

THE FRANCHISE MARKETPLACE

Your Definitive International Franchise Reference

www.franexcel.com

Spring 2008 Edition

India A Lucrative Franchise Destination

Franchise Development Challenges in 2008

Governments & Franchising: A Winning Combination

PLUS

Tax Planning Tips | Franchising, Licensing & Distribution | Importance of Relationships in Franchising

Importance of Relationships in Franchising

By Stewart Germann

When you hear the word “franchising” it should bring to mind a number of different relationships and if you are someone who does not like relationships you should not go into franchising.

Franchisor/Franchisee

The most fundamental and important relationship is between a franchisor and a franchisee. If any franchisee wishes to enter into a franchise agreement with a franchisor then that franchisee is doing so based upon a future relationship with that particular franchisor. That relationship should be built upon mutual trust and respect and both parties should show good faith towards each other. I always associate this relationship to the same relationship in a marriage and if there are misrepresentations and deceit the franchise relationship will flounder. Further, it is very important for both parties to be aware that there must be frequent communication with each other – certainly by e-mail as a start but the communication must include telephone calls and personal meetings. Having paid an up-front franchise fee to a franchisor to plug into a system and use the brand name, it is not acceptable to any franchisee to be left alone to work the business without guidance and encouragement from the franchisor, but I am amazed that some franchisors wish to have little to do with their franchisees – that is not franchising.

Franchisor/Master Franchisee

If a franchisor wishes to appoint a master franchisee, either within the same country but because a territory is too big, or in a country overseas then it is imperative that both parties understand the relationship which they will have with each other. The appointment of a master franchisee is a very important step and a franchisor in particular must not appoint a master franchisee without having good reason to do so, without proper training and without the intention of having close communication with that master franchisee. As in the franchisor/franchisee relationship above, this relationship is also built upon mutual trust and respect and it is essential for each party to act loyally and faithfully towards the other party. There must be agreed regular communication and there also must be meetings between a franchisor and a master franchisee on a regular basis. The master franchisee is charged with developing the brand and the system in a relevant territory for the benefit of both parties and therefore a franchisor must have ongoing interest in the master franchisee.



Disputes

Disputes can and do arise but hopefully not with regularity. The best way of resolving disputes is by way of mediation which has a very high success rate in New Zealand and internationally. Mediation involves the parties appointing a qualified person to act as mediator, and that mediator uses his or her skills to assist the parties to resolve a particular dispute. Mediation is a voluntary process and, in the end, a mediator does not provide a binding ruling. That is the role of the arbitrator in relation to a formal arbitration whereas a mediator tries to assist the parties to come to a resolution which each party can live with.

Good Faith

The concept of "good faith" is becoming more and more important internationally and it also impacts on the relationships between a franchisor and a franchisee, and a franchisor and a master franchisee. At all times, one party should act in good faith towards the other party which means disclosing all material facts and acting in the best interest of both parties. The Courts in New Zealand are just about ready to imply a duty of good faith and there have been a number of recent cases in USA and Australia where good faith has been discussed as a very important ingredient in any franchise relationship. I reiterate what I said above in that "each party should act loyally and faithfully towards the other party". Why? Because franchising is built around the relationship between the parties and to conceal material facts or to misrepresent a position is tantamount to acting in bad faith which has no place in franchising.

You cannot avoid relationships if you go down the franchising route. Franchising is exciting and a tremendous way to grow and promote a sound business model but it cannot survive without people. Any person wishing to become a franchisee or a master franchisee must act loyally and faithfully towards the franchisor, must communicate openly and truthfully and must receive the same treatment from the particular franchisor. The success of any marriage is a good relationship and franchising is no different. ■



*Written by Stewart Germann
Partner
Stewart Germann Law Office NZ*