</sup> The applications were refused based on Section 4(1)(xi), Section 6(1) and Section 3(1) of Japanese Trademark Law, which detail conflicting identical trademarks, using a vague description of the trademark and creating doubt as to whether the trademark would be put into use in the foreseeable future.

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<sup>100</sup> FRANCHISING INTERNATIONALLY, FLP FL-CLE 13-1, 28-30.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* A medium- or small-scale enterprise is any business that has capital (*i.e.*, net worth) of not more than 10 million yen and employing not more than 50 persons. The Retailers Law applies to businesses selling products to ultimate consumers, not to service businesses. At present there are approximately 1.6 million businesses meeting this definition.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> <http://www.jpo.go.jp/index.htm>.

South Korea is in the midst of an austerity program.<sup>115</sup> As in Japan, the most common way a U.S. franchisor enters Korea is through a master franchise agreement with a Korean company that acts as the franchisor of the U.S. franchisor's concept in Korea and sub-franchises to Korean franchisees.<sup>116</sup> The master franchise agreement is considered a "technology inducement agreement."<sup>117</sup> The Korean Foreign Capital Inducement Law (FCIL) requires government approval of all technology inducement agreements.<sup>118</sup> The Korean company must submit the application.<sup>119</sup> The agreement is approved by a relevant Ministry depending on the nature of the goods or services involved.<sup>120</sup> The Ministry reviews the application to determine whether any of its provisions violate Korea's Fair Trade Act. Review must take place within twenty days or the agreement is deemed approved.<sup>121</sup> The appropriate Ministry may require changes to the agreement as a condition to approval and enforcement.<sup>122</sup> In the last few years the government has become more flexible in allowing provisions customarily found in franchise agreements to remain in the agreement (*e.g.*, return of technology after expiration, sales area restrictions, development schedule) that previously were found objectionable.<sup>123</sup>

Under the FCIL, the Korean government has a Negative List of Industries that lists all activities for which foreign investment is not permitted.<sup>124</sup> Any activity not on the Negative List is permitted.<sup>125</sup> The Negative List is reviewed annually by the Ministry of Finance for deletion of certain market segments to encourage foreign investment in Korea as its economy matures.<sup>126</sup> Many service-type businesses remain on the Negative List because manufacturing is being encouraged.<sup>127</sup> In most cases, there is no restriction on the amount or percentage of investment by U.S. franchisors if the business is not on the Negative List.<sup>128</sup> However, certain industries and small- and medium-sized enterprises have a fifty percent maximum foreign equity investment limitation.<sup>129</sup>

From 1997 through 2013, South Korea received thirty-two applications and issued two rejections to Green Mountain Coffee and Sweetfrog in 2012. Korea is a first-to-file jurisdiction and applications should be made through the Korean Intellectual Property Office.<sup>130</sup> The applications were rejected on the grounds of conflicting prior registration and a vague trademark description under Article 7(1)(vii) and Article 10(1) of the Korean Trademark Act.

Mexico has become a far more receptive target country in recent years for a number of reasons.<sup>131</sup> The North American Free Trade Agreement (NAFTA) has opened doors and

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<sup>115</sup> FRANCHISING INTERNATIONALLY, FLP FL-CLE 13-1, 31-32.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> <http://www.kipo.go.kr/kpo/user.tdf?a=user.english.html.HtmlApp&c=30103&catmenu=ek30103;>

[http://www.kipo.go.kr/kpo/user.tdf?a=user.english.main.BoardApp&c=1001.](http://www.kipo.go.kr/kpo/user.tdf?a=user.english.main.BoardApp&c=1001)

<sup>131</sup> FRANCHISING INTERNATIONALLY, FLP FL-CLE 13-1, 14-17.

numerous business opportunities for U.S. franchisors.<sup>132</sup> The Mexican market for franchising increased 404% between 1991 and 1993 alone.<sup>133</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 new Law for the Promotion and Protection of Industrial Property.<sup>134</sup> The new law completely overhauled the legal and regulatory framework that stifled technological development in Mexico.<sup>135</sup> Hence, franchisors were no longer required to register franchise agreements.<sup>136</sup>

