

2012 IFA OFFICERS AND BOARD OF DIRECTORS

EXECUTIVE COMMITTEE

Jon Luther
Dunkin' Brands
Chairman

Steve Romaniello, CFE
FOCUS Brands
1st Vice Chairman

Stephen Joyce
Choice Hotels International
2nd Vice Chairman

John "Jack" Earle
Earle Enterprises LP
Immediate Past Chairman

Melanie Bergeron, CFE
TWO MEN AND A TRUCK
INTERNATIONAL INC
Secretary

Kenneth Walker, CFE
Driven Brands, Inc.
Past Chairman

Harry Loyle, CFE
ComForcare Senior Services
of Dayton, OH
Treasurer

Saunda Kitchen, CFE
Mr. Rooter of
Sonoma County, CA
Chairwoman, Franchisee Forum

John Kujawa, CFE
McDonald's Corporation
Chairman, Franchisor Forum

Darrell Johnson, CFE
FRANdata Corporation
Chairman, Supplier Forum

BOARD OF DIRECTORS

Doug Allison
PepsiCo

Jim Anhut
InterContinental Hotels Group

David Barr
PMTD Restaurants

Susan Black-Beth, CFE
Super Wash, Inc.

Joe Bourdow, CFE
Valpak

Liam Brown
Marriott International, Inc.

Carlton Curtis
The Coca-Cola Company

Rocco Fiorentino, CFE
Swiss Farm Stores

Lane Fisher, CFE
FisherZucker LLC

William Hall, CFE
William G. Hall & Co.

Scott Haner, CFE
Yum! Brands, Inc.

Aziz Hashim
National Restaurant
Development
1st Vice Chairman, Franchisee Forum

Michael Joblove
Genovese Joblove & Battista
1st Vice Chairman, Supplier Forum

David Liniger
RE/MAX, LLC

Stuart Mathis
The UPS Store

Margaret McEntire
Candy Bouquet International, Inc.

Barry Miller
Sylvan Learning Center of
Girard, OH

Catherine Monson, CFE
FASTSIGNS International

Tabbassum Mumtaz
Apex Restaurant
Management, Inc.

Todd Recknagel, CFE
Mr. Handyman

Michael Seid, CFE
CFWshops

Shelly Sun, CFE
BrightStar Franchising, LLC

February 11, 2013

Via email (franchisingcodereview@innovation.gov.au)

Mr. Alan Wein
c/o Franchising Code Review Secretariat
Business Conditions Branch
Department of Industry, Innovation, Science, Research and Tertiary Education
GPO Box 9839
Canberra ACT 2601

Dear Mr. Wein,

I am writing on behalf of the International Franchise Association to share with you our view on, and our members' experience with, certain provisions of the Australian Franchising Code of Conduct (the "**Franchising Code**").

IFA is the oldest and most respected franchise association in the United States of America, and the world's oldest and largest organization representing franchising worldwide. Celebrating over 50 years of excellence, education and advocacy, IFA works through its government relations and public policy, media relations and educational programs to protect, enhance and promote franchising. Through its media awareness campaign highlighting the theme, Franchising: Building Local Businesses, One Opportunity at a Time, IFA promotes the economic impact of the more than 825,000 franchise establishments, which support nearly 18 million jobs and \$2.1 trillion of economic output for the U.S. economy. IFA members include franchise companies in over 300 different business format categories, individual franchisees and companies that support the industry in marketing, law and business development.

On behalf of our members, we would like to comment on three aspects of the Franchising Code which are of special concern to non-Australian franchisors.

1. Removal of the Foreign Franchisor Exemption

The 2008 amendment to the Franchising Code removed the language that exempted a foreign franchisor from the Franchising Code's disclosure requirements if the foreign franchisor only grants one franchise or master franchise in Australia. As we stated in our letter to the Parliamentary Joint Committee on Corporations and Financial Services at the time, this removal has proven burdensome for foreign franchisors, including many of our members, especially those large retail companies that do not franchise in the United States, and that grant franchise rights to a large franchisee operator in Australia.

