



54TH ANNUAL IFA LEGAL SYMPOSIUM



IFA[®]

INTERNATIONAL FRANCHISE ASSOCIATION



Ensure Your Good Deed Goes Unpunished – Assisting Struggling Franchisees

Dominic Mochrie, Osler, Hoskin & Harcourt LLP

James Susag, Larkin Hoffman

OSLER

Larkin Hoffman

OUTLINE/AGENDA

1. What is a Franchisee Assistance Program and Why Have One?
2. Types of Franchisee Assistance Programs
3. Recognizing the Signs of Struggling Franchisee
4. How to Help: Different Ways to Provide Assistance
5. Exiting the Relationship
6. Q&A

INTRODUCTION

- COVID-19 and renewed emphasis on financial assistance programs
 - Adjusting fixed payments and other business obligations
 - Creative problem-solving
 - Lessons learned from operating franchises during the pandemic

FRANCHISE ASSISTANCE PROGRAMS – WHY HAVE THEM AT ALL?

- Advantages:
 - Help franchisees reach their full potential
 - Builds goodwill within the franchisee community and among customers
 - Proactively addresses problem areas early before default or disputes arises
- Disadvantages:
 - Time and resource constraints – these programs are expensive!
 - Complaints about equality among franchisees
 - Waiver & estoppel concerns

TYPES OF ASSISTANCE PROGRAMS

- Formalized Assistance Programs
 - Consistent structure, format, milestones and evaluation criteria for meeting and successfully completing the program are well defined
- Ad-hoc/Customized Assistance Programs
 - The franchisor can provide certain customized assistance to select franchisees on an as-needed basis
- Mandatory vs. voluntary programs
- What about the duty of good faith and fair dealing?

RECOGNIZING THE WARNING SIGNS OF A STRUGGLING FRANCHISEE

- Universal signs that a franchisee is in trouble:
 - Failure to make required payments to franchisor
 - Issues with franchisees' suppliers, vendors or landlord
 - Skewed financial statements
 - High turnover of employees

HOW TO HELP – MENTORSHIP/TRAINING/CONSULTATION

- Mentorship programs
 - match high-performing franchisees with struggling franchisees
- Supplemental training
 - Re-do of initial training or additional ongoing training provided by the franchisor
- Consulting services – external vs. internal consultants
 - Develop tailored, customized solutions to help the franchisee succeed
- The importance of developing a business plan to monitor progress

HOW TO HELP – TAKING OVER TEMPORARY MANAGEMENT

- A good way for a franchisor to diagnose and solve a struggling franchisee's problems. But it is not without risk.
 - Accounting challenges
 - Administrative challenges
 - Drain on franchisor's resources
 - Potential Joint Employer liability

HOW TO HELP –FINANCIAL ASSISTANCE - RENT RELIEF & OBTAINING LOANS

- What should a franchisor consider when offering financial assistance?
 - Time period the relief will be offered
 - Uniform or customized?
 - Deferral or abatement?
 - Put everything in writing

HOW TO HELP- CUSTOMIZED SOLUTIONS

- What assistance do you believe the franchisee requires?
 - Have you seen this before with other franchisees?
 - What helped?
- What assistance does the franchisee believe it needs?
 - Open line of communication
 - Allow the franchisee to explain why/where they are struggling
- Customized assistance must be clearly documented

EXITING THE RELATIONSHIP

- When assistance is not enough to overcome the franchisee's issues:
 - Mutually terminating the franchise agreement
 - Assisting the franchisee in selling the business
 - Determining damages and pursuing the franchisee for outstanding payments

FINAL THOUGHTS

- Paper, paper, paper!
- Ensure you are disclosing your assistance programs as necessary
- