

Argyle Conversations

by ARGYLE EXECUTIVE FORUMSM

featuring

Anne Chwat

EVP & General Counsel
Burger King Corporation
&

Jonathan Shaman

Senior Director
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On March 9, 2011, Anne Chwat, EVP & general counsel for Burger King Corporation, and Jonathan Shaman, senior director at First Advantage Litigation Consulting, met at Argyle Executive Forum's Chief Legal Officer Leadership Forum to discuss legal best practices during IPOs.

Anne Chwat Anne Chwat is executive vice president and general counsel for Burger King Corporation. She also serves as the company's corporate secretary and chief ethics and compliance officer. In her role as general counsel and secretary, Anne is responsible for Burger King's global legal and corporate governance affairs. As chief ethics and compliance officer, she manages the company's worldwide ethics and compliance program. She reports directly to the chief executive officer and serves as a key member of the executive leadership team.

In addition to her legal and governance responsibilities, Anne oversees the company's philanthropic and community affairs efforts, and is president of the HAVE IT YOUR WAY® Foundation, the charitable arm of the BURGER KING® system. In just three years under her leadership, the HAVE IT YOUR WAY® Foundation has expanded its global reach to 13 countries and granted more than \$9 million in scholarships and grants.

Prior to joining Burger King, Anne was senior vice president, general counsel and chief ethics and compliance officer for BMG Music, the music division of Bertelsmann AG. In that capacity, she led BMG's worldwide legal and business affairs department and oversaw all legal aspects of BMG Music's merger with Sony Music, which created the second-largest music company in the world. Anne also served as associate corporate counsel for Joseph E. Seagram & Sons, Inc., the parent company of Universal Studios, Universal Music Group, Universal Theme Parks and the Seagram Spirits & Wine Group. Prior to Joseph E. Seagram & Sons, Inc., she was in private practice with Cleary, Gottlieb, Steen & Hamilton of New York City, specializing in mergers and acquisitions and project finance transactions.

Anne has been profiled in *Diversity Journal's* WomenWorthWatching®, and recognized as one of *South Florida Business Journal's* Top 50 Public Companies, General Counsel. In 2009, she was named to *Business Leader South Florida* magazine's Women Extraordinaire list.

She holds a JD from New York University School of Law and a bachelors from New York University.

Jonathan Shaman Jonathan Shaman brings experience managing all aspects of large-scale, complex matters from the legal, project management and IT perspectives, allowing him to bridge multiple departments at First Advantage Litigation Consulting. In addition to heading up the firm's Managed Review service offering, Jon trains clients on Global RPM®, a proprietary review and production management platform, consulting with them on review priorities and goals. Working closely with the project management team, he helps translate the clients' objectives into efficient workflows for review and production. He also draws on his expertise in cost-effective data reduction and search strategy to conceptualize and prioritize new feature development.

Prior to joining First Advantage Litigation Consulting, Jon was a practicing litigation attorney for 13 years, 11 of those with the boutique firm Constantine Cannon LLP, where he was a senior associate and the firm's director of technology and information systems. The national antitrust and commercial litigation practice at the firm specialized in numerous high-stakes cases involving massive discovery and complicated jury trials. Jon developed a litigation and trial support consulting practice for Constantine & Aborn Advisory Services LLC, and was instrumental in enabling the firm to handle some of the largest antitrust cases in U.S. history, including the Debit Card, Time Warner v. Liberty, and Discover v. VISA/MasterCard cases.

Jon earned his JD at the New York University School of Law. He is admitted to practice in the New York State courts, and the Eastern and Southern Districts of New York.

JONATHAN SHAMAN: Let's start with the most recent news: You'll soon be leaving Burger King to begin a new position. Where are you headed?