Page Two
Letter to Mr. Alan Wein
February 11, 2013

As you pointed out in your Discussion Paper, it was argued by some at that time that this exemption should be removed because inexperienced business operators in Australia should have the benefit of disclosure. We agree. However, it seems that the logical solution would be to impose some sort of "experience" requirement in connection with the foreign franchisor exemption, instead of a wholesale removal of such exemption. Indeed, many of our members, when they franchise into Australia, rely either on a single multi-unit operator or a single master franchisee, to take over the entire country. In most instances, these multi-unit operators and master franchisees are well capitalized and sophisticated investors, and it is difficult to understand how requiring a foreign franchisor to give a disclosure document as is required under the Franchising Code would provide any additional benefit to these experienced franchisees.

In this regard, we think it may be of value to examine the U.S. experience. In the rule-making process leading up to the adoption of the amended Franchise Rule by the U.S. Federal Trade Commission in 2007, the Commission recognized the need to exempt franchisors from the disclosure obligations when they are dealing with sophisticated franchisees. The criteria ultimately adopted in the FTC Franchise Rule are: (a) \$5 million U.S. dollars in net worth, and (b) 5 years in business.

Therefore, we would respectfully suggest that the foreign franchisor exemption be restated, with an added condition that the franchisee (or master franchisee) has a minimum net worth and has been in the business for at least a minimum period. (\$5 million Australian and 5 years seems sensible to us, but we would not presume to substitute our experience for your much closer understanding of the circumstances in Australia.) We believe that this arrangement would strike an appropriate balance between protecting unsophisticated franchisees in Australia, and reducing unnecessary burden on foreign franchisors who wish to franchise in Australia.

2. Disclosure to Australian Subfranchisees

Under the Franchising Code, if an Australian subfranchisor wishes to grant a subfranchise, either the subfranchisor and franchisor must each give their own disclosure document, or they deliver a joint disclosure document, to the prospective subfranchisee. (It is our experience that, in practice, most of our members opt to give separate disclosure documents to avoid any issues that might exist in the subfranchisor's disclosure.)

This is a highly unusual requirement, one that does not, to our knowledge, exist anywhere else in the world. This is especially burdensome for those foreign franchisors who have granted Australia to an exclusive subfranchisor: they are required not only to give a disclosure document to the subfranchisor (please see our discussion above), but also to give a disclosure document every time the subfranchisor discloses to a prospective subfranchisee. This burden is further aggravated by the Franchising Code's requirement that each disclosure document must be "up to date."

Page Three
Letter to Mr. Alan Wein
February 11, 2013

We do not believe that a separate disclosure document by the franchisor adds any significant value to the disclosure process. Rather, we believe that disclosure from the subfranchisor to the prospective subfranchisees is enough. In addition (and this should appear only in the subfranchisor disclosure document) it is of critical importance to subfranchisees to understand what happens if the master franchise agreement with the franchisor is terminated.

Therefore, we are also respectfully suggesting that the Franchising Code be revised so that if a foreign franchisor grants a master franchise in Australia, the foreign franchisor does not need to give separate disclosure documents to prospective subfranchisees. In addition, subfranchisors could be required to clarify the consequences and arrangement in the event that its master franchise agreement with the franchisor is terminated.

3. Disclosure To Existing Franchisees

Another unique feature of the Franchising Code is the requirement to provide a disclosure document to existing franchisees at their request. While we appreciate the desire to keep existing franchisees fully apprised of the status of the franchise system, we do not believe that this is the most effective approach.

The Franchising Code, in another part, contains a list of "materially relevant facts," which the franchisor must disclose to a prospective franchisee after it has delivered the disclosure document. The requirement also applies to existing franchisees, and we believe that this requirement by itself should address the concern mentioned above. By limiting the continuing disclosure obligation to existing franchisees to these "materially relevant facts," we believe, again, that the Franchising Code would strike a balance between protecting franchisees and limiting unnecessary burdens on franchisors.

* * * * *

In closing, we want to commend the Australian government for conducting this review, and for affording us the opportunity to share with you the view of our organization and our members. Australia has been an extremely (and increasingly) important market for U.S. franchisors, and we welcome this opportunity to help improve and strengthen the regulatory environment for both franchisors and franchisees. Further, we believe this will encourage continued and expanded entry into the Australian market, with the attendant benefits to the Australian economy.

We hope that this information is helpful. Please feel free to contact us if you have any questions or would like to continue the dialogue.

Sincerely,


Stephen J. Caldeira