During the data collection time frame (1997-2013), Mexico received four applications for trademark protection and rejected three of those applications. The rejections were for applications from Red Robin in 2011, Native New Yorker in 2013, and Molecular Bar in 2013. The right to a trademark's exclusive use in Mexico is obtained through registration with the Mexican Institute of Industrial Property (IMPI); registration will occur upon a successful application for registration to the IMPI.<sup>137</sup> Article 90 of the Industrial Property Law (IPL)<sup>138</sup> lists the only legal grounds to reject a trademark application in Mexico. Red Robin, Native New Yorker, and Molecular Bar's applications were rejected because they were in violation of provision XVI of Article 90 which prohibits "a trademark that is identical or confusingly similar

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<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* The 1982 Mexican Transfer of Technology Law (TTL) was a manifestation of Mexico's traditional hostility toward foreign activity in its economy. See Hoagland and Alcaraz, *Mexico* in P. Zeidman, ed., *Survey of Foreign Laws and Regulations Affecting Franchising* (2d ed. 1990); Gonzalez and Mazero, *Franchising in Mexico: Breaking with Tradition*, 7 *Franchise L.J.* 3 (Summer 1987).

<sup>135</sup> FRANCHISING INTERNATIONALLY, FLP FL-CLE 13-1, 14-17. In 1990, new regulations were issued under the 1982 TTL, which substantially liberalized the climate for franchising. The Regulations contained three major provisions. First, there was a definition of the term "franchise agreement." 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. See Knight et al., *Mexico Redoubles Efforts to Attract Foreign Franchisors*, *Franchise L.J.* 3, 4 (Spring 1990). 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 it 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. FRANCHISING INTERNATIONALLY, FLP FL-CLE 13-1, 14-17. It provides 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 the registration of the marks with the Mexican Ministry of Commerce and Industrial Development, which has a very restricted right of denial. See Bill No. LD-5/90, Law for the Protection and Promotion of Industrial Property, *Diario Oficial* (June 27, 1991).

<sup>136</sup> FRANCHISING INTERNATIONALLY, FLP FL-CLE 13-1, 14-17.

<sup>137</sup> General information about the process for applying for trademark registration is available at Alvaro R. Bonilla B&R Latin America IP LLC, *Trademark Registration Process in Mexico*, available at <http://www.hg.org/article.asp?id=25823> (last visited July 21, 2015).

<sup>138</sup> Ley de Fomento y Protección de la Propiedad Industrial [Law for the Development and Protection of Industrial Property], D.O., [Diario Oficial de la Federación], June 28, 1991 (hereinafter, "IPL") Mexico's franchise law itself is in another section of the IPL. See Philip F. Zeidman, *With the Best of Intentions: Observations on the International Regulation of Franchising*, 19 *STAN. J. L. BUS. & FIN.* 237, 253-54 (2014).

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>139</sup>

The Russian legislature passed an entire chapter<sup>140</sup> on franchise transactions in Part II of the new Civil Code.<sup>141</sup> The new provisions on franchising, effective since March 1, 1996, dictate the content of a franchise relationship and thus have major practical implications.<sup>142</sup> A substantive prescription of the main features of a franchise transaction risks to stifle growth of franchising rather than promote its development.<sup>143</sup> It leaves less room for a flexible development of this form of doing business, at a time when actual franchising has not yet grown beyond a few companies in big cities such as Moscow and St. Petersburg.<sup>144</sup> Inspired by a desire to protect either consumer rights or the interests of the weaker party in the franchise relationship, i.e. the franchisee, the drafters of the Russian franchising law introduced a few obligations that may put a serious economic burden on the franchisor, and could even deter potential franchisors from entering into franchising in Russia.<sup>145</sup> Consumer interests are safeguarded by: (a) the obligatory registration of each separate franchise transaction<sup>146</sup>; (b) the franchisee’s obligation to inform consumers of his use of franchisor’s name and trademarks pursuant to a franchise agreement, and the obligation to ensure quality conformance of the manufactured goods, services rendered and work performed under the franchise contract<sup>147</sup>; (c) the franchisor’s liability for claims filed against the franchisee<sup>148</sup>. There are also contractual formalities for franchising.<sup>149</sup> For a franchise contract to be valid under Russian law, the following basic requirements must be met: there must be an offer and an acceptance of the offer; Article 1028 of Chapter 55 additionally requires the contract to in written form; the parties must have agreed on the essential terms and conditions of the contract; both parties must have agreed by their free will; the parties must be competent to contract; the contract may not contravene principles of legal order and morality; the contract may not violate mandatory law; the contract must be in writing; and the contract must be registered by the franchisor with the same registration authority that registered the franchisor as legal entity or individual entrepreneur.<sup>150</sup>

