

Tuesday, August 12, 2008

Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Members,

Submission - Inquiry Into Franchising Code of Conduct

Summary

Our request is for an *ethical* review of the Franchising Code of Conduct and or Trade Practices Act to cover the situation where a Franchisor denies a compliant franchisee a Renewal of their Franchise Agreement where that Agreement specifically includes a clause denying that Franchisee compensation for goodwill.

Our recommendation to the Committee would be to amend the Franchising Code of Conduct to specifically prevent a Franchisor from electing not to renew a Franchise Agreement (based purely on the term of the agreement) where the Franchisor has not provided reasonable compensation to the Franchisee for the Goodwill created by that Franchisee.

Our justification for this recommendation is the fact that the Goodwill and income generated by the efforts of Franchisees (and in our case as Master Franchisee) will continue for the benefit of the Franchisor.

Background

We have 12 ½ years experience in franchising as both Franchisee and Sub Franchisor for the same Franchise system. We, (our family) operated a retail franchise outlet of [REDACTED] as a Franchisee from April 1996 until October 2004. Also since April 1996 we have acted as the Master Franchisee North Queensland (Sub Franchisor) for [REDACTED]. We still continue to this day in our capacity as Master Franchisee. However, that role will cease for us on 9th April 2011 as we have been informed by our Franchisor that as the Term of our Master Franchise Agreement will expire our Master Franchise Agreement will not be renewed.

During our tenure as (a retail) Franchisee we developed a business from nothing to what we considered a successful business. We sold that business in 2004 for a value of which a major component was written as Goodwill.

In our capacity as Master Franchisee we have developed our network from 4 to 20 retail stores. Naturally, both the Franchisor and we have benefitted from this effort both financially and from the Goodwill generated. That goodwill generated assisted us to expand our network of franchises and similarly the Franchisor and Franchisees (by virtue of the good name of the franchise).

We understand the implications of entering into a contract and our personal position in relation to our Master Franchise Agreement. We are also conversant with the Franchising Code of Conduct and its impact on the conduct of Franchising. While the Code does offer some protection to (prospective) franchisees in terms of Disclosure requirements, equally it fails in providing any *moral and ethical* protection for franchisees. The reality of franchising is that it is a one sided affair – the Franchisor's. Prospective franchisees and even existing franchisees have little, if any "power" or opportunity to amend the terms of their Franchise Agreement.

As a Master Franchisee we see people consider franchising for a number of reasons;

- they are sick of their current employment
- they love the product
- they see a business as an investment
- they see franchising as a way to enter business without having all the necessary skills
- they want to build an asset to pass on to their children
- they find themselves unsuitable (for various reasons) in the workforce

The ultimate objective for all is to be successful, pay their bills and hopefully build the business and sell for a significant profit. For some, the dream becomes a reality while for others, it becomes a nightmare.

The reality of franchising is that Franchisees DO build goodwill through the operation of their businesses. They build it not only for themselves (in terms of their own personal business) but they also build goodwill for the *Business Name* ie. the Franchisor. A Franchisor will rely on its reputation in the market when it is selling a new franchise. That reputation is a direct result of the goodwill created by all of its franchisees. That reputation (goodwill) has a value to the Franchisor and therefore, equally to the franchisee(s) whose efforts have helped develop it.

We urge you to protect the efforts of Franchisees by amending the Franchising Code of Conduct to specifically prevent a Franchisor from electing not to renew a Franchise Agreement (based purely on the term of the agreement) where the Franchisor has not provided reasonable compensation to the Franchisee for the Goodwill created by that Franchisee.

Yours faithfully,



MRM Pty Ltd
John Rutherford
Director