

WISEWOULDS SUMMER FRANCHISE UPDATE JAN/FEB 2009

It was a busy year in Franchising at Wisewoulds in our franchise group.

Its now 2009, finally hot and a new and exciting year begins.

With the current economic downturn worldwide and with companies having to review staff levels and operating costs, there is likely to be further redundancies or restructuring of staff at many levels.

Some of those people will look to the franchise sector to start a new career or buy a job.

Despite the media hype (they love a tragedy), we believe that with the positive action by all of the major world economies Australia will weather the downturn reasonably. Certainly, some industries and sectors will be affected, while others will continue to grow. For some, it will create new opportunities, particularly where inefficient and highly geared competitors may not survive!

A wise man once told me (my brother Ted – Ted’s Camera stores) when times get tough, get lean, get mean with your suppliers and advertise harder.

The Impact on the Industry

Franchisors funding franchisees into business:

There will be more of a temptation for franchisors to fund franchisees who have little or no equity to come on board by offering funding, or terms on payment of fit out and establishment costs. We generally do not recommend franchisors extend these offers, as it can lead to dispute and a failure by a franchisee to repay.

A franchisee needs to have their own equity at risk in the business to ensure they remain committed to making the business a success. That incentive does not exist when they are relying on franchisor funds. The franchisor is also at risk if the franchisees expectations are not met, franchisees then use that as a reason not to meet their commitment under the loan agreement or the Franchise Agreement. Offering finance terms with security over the business or other assets of the franchisee can still be problematic where a franchisee defaults and the franchisor seeks to realise the security.

Rather than offering terms franchisors could consider offering franchisees concessions, if necessary, in the early stages of the franchise by payment of reduced or stepped royalties or marketing fees tied to performance. In this case, the franchisee has still funded the establishment costs and has that equity at risk and the franchisor continues to have its rights in the event of a default by the franchisee.

Franchisees:

Prospective franchisees need to be cautious in selecting a franchise system. They need to consider what system best suit their needs, skills and objectives, and carefully choose a system, without jumping in for the wrong reasons.

We regularly advise prospective franchisees to assist them to make an informed decision before they commit. As members of the International Franchise Lawyers Association (**IFLA**) and Franchise Association New Zealand (**FANZ**) and Franchise Council of Australia (**FCA**) together with access to the ACCC, and consultants in the industry, we have considerable industry knowledge.

We offer franchisees **fixed price**, written reports and assessments.

Franchisors:

For franchisors the issue will be to ensure that their own systems, and their franchisees continue to trade profitably, and franchisees receive a return on their effort.

Franchisors still need to be discerning in selecting the right franchisees amongst a growing pool of available and keen applicants.

Defaults and disputes are likely to increase. Franchisors need to identify problem franchisees early and implement strategies quickly to deal with them.

The challenge ahead – Dispute Resolution - solutions and strategies

There will no doubt be challenges for both franchisors and franchises in the current climate.

Our experience over the last twelve (12) months is that there are more and more franchisees looking to an early exit from their franchise system, mainly due to the fact that whilst they were previously able to take a salary and meet their operating costs after payment of franchise fees, many are now realising that with tightening margins and increased costs, there is simply no return on their effort or investment.

The basic principals that we all apply to our business ensuring that we buy at the right price, contain overheads and manage our businesses efficiently, continue to apply to both franchisors and franchisees.

In some cases this is overlooked by franchisees who are “over reliant” on their franchisors for their success. In other cases, we have found that franchisees have legitimate concerns relating to the lack of support, and failure of franchisors to be able to supply product at competitive prices.

The usual financial model where franchisees pay royalties on their gross turnover, not profit, means that franchisees tend to build resentment when the franchisor continues to receive their revenue stream from sales and the franchisee is left with no return and a growing debt.

Wisewoulds specialise in dispute resolution solutions and strategies for both franchisors and franchisees.

We have acted for a variety of franchisee advisory groups in dispute resolution at mediations and have developed extensive knowledge in identifying appropriate exit strategies.

We look to non litigious ways to negotiate co-operative exits that both parties can live with to move forward.

Legal Fees – Flexible Fee Options

Wisewoulds are leaders in offering clients flexible fee structures. We offer clients:

- fixed fee services;
- capped fees;
- genuine and realistic fee estimates; and
- the ability to get the job done within the fee estimate range.

In our franchise service group we can provide documentation and services on a **fixed fee** basis. This gives clients certainty in budgeting for fees.

We also provide fee estimates based on detailed **scope of works** and commit to providing the services within the cost estimate.

This is a major step in meeting client's expectations and ensuring that client's retain our firm with confidence.

We can also provide interim weekly or fortnightly work in progress reports.

In our view, these measures address one of the biggest issues facing professional advisors generally in relation to fees, that is, certainty in billing.

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