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<sup>139</sup> MEXICO Industrial Property Law of June 25, 1991, as amended by the Decree of June 28, 2010 Art. 90 (XVI), available at <http://www.wipo.int/edocs/lexdocs/laws/en/mx/mx113en.pdf>.

<sup>140</sup> Chapter 54.

<sup>141</sup> Corinna M. Wissels, ¶ 7352 CAN FRANCHISING PROSPER UNDER NEW RUSSIAN LAW?, 2009 WL 3929655, Business Franchise Guide 1995-1996 New Developments Transfer Binder. The use of franchising laws is rare. The few countries that regulate franchising (France, Brazil, Mexico and Spain), focus on disclosure rules. On an international level, a working group on franchising of UNIDROIT in France decided—after 8 years of studying the desirability of a model law on franchising—not to propose such legislation but to publish a study text on franchising instead. Likewise, the Geneva based WIPO decided in 1994 not to promote specific franchising legislation but limited its effort to a franchising guide.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* The drafters identified the following main reasons for codifying<sup>31</sup> franchise transactions: (a) consumer protection; (b) anti-trust concerns; and (c) the didactic function of the Code.

<sup>146</sup> RF Civil Code, Article 1028.2.

<sup>147</sup> RF Civil Code, Article 1032.

<sup>148</sup> RF Civil Code, Article 1034.

<sup>149</sup> The general rules on contract in Part I of the Civil Code apply. Corinna M. Wissels, ¶ 7352 CAN FRANCHISING PROSPER UNDER NEW RUSSIAN LAW?, 2009 WL 3929655, Business Franchise Guide 1995-1996 New Developments Transfer Binder.

<sup>150</sup> *Id.*

Chapter 54 of the Russian Civil Code prescribes two mandatory obligations for a franchisor.<sup>151</sup> The first is an obligation to transfer to the franchisee technical and commercial documentation, and provide information necessary to exercise his rights under the contract and instruct the franchisee and his employees on issues related to the execution of these rights.<sup>152</sup> The second is an obligation to issue all licenses stipulated in the contract, and to comply with all legal formalities, that may be required under current intellectual property laws.<sup>153</sup> The contract may have to be registered with the patent authority under Russian Patent and Trademark Law.<sup>154</sup> In addition, Chapter 54 also enumerates a number of dispositive obligations.<sup>155</sup> Unless the contracting parties agree otherwise, the franchisor must render continuous technical and consulting assistance to the franchisee, including training of employees.<sup>156</sup> In addition, the franchisor must supervise the franchisee's quality of goods, work or services.<sup>157</sup>

On the other hand, a franchisee also has obligations under the Civil Code.<sup>158</sup> These include the following obligations: to use franchisor's trade name and trademark; to assure quality conformance of the manufactured goods, services rendered, or work performed; to observe franchisor's instructions related to the use of the exclusive rights, the interior and exterior design of the premises; to maintain confidentiality of know-how and confidential commercial information; to render all additional services that customers can count on when purchasing the good/services/work directly from the franchisor; and to inform buyers of the nature of its business as franchisee.<sup>159</sup>

In turn, the Russian Civil Code primarily introduces dispositive norms that may be set aside by the contracting parties' mutual agreement.<sup>160</sup> The introduction of specific rules that impose a serious economic burden on the franchisor is not beneficial to the Russian economy however.<sup>161</sup> In particular, the obligation to register each franchise agreement and the franchisor's liability for acts and omissions of the franchisee may endanger the further growth of franchising in Russia, as it may discourage potential franchisors from entering into franchising in Russia.<sup>162</sup>

