

Marketing Fees by Marriott

A recent study by HVS found that among franchised hotels in the United States, the average franchise cost was 10.8% of rooms revenue.¹ The average fees for 14 out of the 15 Marriott brands included in the study exceeded this amount. Average fees for Fairfield Inn-branded properties were 14.1% of room revenue; for Courtyard, fees were 14.0%. Marketing Fund fees make up a portion of these charges.

Marriott franchisees might assume that the money they pay in marketing fees each month – on average 1.6% of gross rental revenue in 2016-2017 across all brands, according to the HVS survey² – is being used to market their brand. Franchisees may not have read all the way through their Franchise Disclosure Documents (“FDDs”), which for Marriott brands are now over 400 pages long. Some of the disclosures in those documents and others in franchise agreements relate to Marriott’s marketing fund – what it can be used for, how much the fees could change, whether the fund could help franchisees’ competitors, and so on.

There are some steps existing franchisees can take to learn more about how their money is used in practice. Meanwhile, prospective Marriott franchisees and those thinking about negotiating new agreements with Marriott should consider things like:

- The amount of the initial marketing fee rates AND how much those rates can change at Marriott’s discretion;
- Whether the marketing Marriott conducts using marketing fund money will meet their hotel’s needs;
- The additional costs Marriott can mandate franchisees incur for marketing over and above the marketing fees.

What Franchisees Should Know About Marketing Fees

The following are some of the key provisions of the Marriott/JW Marriott brand FDD for 2017. Franchisees of other Marriott brands should check to see if their FDDs contain similar provisions.

Things franchisees should know:	What Marriott says:
Marriott can use franchisees’ marketing fund money for non-marketing purposes. The company allows itself to commingle marketing funds with other funds, with no stated limits about how commingled funds could be used.	“All sums we receive under the Marketing Fund are deposited in an account under our control and may be commingled with other funds (Franchise Agreement – Section 6.2.E).” – Marriott 2017 FDD, pg. 65
The cost of being a Marriott franchisee could go up at any time. One of the many ways this could happen is that the company could decide to make franchisees increase their marketing fund contribution rates.	“We may change the allocation and amounts of the Marketing Fund Contribution (including an increase to up to 3% of gross room sales), and you will be bound by any such change (see Item 6) (Franchise Agreement – Section 6.2.B and Exhibit A – Item 12.B).” – Marriott 2017 FDD, pg. 65
Marriott can loan money to the marketing fund, which it controls. This potential conflict of interest may lead franchisees to wonder: <ul style="list-style-type: none"> • What interest rate might Marriott charge Marriott for such a loan? • Would Marriott agree to the loan terms Marriott imposed? • What portion of franchisees’ marketing fund contributions could be used to pay the interest on such a loan? 	“We may make loans to the Marketing Fund and use contributions to the Marketing Fund to repay such loans plus interest (Franchise Agreement – Section 6.2.E).” – Marriott 2017 FDD, pg. 66
Marriott is not obliged to spend marketing fund money to the exclusive benefit of franchisees.	“We have no fiduciary duty to you for the Marketing Fund (Franchise Agreement – Section 6.2.E).” – Marriott 2017 FDD, pg. 66

Marriott has advertised multiple brands together in the same ad. Marriott's Golden Rule campaign advertises Courtyard, Fairfield, Four Points and Springhill Suites side by side. How well is Marriott distinguishing its brands from its competitors' brands?	See one of the Golden Rule commercials on YouTube: https://youtu.be/v_NnEIkgCD4
Marriott can use marketing fund money to promote a franchisee's competitors, if they are Marriott brands (which now include the former Starwood brands).	"We may use the Marketing Fund for purposes that benefit or include Marriott hotels as a whole, certain groups of Marriott hotels and other Company Brand Hotels in addition to Marriott hotels (Franchise Agreement – Section 6.2.C), and we may allocate the cost of such advertising and marketing activities among the marketing funds of the participating Company Brands (including the Marketing Fund) as we determine." – Marriott 2017 FDD, pg. 66.
Marriott can demand that franchisees undertake additional marketing, and it can require them to fund that marketing with additional monies instead of using Marketing Fund fees.	"We may provide, and you must participate in, marketing programs and activities that are not funded by the Marketing Fund, such as email marketing, internet search engine marketing, transaction- based paid internet searches, sales lead referrals and bookings, cooperative advertising programs, travel agency programs, incentive awards, gift cards, guest satisfaction programs, complaint resolution programs, and loyalty programs (such as Marriott Rewards)." – Marriott 2017 FDD, pg. 67
If franchisees create their own original marketing materials, Marriott can use them or give them out to other franchisees without compensating the creator. It could even use the materials at hotels it manages, even if those hotels compete with those of the franchisee that created them.	"Any marketing materials developed by you may be used or modified by other Company Brand Hotels without compensation to you (Franchise Agreement – Section 6.1.B)." – Marriott 2017 FDD, pg. 67

What Franchisees Can Do

Franchisees who are concerned about Marriott's provisions should consider their options. Even those already locked into long-term franchise agreements can take one or more of the following steps:

1. Send us a copy of the franchise agreement, so that UNITE HERE can provide timely and useful information to you and other franchisees;
2. Franchisees can ask their own attorneys to take a critical look at their franchise agreements and franchise disclosure documents to see that Marriott has met both state and federal standards of transparency, including the FTC's Franchise Rule, 16 C.F.R. Part 436;
3. Franchisees can ask Marriott for an unaudited copy of the books. Marriott states "Upon your request, we will provide you with an unaudited accounting of the uses of amounts in the Marketing Fund for any fiscal year if such request is made between 90 and 180 days after the end of such fiscal year (Franchise Agreement – Section 6.2.E)."³
4. Those who may be contemplating entering into future deals with Marriott should think twice. They may want to compare Marriott's policies and fee schedules with those of competing franchisors.

Endnotes

- 1 "2016/17 United States Hotel Franchise Fee Guide," Kasia Russell and Bomie Kim for HVS, Summer 2017.
- 2 "2016/17 United States Hotel Franchise Fee Guide," Kasia Russell and Bomie Kim for HVS, Summer 2017.
- 3 Courtyard by Marriott Franchise Disclosure Document for 2017.