ANNE CHWAT: I'm going to be the general counsel at International Flavors & Fragrances, based in New York City. They're one of the leading global companies that creates and manufactures fragrances and flavors. IFF sells its fragrances primarily to manufacturers of fine perfumes, cosmetics, soaps and other personal and household goods. It sells its flavor products to manufacturers of prepared foods, beverages, and other companies in the food service business. Many of its fragrances are used in fine fragrances and its flavors in top food brands that you would recognize. IFF's major manufacturing facilities are located where many of the raw materials for the flavors and fragrances are produced such as the US, The Netherlands, Spain, Brazil, China, Indonesia and India just to name a few.

Congratulations. Coming back to Burger King, can you describe some of the changes that the company has undergone in the time you've been there?

I joined Burger King in September of 2004. Previously, I was the general counsel at BMG Music in NYC, a subsidiary of Bertelsmann AG, a German company. For about a year before I left BMG, we were involved in negotiating and finalizing a 50/50 joint venture with Sony Music. It took a year to complete that merger because the consolidated company was creating the

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second-largest music company in the world, so there were a lot of anti-trust issues. The primary clearance we needed was in the EU where we had to go through a prolonged and very complex hearing and process in Brussels. At the time of the merger, I was approached by Burger King to join its Executive Team as General Counsel. At the time, I was not at all interested in a move to Miami—I'm a die-hard New Yorker, and my kids had just gotten into great schools in NYC. One was in first grade and the other in sixth grade. But it was a very interesting and unique opportunity because Burger King recently had been acquired by a group of private equity firms—Goldman Sachs, TPG and Bain—and they were interested in doing a turnaround and taking Burger King public. The work was going to be extremely interesting and lucrative, so I was eventually intrigued enough to pack up my family and move to Miami.

Before being acquired by the private equity firms in 2002, Burger King was privately owned—first by its founders, and then Pillsbury, and then Diageo. Burger King is the number-two fast food hamburger brand in the world, but before it had been acquired by private equity it has always been a small subsidiary of these large mega companies. It's largely a franchise business; 90% of Burger King restaurants are owned by franchisees. The corporate headquarters in Miami had been a revolving door of management trainees coming from Pillsbury and Diageo. As a result, the corporate structure and governance were not very strong and the business needed to be refreshed and kick-started. The first thing the private equity group did was install a new management team with the goal of bringing new marketing, operations and other processes into the business to get it ready for an IPO. Many of the franchisees had become over leveraged and needed to be restructured and worked out.

We worked through many restructuring plans with franchisees so that they could become more successful. We brought in a whole new marketing plan and globalized the business. When I first got to Burger King, there were two distinct businesses—the U.S. and the rest of the world—and they really didn't talk much to each other. As part of the effort to take the company public, we spent a lot of time globalizing the business, which involved first getting everyone talking to each other, and secondly, putting in place meaningful global policies and practices.

As general counsel, what steps did you take to prepare Burger King for its IPO in 2006?

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The first question I asked myself when I got to Burger King was, what are the company's primary assets? And then next, are they properly protected? I had never been in the fast food hamburger business. I came from the music business, and before that I was at Seagram, a spirits & wine and entertainment business. I learned very quickly that there were three main assets at Burger King. One was our trademarks. Without the Burger King logo, without the Whopper sandwich, without “Have

It &Your Way,” we really didn't have a brand. So the trademarks which gave us ownership of our brand, were very, very important. The first thing I did was try to get my arms around where our trademarks were registered. Since the company really hadn't been run as a global business, it was very challenging to pull it all together. We essentially had to go country by country and clean up and put our trademark portfolio in order.

The second main asset was our franchisees. As I said, we're 90% franchised, so I had to understand the franchise agreements. Were they properly up to date? Were our rights global? Were the rights similar on a global basis? The legal team spent a lot of time pulling together all of our agreements and ensuring that our rights and relationships with our franchisees were strong and well documented.

The third asset, which is true for any company, was our employee base. We had to make sure we had the right people in place, enforceable agreements in place, the right compensation structure in place – all on a global basis. As a company that was preparing to go public, we also wanted to be able to offer equity to our employees. This involved researching and understanding the employment and securities laws and implications in every single country where we had employees or wanted to offer equity. The legal team worked very closely with human resources on all of these projects.