From 2007 through 2013, Russia received twenty-one applications, but only rejected one application, from Texas Roadhouse in 2008.<sup>163</sup> Russian trademarks are governed by the *Law of the Russian Federation # 3520-1 On Trademarks, Service Marks and Appellations of Origin of Goods*.<sup>164</sup> Registration of a trademark confers exclusive propriety rights.<sup>165</sup> Some United States

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<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> RF Civil Code, Article 1031.2

<sup>156</sup> Corinna M. Wissels, ¶ 7352 CAN FRANCHISING PROSPER UNDER NEW RUSSIAN LAW?, 2009 WL 3929655, Business Franchise Guide 1995-1996 New Developments Transfer Binder.

<sup>157</sup> *Id.*

<sup>158</sup> RF Civil Code, Article 1032.

<sup>159</sup> Corinna M. Wissels, ¶ 7352 CAN FRANCHISING PROSPER UNDER NEW RUSSIAN LAW?, 2009 WL 3929655, Business Franchise Guide 1995-1996 New Developments Transfer Binder.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> Russia also rejected an application for well-known status outside the 2007-13 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, available at <http://www.worldipreview.com/news/ford-s-application-for-well-known-status-rejected-in-russia-7336>.

<sup>164</sup> The U.S. Embassy's description of the Russian trademark registration process can be found at <http://moscow.usembassy.gov/ipr-trademarks.html>.

proponents argued that the trademark rejection was based on Russia's unwillingness to protect well-known American trademarks. However, "[i]t was reported that Rospatent had 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>166</sup> FMC's experience in Russia suggests that the WIPO and OHIM 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 Community Trademark systems.

## IX. Conclusion

This article focuses on restaurant franchisors and the rejection rate using the Madrid system.<sup>167</sup> Further research could expand the data set to include hotel franchisors, which make up the other half of Nice classification 43,<sup>168</sup> and could explore and characterize the countries that most commonly reject applications through the European Community Trademark system, causing the entire registration to fail.

An important aspect of trademarks still to be explored is duration. A trademark registration lasts for ten years. The franchisors that registered their trademarks through the European Community 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 Community Trademark system. An interesting analysis could be conducted on which system these franchisors choose to renew their trademark through and the reasons for their selections.

Finally, the observations from the second sample concerning the differences in trademark application acceptances and rejections emphasize the need for potential significant 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 in place. This study exposes a clear weakness in the established laws that must be addressed.

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<sup>165</sup> *Id.*

<sup>166</sup> *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> (describing Rospatent's rejection of FMC's trademark petition.)

<sup>167</sup> *Supra* notes 23 & 39 and accompanying text.

<sup>168</sup> *Supra* note 25.

## *Appendix*

### **I. European Community Trademark 28 Member Countries (with each nation specifically having franchise legislation indicated by an asterisk (“\*”))<sup>169</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 94 Member Countries (with each nation specifically having franchise legislation indicated by an asterisk (“\*”))<sup>170</sup>**

African Intellectual Property Organization (OAPI), Albania\*, Antigua and Barbuda, Armenia, Australia\*, Austria, Azerbaijan\*, Bahrain, Belarus\*, Belgium\*, Bhutan, Bosnia, Botswana, Bulgaria, Cambodia, China\*, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia\*, European Union (EU), Finland, France\*, Georgia\*, Germany, Ghana, Greece, Hungary, Iceland, India, Iran, Ireland, Israel, Italy\*, Japan\*, Kazakhstan\*, Kenya, Kyrgyzstan\*, 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, Slovakia, Slovenia, South Korea\*, Spain\*, Sudan,

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<sup>169</sup> *Community Trademark*, EUROPEAN UNION, [http://europa.eu/index\\_en.htm](http://europa.eu/index_en.htm) (last updated Mar. 2015); *see also* Int’l Trademark Ass’n, [www.inta.org/TrademarkBasics/FactSheets/Pages/CommunityTradeMarkFactSheet.aspx](http://www.inta.org/TrademarkBasics/FactSheets/Pages/CommunityTradeMarkFactSheet.aspx). Croatia joined last (as of 28 countries) in 2013. Reached 27 countries as of 2007 (Adding Bulgaria and Romania then). Had 25 as of 2004. Statistics are based upon the 27 member countries – all but Croatia – applications pre-Croatia’s 2013 admission. For a map showing nations with franchise laws, see INT’L FRANCHISE ASS’N, *INTERNATIONAL FRANCHISING LAWS*, available at <http://www.franchise.org/international-franchising-laws> (Laws Applicable to Franchising - 2014).

