
From: Trevor Banks <[REDACTED]>
Sent: Wednesday, 9 January 2013 10:00 PM
To: Franchising Code Review
Subject: franchising submission

Franchising Code Review Secretariat
Business Conditions Branch
Department of Industry, Innovation, Science, Research and Tertiary Education
GPO Box 9839
Canberra ACT 2601

I would like to firstly thank you for the opportunity to give my thoughts and experiences on Franchising and Small Business in Australia, and make submission on the as yet still unresolved issues with Franchising in Australia.

Stories of deception, lies, suffering, conflict and sadly, death are now commonplace in the Franchise industry, but only those courageous enough or so desperate that the ramifications no longer cause concern are prepared to go public. We are not just talking about the odd exception in terms of a franchisee experiencing problems. It's a systemic problem. The undertaking to investigate and challenge Franchising in Australia is long overdue, and one which I am sure will present numerous complexities and expose a number of issues

Franchisees can be "breached" for not complying with their contracts or operational guidelines, often for the most spurious of reasons, yet there is little or no recourse when the Franchisor is in any way negligent, incompetent, wasteful or complicit in the demise of Franchisees and their businesses.

From the website of the Franchise Council of Australia I quote "By nature of the relationship, the franchise agreement will be imbalanced in favour of the franchisor, as the franchisor must at all times remain in control over certain standards critical to the ongoing success of the business format."

So what happens when the Franchisor, while in complete control over standards critical to the ongoing success of the business makes, and continues to make decisions which are detrimental to the profits of the Franchisee to the point that the business can no longer sustain the basic costs of operation, not to mention household and daily expenses, despite the Franchisee being compliant with all facets of the Franchise Agreement ?

Undoubtedly, the critical selling point of a Franchise is the concept of leverage, efficiency and a competitive advantage attained through an increased buying power. Therefore, if the Franchisor makes decisions which nullify this advantage then there is a basic breach of contract if we are to assess the case on purely moral, ethical and common sense criteria.

I would very much like to explore the ideas of increased awareness and knowledge, and to formulate legislation at a federal and/or state level that will best create and support a no cost initiative that serves to prevent, rather than cure, beginning with the following which should appear in the disclosure document, on the Franchisor website, and a Govt website in an easy to find / read format, not dissimilar to the name and shame file for unsanitary hygiene in the health act.

1. the obligation to volunteer all Dispute Notices and Mediation called on the Franchisor for the past seven (7) years.
2. the results of a compulsory bi-annual survey completed by the Franchisees which is Govt orchestrated not Franchisor manipulated, again for a seven (7) year period.
3. exit surveys on Franchisees that depart a system for any reason in the preceding seven (7) years should be compulsory.
4. non-renewal of Franchise Agreement, or store closures taken over by Franchisor added to the official statistics of Franchising kept by the Govt Department of Small Business for a far more accurate measure of failures.

5. the removal of any, and all non-compete and equipment ownership clauses once the Franchise Agreement has expired.

I believe that implementation of these simple measures alone would curb some of the immoral acts that are currently being perpetrated by some Franchisors to varying extents, and would provide a simple, yet effective information base for anyone wanting to carry out complete due diligence.

New ACCC Chairman, Mr Rod Sims in his inaugural speech declared that: **"In the last financial year the ACCC received just over 600 franchise-related complaints. 28 per cent of those complaints included allegations of misleading and deceptive conduct; for example, misleading claims about potential earnings 15 per cent included allegations of failure to provide adequate disclosure as required by the code 14 per cent included allegations of unconscionable conduct by the franchisors 11 per cent related to allegations of the unlawful termination by the franchisor of the franchising agreement. As the Chairman of the ACCC, it is difficult for me to ignore these statistics", but ignore them they do.**

I will forward a detailed response forthwith in accordance with specific questions of discussion paper.

"If you have a problem with one Franchisee, you have a problem franchisee. If you have a problem with twenty Franchisees, you have a problem Franchisor." Jim Penman, founder of the Jim's Group.

Trevor Banks

[REDACTED]

[REDACTED]

Email: [REDACTED]

Phone: [REDACTED]