

Manzoor Ishani, senior franchise consultant solicitor at Sherrards discusses what franchisees should expect from a franchise.

FRANCHISING – WHAT SHOULD FRANCHISEES EXPECT?

In the early days of franchising in the UK, when franchisors and franchisees tended to be less sophisticated and streetwise, franchise agreements contained a host of detailed obligations which the franchisor offered to perform for its franchisees. These days, when reviewing franchise agreements for clients, banks etc. I am increasingly coming across clauses which deal with the franchisor's obligations which are fewer in number, more general (rather than specific) in nature and short on detail as to exactly what it is that the franchisor will do for its franchisee.

There are a number of theories as to why this is so; the more specific the obligations, the more demanding will be the franchisee, the greater the detail, the greater the inflexibility. It is not so much the number of obligations but rather their nature which is important, franchisees are now much better informed and confident of their rights and expectations than was previously the case. Some of these theories are based on sound principles, others less so, whilst some are a poor attempt at thinly disguising a hidden agenda.

All this is small comfort to a prospective franchisee who is eager to know what the industry norm or standard is by which they can judge their particular franchisor.

After having spent time explaining to a prospective franchisee the reasons why franchise agreements are in a standard form and why franchisors will brook no amendments, it becomes difficult to explain to them why franchisors are not required to accept 'standard' obligations. This argument whilst attractive on the face of it, is facile when examined more closely. Much of course depends upon the nature of the business. The sort of obligations which a franchisee should rightly expect from a franchisor of a fried chicken business are going

to vary considerably from those expected of a franchisor of a retail confectionery or dry cleaning business.

Never the less, almost all professional advisors and ethical franchisors would agree that there are certain franchisor obligations which are fundamental to ethical franchising irrespective of the nature of the business franchised.

Training

It is a sine qua non of franchising that franchisors must have an unequivocal obligation to train franchisees in how to operate the franchised business and this obligation to train must continue beyond initial training so that franchisors are obliged to provide continuing and further training to franchisees during the subsistence of the franchise agreement.

Protection and reputation

Franchisees pay franchisors for the right to use the franchisor's intellectual property such as the trade name, trade marks, know-how, copyright, business system etc. Franchisors should do whatever they can to protect their intellectual property and should be under an obligation to continue protecting their intellectual property including, where necessary and sensible, taking court proceedings against infringers. A balance has to be struck between what is necessary, desirable or practicable and the interests of the franchisor, the franchisee and the franchised network as a whole. Never the less, franchise agreements should contain provisions relating to this so that prospective franchisees can make a decision, as to whether such provisions are acceptable to them or not, on an informed basis.

Support

Crucial to any successful franchised operation is the level of support a franchisor gives to its franchisees in its operation of its franchised business. This after all is one of the things franchisees pay for: There should therefore be a positive obligation on the part of the franchisor to provide such support as a franchisee may reasonably require to enable the franchisee to run his or her franchised business in accordance with the franchisor's system. The level of support required will vary from one franchisee to another: This is one example where previously detailed provisions in franchise agreements have now changed and have become more general in nature. Franchisors are aware of the fact that a line needs to be drawn between supporting franchisees in genuine need of support and those who, for reasons best known to themselves, are so demanding of their franchisor's support as to substitute it for their own efforts so that they eventually, if not quickly, become reliant upon it for the success of their businesses. .

Improvements

I am convinced that the obligation to enhance, develop and improve the system, the services, the product range etc. of a franchised business lies squarely with the franchisor. To me this obligation is fundamental and one which cannot be delegated to franchisees. One of the principal obligations of franchisees is to sell the goods

and or services which are the subject of the franchise, not to develop them. Of course, franchisees should be involved in assisting franchisors to a reasonable extent in pilot/marketing testing any improvements.

Mature

franchisors also encourage franchisees to use their initiative to think of improvements and innovations and to relate any ideas they may have as to how the business or the system may be improved, to the franchisor, but it is the franchisor who must decide whether an idea is worth taking up, developing and subsequently when ready, passing it to the rest of the franchised network to incorporate into the franchised system.

Many great ideas (such as the MacDonaldis 'Big Mac) were the brainchild of a franchisee. Nevertheless, this is not a substitute for franchisors expending time and resources in research and development. Ideas from franchisees are always to be welcomed but must not be substituted for the franchisor's obligations.

Quality control

Different franchisors have different methods of ensuring that quality is maintained throughout their franchised network but before franchisors can do this they must be sure of the quality of their own system, products

etc. This is best done by demonstration and these days very few if any franchisees will buy a franchise without having first satisfied themselves that the franchisor has pilot tested it. These days, the sale of a franchise is a sale by sample. Having established the requisite quality and standards, the franchisor must then provide sufficient mechanisms in the franchise agreement to enable it to ensure that franchisees operate to the same standards. Strictly speaking, although not an obligation on the part of a franchisor, the nature of this obligation is such that it is mutual in that it is as much in the franchisee's interest to maintain quality as it is in the franchisor's interest to ensure that quality is maintained.

Advertising marketing and promotions

This is one obligation about which not everybody will agree. Some feel that the obligation to provide, conduct, co-ordinate etc. advertising marketing and promotions of the franchise, at least at the national level, should be that of the franchisor. Much depends upon the nature of the business. In some cases franchisors are content to leave it to franchisees and feel that their franchised business is such that it would benefit little by any form of national advertising. Other businesses are increasingly becoming reliant upon

national or regional advertising, marketing and promotions as a necessary feature to ensure success of a franchised business. If the nature of the franchise business is such that advertising marketing and promotions at a national or regional level is necessary, the franchisor should not be allowed to abrogate its responsibility in this regard and should be obliged to be involved at an appropriate level for this purpose.

Even in businesses which do not need any form of direct advertising, marketing or promotions, many franchisors still undertake an obligation to provide franchisees with artwork, brochures, flyers, leaflets, point of sale material etc. thereby ensuring quality, standardisation and economies of scale for its franchisees.

One can think of many more obligations which one could add to the above list, particularly if one takes into account industry standards in operations such as quick printing, fast food, parcel delivery etc. Nevertheless, it is to be hoped that the foregoing will at least help prospective franchisees and those advising them, to get some sort of 'feel' for what they should be looking for.

Franchise Focus Autumn 2006