<sup>170</sup> *Madrid Agreement Concerning the International Registration of Marks*, WIPO (Apr. 15, 2015), [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 regulation that are not Madrid Agreement signatories are Angola, Brazil, Canada, Indonesia, Malaysia, South Africa, and Taiwan. In effect, there are 34 nations *in toto* with franchise legislation, with 27 being Madrid Agreement nations and six that are not. For a brief discussion of these 33 nations’ franchise law, as well as those of Macau, see Philip F. Zeidman, *With the Best of Intentions: Observations on the International Regulation of Franchising*, 19 STAN. J. L. BUS. & FIN. 237, 252-61 (2014). We have not included Antigua and Barbuda, Barbados, Saudi Arabia, and Venezuela as those laws do not necessarily depend upon a party’s being characterized as a franchise. *See id.* at 261.

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

### III. Regression 1 Summary Output

#### 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>	<i>Lower 95.0%</i>	<i>Upper 95.0%</i>
Intercept	0.51145	0.039594	12.9174	3.7E-27	0.433301	0.5896	0.433301	0.5896
QSR 50	0.420368	0.078963	5.323636	3.13E-07	0.264514	0.576222	0.264514	0.576222

### IV. Regression 1 Summary Statistics

<i>European Community Trademark</i>		<i>QSR 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

**V. Regression 1 Impact Assessment**

	Coefficient	Standard Deviation	Impact
QSR 50	0.420368	N/A	0.420368

**VI. Regression 2 Summary Output**

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>	<i>Lower 95.0%</i>	<i>Upper 95.0%</i>
Intercept	0.512195	0.075805	6.756777	2.07E-10	0.362574	0.661816	0.362574	0.661816
Seniority	0.137059	0.086629	1.582136	0.115445	-0.03393	0.308044	-0.03393	0.308044

**VII. Regression 2 Summary Statistics**

<i>European Community 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

### VIII. Regression 2 Impact Assessment

	Coefficient	Standard Deviation	Impact
Seniority	0.137059	N/A	0.137059

### IX. Regression 3 Summary Output

#### 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>	<i>Lower 95.0%</i>	<i>Upper 95.0%</i>
Intercept	1	0.021455	46.60996	7.3E-100	0.957653	1.042347	0.957653	1.042347
QSR 50	-0.61364	0.042787	-14.3416	3.04E-31	-0.69809	-0.52918	-0.69809	-0.52918

**X. Regression 3 Summary Statistics**

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

**XI. Regression 3 Impact Assessment**

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

**XII. Regression 4 Summary Output**

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>
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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>	<i>Lower 95.0%</i>	<i>Upper 95.0%</i>
Intercept	0.995711	0.052956	18.80275	1.42E-43	0.891185	1.100238	0.891185	1.100238
Seniority	-0.10979	0.061759	-1.77764	0.07723	-0.23169	0.012118	-0.23169	0.012118
Pre 03	-0.27472	0.061248	-4.48535	1.33E-05	-0.39562	-0.15383	-0.39562	-0.15383

### XIII. Regression 4 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

### XIV. Regression 4 Impact Assessment

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

### XV. Regression 5 Summary Output

#### SUMMARY OUTPUT

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

Error  
 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>	<i>Lower 95.0%</i>	<i>Upper 95.0%</i>
Intercept	17.35115	1.148597	15.10638	2.01E-33	15.08408	19.61821	15.08408	19.61821
QSR 50	10.1034	2.29066	4.410695	1.81E-05	5.582162	14.62464	5.582162	14.62464