So it was those three groups of activities —protecting our trademarks, ensuring our franchisee relationships were strong, and securing our employees—where the legal team focused most of its resources in the first phase of preparation.

The second big chunk of activity we focused on was to ensure that we had in place all the

policies and processes that a public company would need. Burger King always had been a private company and was operated almost like a mom-and-pop under its previous owners. No one had focused seriously on implementing a compliance & ethics program or a records management program. The crisis management program was desperately in need of revision and re-launching. There was no corporate secretarial function, disclosure controls or ERM process. So together with my team we created and adopted all of these programs and processes and essentially updated all existing policies to ensure they would be suitable for a public company. As a result we became the owners and custodians of all of these programs.

I have a personal passion for ethics and compliance so one of the first things I did was to create a global program and committee which included cross functional representatives from each of our global offices around the world. After we updated our compliance policies and created a global calendar of events, we were determined to ensure compliance would be an integral part of the company's business plan and be supported by the executive team. So when we rewrote our code of conduct, we tied it directly to the four pillars of our business plan so that when the CEO would talk about it, people would listen. People understood how it related to the turn-around and growth of our business. We also spent a lot of time training on FCPA issues because our biggest growth was in "red flag" countries—China, Russia, Brazil, Mexico - all places where there is a lot of potential for violating the FCPA rules if employees are not properly trained.

What best practices enabled you to succeed in this IPO process?

Some of the best practices are the same things I would suggest to anybody who's joining a new company, particularly one that's going through a transformation. First, learn the business. Lawyers often have a tendency to sit in their offices in the law department and just focus on legal issues. To be most effective, lawyers need to understand the business so they can assist the business partners

"Lawyers need to understand the business so they can assist the business partners with crafting appropriate and legally compliant business solutions"

with crafting appropriate and legally compliant business solutions. If the legal team are facilitators in the growth of the business it is much easier to garner the support of the rest of the executives who are essential partners to ensuring that all of the appropriate legal activities are accomplished in connection with the IPO. It is critical that our business partners understand the importance of protecting the business by supporting the programs necessary for the IPO such as the compliance program, corporate governance, disclosure controls and crisis management.

Another critical best practice for me is to build meaningful relationships and lines of communication, with my clients, whether they're in China or down the hallway. They need to know that what I'm doing is important and they need to understand how it's important. For example, if you want to expand into China, the last thing you need is a Department of Justice investigation because something went awry while you were trying to open up your last restaurant. The lawyers need to get to know their clients

personally and build a trusting relationship so the clients are comfortable picking up the phone to call their lawyers when there is a potential issue. Sometimes this requires traveling abroad and spending time with persons you otherwise wouldn't have a chance to meet in person. I have found this is critical to assure that the local management team understands that the law department is there to support them. Effective law departments are not just "the police." We're here to help drive and protect the business.

With all these changes that were happening at Burger King, how were you able to identify and protect the value of the company?

It's a lot of what I just said. The more you learn the business and build relationships with your clients around the world, the better you can identify the issues and protect the value of your business. And you can protect it best when your clients trust you and are willing to open up to you. It's almost impossible to know if there's a problem or issue if you're 10,000 miles away Or if you're not at every single business meeting. It is critical that your clients keep great lines of open communication with you. I truly believe most issues can be resolved as long as there are good relationships, trust and open lines of communication with your clients.

In 2010, Burger King was sold to 3G Capital. Were you involved with those negotiations?

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I was quite involved. Burger King had successfully completed its turnaround. We had successfully consummated our IPO, and the business was doing very well. Then the economic downturn hit in 2009 and Burger King suffered. Many of our core guests were

extremely hard hit by the economy. Burger King was not for sale. But due to our depressed stock price we were a target, and 3G approached us. For at least a six-month period, only three members of the management team and the board of directors knew about or were involved with the potential transaction. The three members of management were the CEO, the CFO and me. Since we were not for sale, there were a lot of very interesting discussions and process occurring at the board level regarding the board's fiduciary obligations, the appropriate process to follow and then the actual negotiation of the final transaction. For me, it was a very active period. I spent a lot of time with the board helping them understand their duties and generally negotiating the transaction and driving the process forward in accordance with those obligations.

Throughout your career, what skills or best practices have you found to be especially important?

I have a strong M&A background. I was an M&A lawyer at Cleary, Gottlieb, Steen & Hamilton for almost eight years. It seems that everywhere I go, the company I work for either gets sold or does a merger so my M&A skills have been very helpful. When I left Cleary, Gottlieb I went to Seagram as a

corporate transactional attorney. At the time, Seagram owned Universal Studios, Universal Music, the spirits and wine business, and a publishing company. While I was at Seagram we sold the company to Vivendi in a very complex global transaction. This sale occurred during the period of very large and aggressive M&A deals such as the AOL Time Warner merger. Just as the Seagram/Vivendi deal closed, I was offered a position at BMG music. As I mentioned earlier, I worked on the merger of BMG with Sony music while I was the General Counsel of BMG

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So I have utilized my basic M&A skills, both in private practice as well as while being in the inside of three companies that consummated very large and significant transactions. When you’re the outside counsel working on a major acquisition or merger, it’s very much about representing your client the best you can - negotiating the deal and getting the best possible terms for your client. That’s how I practiced M&A while I was at Cleary. On the inside, it’s a different process. The basic M&A skills are important, but the thing that

becomes even more important when you’re representing a company from the inside is to stay objective. When you’re part of the company, particularly at the most senior level, you’re more emotionally vested as part of the team that has created the culture of the company and moved the business forward. You have relationships with the employees, shareholders, franchisees and suppliers. It is critical to balance the interests of all of the stakeholders while also continuing to be mindful that you ultimately represent the shareholders..

Lawyers are trained to be objective, so we are often better prepared in these situations. I’ve seen other executives often get quite emotional and very wrapped up in the process. As the lawyer, the most important thing is to make sure your client stays objective. You have to treat the transaction the same way you would as an outside lawyer. Make sure you document everything. Don’t rely on handshakes. The other thing I’ve learned over the years is that it is crucial to follow all the processes. When you’re at a big public company, you will get sued if you consummate a major sale or merger. There is a big business today in representing shareholders in class action lawsuits. During the entire time Burger King was negotiating with 3G, we were very mindful to hold formal board meetings whenever they were needed, we ensured that full and proper discussions took place when any major issues were decided; that outside counsel and the investment bankers advised the board as appropriate, and that we documented all of these processes. This proved very important because we were sued in five different shareholder class action cases right after we announced the deal.

Can you describe the process of taking Burger King back to private from public?

It’s a much easier process than going from private to public. However, we didn’t completely go private, because Burger King still has public debt outstanding. Although we’re not publically traded on the stock exchange, which released us from some of the public-company reporting obligations, there’s

still a lot we need to do. We still file 10-Ks and 10Qs. We still have to report executive compensation data. The only thing we don't have to comply with are the New York Stock Exchange requirements. My advice has been, even though we're semi-private, to operate on the assumption that at some point we may go fully public again so we should keep all the existing reporting and disclosure processes in place. The nice thing about not being traded on the stock exchange is that no one is tracking our stock and earnings per share prices as our investors used to. This allows us to be more flexible to do transactions that we may have been hesitant to consummate due to the potential impact on our stock price or EPS. Now is a good time for Burger King to look at possible tax reorganizations, clean up transactions, or do a refinancing with better terms.

Looking back on your preparation for Burger King's IPO, would you have done anything differently?

I think we did a really good job. We went back to the fundamentals to identify and secure our assets. We determined whether we had all the right programs and policies in place and fixed what was broken. We made sure we had the right employees in place. We strengthened the business by working with our franchisees, and improving our marketing and operations platforms. It's different for every company and every business. But I don't think I'd do anything differently. I'm very comfortable that I'm leaving Burger King in a very good place from a legal perspective if it decides to go public again.■