

1 September 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 to inevitably benefit the Franchisor.

Background

We have been in the franchise business since 1993 as both Franchisee and Master Franchisee for the same Franchise system. We have operated retail franchise outlets of [REDACTED] as a Franchisees from April 1993 up until now. Also since 1996 we have acted as the Master Franchisee Victoria West an Southeast /Tasmania for [REDACTED]. We still continue to this day in our capacity as Master Franchisee. However, that role will cease respectively March and October 2011 as we have been informed by our Franchisor that as the Term of our Master Franchise Agreements will expire our Master Franchise Agreements will not be renewed.

In our capacity as Master Franchisee we have developed our network from a few stores to 52 retail stores. Naturally, both the Franchisor and us have benefited 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 Agreements. 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.

Having made considerable investment in two Master Franchisee Licences in Victoria and Tasmania we would were encouraged by the Franchisor to and expect this to be a lifelong business and commitment. The reality of franchising is that it is a one sided affair., Our Franchisor has decide not to renew our Master Franchise Agreement based solely on the term of the agreement not our performance.

The outcome is not only do we no longer have a viable business future after having put all our time and considerable effort into building up a very profitable business, but we will not be compensated for the Goodwill generated over the 15 years. It would appear that we have been made a victim of our own success as our efforts in increasing the franchise business has resulted in the creation of goodwill which the Franchisor can now seize and either operate the business previously run by us, or sell it to another operator the realise the goodwill.

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

- they are unhappy with 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. The 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,

Melwestside Pty Ltd
Tony Morris
Director

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Director