**XVI. Regression 5 Summary Statistics**

<i>Countries</i>		<i>QSR 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

**XVII. Regression 5 Impact Assessment**

	Coefficient	Standard Deviation	Impact
QSR 50	10.1034	0.435079	4.395777169

**XVIII. Regression 6 Summary Output**  
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>	<i>Lower 95.0%</i>	<i>Upper 95.0%</i>
Intercept	16.41463	2.144297	7.655019	1.3E-12	12.18228	20.64699	12.18228	20.64699
Seniority	4.54059	2.450482	1.852937	0.065595	-0.2961	9.377281	-0.2961	9.377281

**XIX. Regression 6 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

**XX. Regression 6 Impact Assessment**

	Coefficient	Standard Deviation	Impact
Seniority	4.54059	0.424767	1.928692793

**XXI. Regression 7 Summary Output**

SUMMARY OUTPUT

<i>Regression Statistics</i>	
Multiple R	0.374933
R Square	0.140575
Adjusted R Square	
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>	<i>Lower 95.0%</i>	<i>Upper 95.0%</i>
Intercept	0.165674	0.025657	6.457322	2.34E-10	0.115278	0.216071	0.115278	0.216071
First-to-File	0.163006	0.031924	5.106041	4.53E-07	0.100298	0.225713	0.100298	0.225713
Polity Score	-0.01461	0.001953	-7.48273	2.88E-13	-0.01845	-0.01078	-0.01845	-0.01078

**XXII. Regression 7 Summary Statistics**

<i>Rejection</i>	<i>First-to-File</i>		<i>Polity Score</i>		
Mean	0.19964	Mean	0.56295	Mean	3.955036
Standard Error		Standard Error		Standard Error	
	0.016968		0.021055		0.344168
Median	0	Median	1	Median	8

Mode	0	Mode	1	Mode	10
Standard Deviation	0.40009	Standard Deviation	0.496468	Standard Deviation	8.11537
Sample Variance	0.160072	Sample Variance	0.246481	Sample 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

### XXIII. Regression 7 Impact Assessment

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

### XXIV. Regression 8 Summary Output

#### SUMMARY OUTPUT

##### *Regression Statistics*

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</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper</i>	<i>Lower</i>	<i>Upper</i>
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	<i>Error</i>				95%	95.0%	95.0%	
Intercept	0.399831	0.031432	12.72059	1.05E-32	0.338091	0.461571	0.338091	0.461571
GDP per worker	-4E-06	5.36E-07	-7.43139	4.1E-13	-5E-06	-2.9E-06	-5E-06	-2.9E-06

### XXV. Regression 8 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

### XXVI. Regression 8 Impact Assessment

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

### XXVII. Regression 9 Summary Output

#### 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>	<i>Lower 95.0%</i>	<i>Upper 95.0%</i>
Intercept	0.338408	0.026367	12.83467	3.4E-33	0.286617	0.390198	0.286617	0.390198
GNI per capita	-4.6E-06	6.82E-07	-6.70423	5E-11	-5.9E-06	-3.2E-06	-5.9E-06	-3.2E-06

### XXVIII. Regression 9 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

### XXIX. Regression 9 Impact Assessment

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

### XXX. Data

Countries	2010 Polity Score	Applications Received	Applications Rejected
Armenia	5	6	0
Australia	10	57	5
Austria	10	4	0
Azerbaijan	-7	1	1
Bahrain	-7	1	0
Belarus	-7	2	0

