

## **FRANCHISING IS LIKE A MARRIAGE**

It is often said, and I have been saying it for years, that the relationship between a franchisor and a franchisee is just like the relationship between a husband and wife in a marriage. There must be mutual trust, respect and each party has specific duties to perform. But what are these duties?

A franchisor has a duty to ensure that the name and branding is protected, that the system is robust and proven, that the operating manuals are readable and work, and that the franchise will prosper and grow. On the other hand, a franchisee has the duties of complying with the franchise agreement, communicating with the franchisor, being truthful and honest by returning the correct gross sales and paying franchise fees, and by working hard in growing the business. But what of their relationship?

The relationship between the parties is an evolving one, just like in a marriage. After the ceremony when the franchise agreement has been signed begins the honeymoon period when the franchisee will be finding out just what makes the franchisor tick, how to get a prompt response from the franchisor, assessing just how good the initial training was, how to excite the franchisor, overcoming the obstacles in relation to the commencement of any new business, and trying to have fun. A franchisor will be coming to grips with the decision of having picked someone to be a franchisee, hoping that the choice is a good one, calculating how to arouse and stimulate the franchisee to reach higher levels, working out the degree of communication necessary between the parties, and related matters.

During the honeymoon period both the franchisor and the franchisee will be ecstatic and happy and they will be finding out a lot about each other. After a period of time, and this period differs from system to system, one of the parties, and it is usually the franchisee, will become dejected and despondent. During this period the franchisor will need to carefully manage the relationship and must try to eliminate any negativity. There must be a mechanism for resolving disputes in a timely fashion. It is healthy for the parties to disagree from time to time for, just like in a marriage, this keeps the relationship exciting and meaningful. However, if there is a strong area of disagreement and if the parties cannot reach agreement then the dispute resolution techniques of mediation and arbitration should be used.

I am a great believer in keeping things simple, having regular communication, sticking to the ground rules and having constructive comments and criticism, not destructive criticism. The greater the intensity of the relationship between the parties, the more successful and profitable the franchise business should be for both the franchisor and franchisee and that is what is commonly called the win/win of franchising.

It has been proven that positive people usually achieve better results than negative personalities. Franchising is very positive and exciting but it must be done properly and high standards must be maintained at all times. The relationship between franchisor and franchisee is also exciting and it is the dynamics of that relationship which makes franchising something special. I reiterate that there must be mutual trust and respect between franchisor and franchisee for otherwise the relationship will founder and end in divorce.

**Stewart Germann**  
**A franchising lawyer at Auckland**