



JAMES M. "DUKE" JOHNSTON, GENERAL COUNSEL AND VICE PRESIDENT OF LEGAL AND GOVERNMENTAL AFFAIRS FOR THE DWYER GROUP INC.

Digging Deep

Despite Tanking Economy, Business for Service-Sector Franchise Company Hums

BY JEANNE GRAHAM

Some companies have been downsizing during the turbulent economy of the past year, but in June The Dwyer Group Inc. announced the sale of 44 new franchises, a record month for the Waco-based company.

"Ever since the economy tanked, we've been able to survive pretty well because of the industries we're in," says James M. "Duke" Johnston, the company's general counsel and vice president of legal and governmental affairs. "People still have to get the toilet fixed, the lights turned on."

He also notes that in this economy, corporate managers are leaving their companies or being laid off and using retirement savings to purchase a franchise. "We're seeing this across the country," Johnston says.

The Dwyer Group is a holding company for six service-oriented franchises that include appliance, plumbing, electrical, and other repair or restoration businesses: Mr. Electric, Mr. Appliance, Mr. Rooter, Glass Doctor, Aire Serv and Rainbow International. So far this year the company has awarded 171 franchises, bringing its total to more than 1,400 franchises worldwide, says Debbie Hood, the company's chief administrative officer. The Dwyer Group, which has 420 employees, posted 2008 revenue of \$74 million, Hood says.

With an in-house team of two lawyers, Donna Christopherson and M. Steven LaCroix, five paralegals and two legal assistants,

Johnston is responsible for the company's contract negotiations and the drafting of all franchise contracts. The Federal Trade Commission requires franchises to provide a disclosure document to all prospective franchisees. The 3-inch book details information about The Dwyer Group and the individual franchise that the prospective franchisee can use to make a decision about investing, Johnston says. The disclosure includes information about the franchise's history, litigation, territory pricing strategy, intellectual property rights, financial information and rebates available from vendors. He says it also includes information about the structure of The Dwyer Group and its financials.

Not only do the in-house lawyers have to cover all federal disclosure requirements, but in states such as California, Illinois and New York, there are additional regulations, Johnston says.

"Certain states have franchise sales laws, and in those states they can add additional requirements over and above the FTC," he says.

For example, in California, each franchise must register with the California Department of Corporations, where an examiner will review the documents and a specific state-required addendum, he says.

"You have to dig deep and look at all the documents and make sure your disclosure is not lacking," he says.

BUSINESS TWIST

Johnston, nicknamed Duke by his mother, a John Wayne fan, says he became interested in the law while a seventh-grader in Rosenberg, which is about 30 minutes southwest of Houston.

"I got roped into doing this trial at the county fair," he says. Johnston played the prosecutor of an alleged horse thief in a mock trial at the Fort Bend County Fair. The audience was the jury, he says.

"I really enjoyed it," he says. "That's when the interest in law really took off."

Johnston graduated from Texas Southern University Thurgood Marshall School of Law in Houston in 1993. He says he then went to work as an associate with Korth & Garcia, a personal-injury litigation boutique in Austin where he had worked as a summer associate. But trial law didn't seem to

be the best match with his interests, Johnston says.

"When I was in law school, I thought I would go into insurance law," Johnston says. "My interest always had a kind of business twist."

Johnston had the chance to pursue the business twist in 1994 when he accepted a job as a staff attorney with The Dwyer Group. While he was still a student at Thurgood Marshall, he attended a friend's wedding, where he met company founder Don Dwyer.

"We struck up a conversation," Johnston says. "He was a driven entrepreneur, a charismatic guy."

During his third year in law school, Johnston says Dwyer called him and asked if he wanted a job. At that time, Johnston says he was still interested in pursuing trial work.

"Don was a great salesperson," Johnston recalls. "He kept calling me and saying, 'You need to leave Austin and come to Waco.' He sold me on building a specialty in franchise law and being in a corporate environment involved in the business end."

Johnston joined the company working for then-general counsel Michael S. Weatherbie, now a shareholder in Akerman Senterfitt in Vienna, Va. Dwyer died in 1994. When Weatherbie left the company in 1998, Johnston was named GC and vice president. He reports to Debbie Hood, the company's chief administrative officer.

Hood says that by 1998 Johnston had proven to be an excellent lawyer by deftly handling the company's franchisee disputes. "He is excellent at working with franchisees," Hood says. "We rarely end up in a courtroom with a franchisee."

Johnston says for outside counsel he uses Kilpatrick Stockton in Atlanta to handle the company's trademark portfolio. For assistance with litigation he turns to DLA Piper in Washington, D.C.; Beard Kultgen Brophy Bostwick Dickson & Squires in Waco; or Curmutt & Hafer in Arlington.

"Local litigation is really enforcement actions against franchisees," he says. "We try to resolve situations before filing litigation when we can. Every now and then a franchisee doesn't pay royalties or won't comply with a noncompete [agreement] or continues to use our trademark," he says.

Occasionally, there will be a customer suit against a particular franchisee and the customer will name The Dwyer Group as a co-defendant, he says.

"We try to get dismissed out of those," he says. "It's a customer of a franchisee looking for our deeper pockets."

Johnston puts a premium on early case evaluation and determining what is needed to achieve the company's goals, says Curmutt & Hafer partner Doug Hafer. Hafer has known Johnston since the two attended Trinity University in San Antonio, where Johnston earned a bachelor's degree with a double major in political science and sociology.

"A lot of times he will ask me what I think of a case and not tell me what he is thinking," Hafer says. "He's always testing what he's doing to make sure he is staying sharp."

Johnston says he became more focused on interest-based dispute resolution rather than a more adversarial, win-or-lose approach after completing a two-week negotiation program in 2000 at Harvard Law School.

"You ask questions to learn what drives certain franchisees: ego, money, time," he says. "It's not always about money but how you approach the mediation. For some, it's just an apology for some perceived wrong. I spend a lot of time now figuring out what makes them [franchisees] tick. I hate spending money on outside lawyers, if I can help it."

Johnston also obtained a master's degree in business administration from the University of Dallas in 2008.

"It was a combination of night, weekend and Internet courses while working full time," he says. "It took me five years."

Johnston lives in Waco with his wife and their 9-year-old daughter. He has had occasion to call franchisees, such as Mr. Electric to handle porch light electrical wiring problems or Mr. Appliance to repair a freezer.

He is also a John Wayne fan and says that the 1968 film "The Green Berets" is his favorite. "I have memories of watching it when I was little, memories of my dad," he says.

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