<b>Bosnia</b>	-66	2	0
<b>Bulgaria</b>	8	2	0
<b>China</b>	-7	69	48
<b>Colombia</b>	7	3	3
<b>Croatia</b>	9	4	0
<b>Cuba</b>	-7	4	1
<b>Cyprus</b>	10	3	0
<b>Czech Republic</b>	8	1	1
<b>Denmark</b>	10	1	1
<b>Estonia</b>	9	4	0
<b>Finland</b>	10	1	0
<b>France</b>	10	2	0
<b>Georgia</b>	6	8	0
<b>Germany</b>	10	5	1
<b>Hungary</b>	10	3	0
<b>Iceland</b>	10	11	0
<b>Iran</b>	-7	1	1
<b>Ireland</b>	10	7	1
<b>Israel</b>	10	9	1
<b>Italy</b>	10	2	0
<b>Japan</b>	10	58	3
<b>Kazakhstan</b>	-6	5	2
<b>Latvia</b>	8	1	0
<b>Lithuania</b>	10	1	0
<b>Mexico</b>	8	4	3
<b>Mongolia</b>	10	3	0
<b>Morocco</b>	-6	5	0
<b>New Zealand</b>	10	4	1
<b>North Korea</b>	-9	1	1
<b>Norway</b>	10	14	0
<b>Oman</b>	-8	1	0
<b>Poland</b>	10	3	1
<b>Portugal</b>	10	3	1
<b>Romania</b>	9	3	0
<b>Russia</b>	4	22	2

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

<b>Franchise</b>	<b>Number of Countries Applied To</b>
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<b>Ago</b>	3
<b>Annapurna's</b>	4
<b>Applebees</b>	33
<b>Arby's*</b>	27
<b>Auntie Anne's</b>	27
<b>Austin Grill</b>	35
<b>Banzai Bowls</b>	30
<b>Barcade</b>	2
<b>Baskin Robbins*</b>	31
<b>Beef O'Brady's</b>	1
<b>Benihana</b>	28
<b>Bill's Bar &amp; Burger</b>	2
<b>BJ's</b>	30
<b>Boa</b>	27
<b>Boba Time</b>	5
<b>Bob's Steak &amp; Chop House</b>	3
<b>Bojangles*</b>	27
<b>Boston Market*</b>	27
<b>Bouchon</b>	1
<b>Built Burgers</b>	2
<b>Burger King*</b>	27
<b>BYO Pizza</b>	3
<b>Café Fair</b>	1
<b>Café Kaila</b>	1
<b>Cantina Laredo</b>	31
<b>Carl's Jr.*</b>	32
<b>Checkers*</b>	27
<b>Chester's</b>	38
<b>Chez Panisse</b>	31
<b>Chick Fil-A*</b>	27
<b>Chipotle Mexican Grill*</b>	31
<b>Chop't</b>	2
<b>Church's Chicken*</b>	31
<b>Clinton St.</b>	1
<b>Cold Stone Creamery*</b>	27
<b>Craft Restaurant</b>	3
<b>Cups Frozen Yogurt</b>	27
<b>Dagwood's Sandwich Shop</b>	35
<b>Dairy Queen*</b>	27
<b>Daphne's California Greek</b>	2
<b>Dean &amp; DeLuca</b>	6

<b>Del Taco*</b>	27
<b>Doc Popcorn</b>	34
<b>Doggie Diner</b>	1
<b>Domino's Pizza*</b>	27
<b>Dos Caminos</b>	30
<b>Duka Restaurant</b>	1
<b>Dunkin' Donuts*</b>	33
<b>Einstein Bros. Bagels*</b>	27
<b>El Chico</b>	6
<b>EZ Take Out Burger</b>	1
<b>Fat Tuesday</b>	33
<b>Fire of Brazil</b>	29
<b>Firehouse Subs</b>	32
<b>Five Guys*</b>	27
<b>Freeman's</b>	29
<b>Fresh Healthy Café</b>	1
<b>Freshens</b>	2
<b>Genji</b>	1
<b>Georgetown Cupcake</b>	29
<b>Green Mountain Coffee</b>	7
<b>Grimaldi's Pizzeria</b>	42
<b>Haagen Dazs</b>	1
<b>Hardee's*</b>	27
<b>Heart Attack Grill</b>	3

