

Welcome to IF Consulting's e-Newsletter

March 31, 2006

Our regular email tackles the topical issues that surround all marketing channels and their underlying strategies.

Franchisees lack protection

Debate surrounding protection for Australian franchisees is being hindered by an information void. According to the Australian Securities and Investments Commission (ASIC), there is "no regulatory or legislative requirement for any company that went into any form of external administration to notify ASIC of the franchisees affected by a failure."

Australia's franchisees operate within a legislative scheme comprising the Franchising Code of Conduct and prohibitions on misleading and unconscionable conduct. Under the code, franchisors must make comprehensive prior disclosure to intending franchisees. However, there is no requirement for disclosure documents to be lodged with a regulatory body.

<http://afr.com/articles/2006/03/20/1142703248265.html>

IF Comment

It's a sad but true fact that in Australia, franchisees who have been cheated by crooked franchisors, or seriously disadvantaged when incompetent franchisors go broke, have very little chance of winning in court.

The Australian legal system mandates that solicitors instruct barristers with the simple result that those with the deepest pockets usually win. Australian lawyers don't work on contingency, class actions are few and far between and Australian courts level only compensatory damages, not punitive damages.

Contrast this with the United States where aggrieved franchisees can hire a lawyer who will get paid only if he wins the case, courts award treble punitive damages, and class actions are easily brought. In the US, a franchisor who mails misleading information has to deal with the FBI, because once dishonest mail crosses a state border, the offense becomes federal.

Simply put, it's easier to cheat franchisees in Australia than in the USA and it's harder for a cheated Australian franchisee to win in court.

One solution may be to provide aggrieved franchisees with legal aid. One can imagine franchisors saying, "Franchisees are never happy, and if they have legal aid we'll spend the rest of our working lives in court." They will also say that the Australian Franchising Code provides for compulsory arbitration. It does, and arbitration usually works. But arbitration is for honest, competent franchisors dealing with honest franchisees where there is a genuine commercial dispute, not stupidity or cupidity.

Obviously, there have to be mechanisms to ensure vexatious litigants don't get legal aid. That mechanism can be vested in a government organization with the skills to evaluate whether franchisees' claims are valid and the power to appoint lawyers to provide legal aid.



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At the very least, legal aid for cheated franchisees, should be trialed by an Australian state government or the Federal government.

Snippets

The former owner of a Chevrolet dealership in West Babylon, New York, won a US\$2.3 million jury verdict against GM in 2004. The dealer alleged that GM breached its fiduciary duty to him by stopping him from disciplining employees whom he accused of stealing from the dealership. However the U.S. Court of Appeals for the Second Circuit reversed the jury verdict this month.

<http://www.autonews.com/apps/pbcs.dll/article?AID=/20060320/SUB/60316011/1078&refsect>

With a catch cry of "Bargain investment, sellable products, handsome revenue" UPD Guarantee, a non-life insurance broker, is trying to attract prospective franchisees in Thailand. Founded in 2000, UPD Broker grew from the original family business of petrol stations. To boost the low petrol margin, founder Yupadee Vipattipumiprates decided to add a small sideline business selling compulsory third-party vehicle insurance to customers. The business began to expand into other services, including annual car check-ups and registration renewals.

http://www.bangkokpost.com/270306_Yourmoney/27Mar2006_money07.php

In a new twist to the world of on-demand entertainment, the hit US television show "Scrubs" will be added to Apple's iTunes Internet store. Although over 60 programs have been made available on iTunes since Apple closed its first deal with ABC last year, "Scrubs" will be iTunes' first third-party deal. Up until now, questions of revenue sharing had prevented third party shows like "Scrubs" from being distributed in this way.

<http://www.ecommercetimes.com/story/BJqTmwdjgn8V70/Landmark-Deal-Sends-Scrubs-to-iTunes.xhtml>

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