Franchising Code of Conduct Review

Submission by:

Phil Blain, Director, Phlyn Pty Ltd (experience attached)

Introduction

I do not propose to submit a full submission on each of the questions. I support the FCA's comprehensive submission so rather, based upon my considerable practical and commercial experience I prefer to focus on three key areas of the Franchising Code of Conduct that I believe simply are not working as intended.

May I preface these comments by saying I am a keen supporter of the Code and delighted at what it has achieved since my discussions with Bob Gardini and my then business partner, Bill Borowski (dec'd) prior to the introduction of the 1998 Code. I have known and respected Mr Alan Wein since around that time and wish him well with the challenge of the review.

Issue 1

The changes of 2008 and 2010 have seen most legal practices recommend to their franchisor clients that two sets of franchise Disclosure documents are provided. The initial draft reading copies and then those that are provided "in the manner in which they are to be signed".

In the vast majority of cases I believe these documents are identical, save for the details of the franchisee being inserted.

I appreciate that the intention of this Code change was to prevent unscrupulous changes to the documents read as drafts and then those signed as contracts. The intent is unquestionably a good one.

However, the provision of these lengthy documents for potential franchisees is a very worrying time for them. Doubling the amount of paper they have to wade through is very frightening for the potential franchisee and a major negative factor for franchisors trying to recruit franchisees in a very tough market.

I believe that this process also has a ramification that the Code is trying to prevent. Potential franchisees are more reluctant to take legal advice if they are requested to take two sets of

documents for examination and it unquestionably adds costs for the franchisee when the lawyers (correctly) charge time for examining both sets of documents.

This process also adds at least an additional two weeks to the recruitment process to honour the 14 day period expressed in the Code. Practically, it takes longer than that by the time additional adviser appointments etc. are convened. This can be a very frustrating time for a franchisee who just wants to get started and frequently this puts a strain on their finances enduring another two weeks or so of unpaid time.

As a solution is it not possible to change this process so that unless the documents are changed at all (other than the insertion of franchisee details) that there is no need to duplicate this process?

Issue 2

Providing details of "unforseen expenses" is in itself a complete nonsense. If the expenses are unforseen, how can a franchisor fill in this section of the Disclosure with any degree of accuracy?

What has occurred practically is that some documents now contain a horrifically long list of possible expenses, the majority of which are highly unlikely to ever occur. This has been brought about by lawyers trying to protect their franchisor client's interests under every conceivable circumstance.

In addition, upon legal advice to protect the franchisor's interests, these low to high assumption costs are decidedly unhelpful to a franchisee as they are so broad as to be useless anyway.

The length of the list is very frightening for potential franchisees and thus is a major negative in the recruitment process.

I totally accept the franchisor is responsible for clearly explaining all costs that a franchisee will incur in the Disclosure but there must be a better way of tightening the range of numbers expressed and being more accurate with the true range of probable costs.

Is it possible, or practical, for franchisors to be forced to provide actual costs for establishment experienced by franchisees as examples rather than providing these woolly and inaccurate lists?

Even with an embryonic franchisor trying to recruit their first franchisee they should have details of the costs they experienced themselves.

Issue 3

Where a franchisor has clear splits of fees e.g. Management Service fee 6%, Advertising and Marketing fee 2%, it is clear what the franchisor must do with regard to the detailed information provided to franchisees about the Marketing fund.

I am aware of some systems that try to avoid this reporting requirement by only charging one joint fee which includes some marketing and advertising (which may or may not be qualified at a % or amount). Their claim is thus that they do not have a fund as described under the Code and thus do not have to report advertising and marketing spends to franchisees. I believe the franchisees have a fundamental right to see this information – the power of brand and its ongoing support is one of the major reasons for becoming a franchisee in the first place.

I will leave it to the legal brains to describe what constitutes an Advertising and Marketing fund under the Code but franchisees should have access to this information.

Final Comments

The Code has certainly improved the sector but after this review and resulting adjustments I plead that the Code and the sector is left alone for a considerable time. The sector has endured intense and continuing scrutiny, which other business sectors have not, when all the statistics indicate franchising is healthy and outperforming the majority of business in Australia.

As a long standing consultant to the sector I also believe that the concept of separate state laws would be a disaster for SA and WA. Most of my clients believe, and indeed my advice is, that should this state legislation be enacted these states will become franchising backwaters as the costs of going there will outweigh the benefits.

Thank you for reading my submission and considering its content.

Phil Blain

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