<b>Herbivore the Healthy Grill</b>	27
<b>III Forks</b>	30
<b>In-n-out Burger*</b>	27
<b>Jack in the Box*</b>	28
<b>Jamba Juice*</b>	31
<b>Jason's Deli*</b>	27
<b>Jersey Mike's</b>	31
<b>Jimmy John's*</b>	35
<b>Johnny Rocket's</b>	5
<b>Katana</b>	27
<b>Kenny Rogers Roasters</b>	9
<b>KFC*</b>	27
<b>Koa Pancake Express</b>	4
<b>Koi Restaurant</b>	27
<b>Krispy Kreme*</b>	27
<b>Kyotofu</b>	1
<b>L&amp;L Hawaiian Barbeque</b>	3
<b>La Salsa</b>	29
<b>Lavo</b>	33
<b>Lippi</b>	1
<b>Little Caesar's*</b>	1
<b>Long John Silver's*</b>	27
<b>Lucky Fish</b>	1
<b>Lyfe Kitchen</b>	28
<b>Maui Wowi</b>	2
<b>McDonald's*</b>	27
<b>Melting Pot</b>	30
<b>Moe's Southwest Grill</b>	2
<b>Molecular Bar</b>	1
<b>Mooyah Burgers</b>	2
<b>Naked Pizza</b>	5
<b>Native New Yorker</b>	4
<b>Nikki Beach</b>	33
<b>Ninja Frog</b>	3
<b>Orange Leaf</b>	2
<b>Organic to Go</b>	27
<b>Osteria Mozza</b>	3
<b>Palm Restaurant</b>	29
<b>Panda Express*</b>	31
<b>Panera*</b>	27

<b>Papa John's Pizza*</b>	33
<b>Papa Murphy's*</b>	27
<b>Payard</b>	29
<b>Peacock Alley</b>	30
<b>Penguin's Frozen Yogurt</b>	2
<b>People's Organic Coffee</b>	3
<b>Pho Hoa</b>	5
<b>Piada Italian Street Food</b>	27
<b>Piperno</b>	28
<b>Pizza Hut*</b>	27
<b>Pizza Rustica</b>	1
<b>Pizza Vito</b>	27
<b>Pizzeria Mozza</b>	4
<b>Pollo Loco*</b>	27
<b>Pollo Tropical</b>	33
<b>Popeye's*</b>	27
<b>Potbelly Sandwich Works</b>	31
<b>Project Pie</b>	4
<b>Qdoba Mexican Grill*</b>	29
<b>Quaker Steak &amp; Lube</b>	30
<b>Quiznos*</b>	36
<b>Red Robin</b>	42
<b>Restaurant Du Cap</b>	29



<b>Round Table Pizza</b>	31
<b>Ruth's Chris Steak House</b>	6
<b>Sbarro*</b>	27
<b>Schlotsky's</b>	4
<b>Sea Dog Brewing Co.</b>	31
<b>Senor Pico's</b>	31
<b>Shake Shack</b>	33
<b>Shakey's</b>	1
<b>Shophouse</b>	1
<b>Smashburger</b>	40
<b>Starbucks*</b>	27
<b>Steak 'n Shake*</b>	7
<b>STK</b>	11
<b>Strip House</b>	30
<b>Subway*</b>	56
<b>Sugar Factory</b>	4
<b>Sushi Roku</b>	29
<b>Sweet Street</b>	3
<b>Sweetfrog</b>	4
<b>Taco Bell*</b>	27

<b>Tahitian Noni Café</b>	29
<b>TCBY</b>	29
<b>Tea Station</b>	1
<b>Teddy's Bigger Burgers</b>	2
<b>Texas Land &amp; Cattle Steak House</b>	32
<b>Texas Roadhouse</b>	38
<b>The Boiling Crab</b>	48
<b>The Cheesecake Factory</b>	33
<b>The Original Pancake House</b>	28
<b>Three Floyds</b>	27
<b>Tilted Kilt Pub &amp; Eatery</b>	35
<b>TMS- The Meatball Shop</b>	2
<b>Trader Vic's</b>	35
<b>True Food Kitchen</b>	27
<b>Tully's Coffee</b>	29
<b>Tunuru</b>	27
<b>U.S. Prime</b>	4
<b>UMami Burger</b>	35
<b>Uno Chicago Grill</b>	33
<b>Wendy's*</b>	27
<b>White Castle*</b>	27
<b>Wildfire</b>	1
<b>Wingstop*</b>	11
<b>World of Beer</b>	2
<b>Yogurtking</b>	30
<b>Yogurtland</b>	9
<b>Yogurtlush</b>	27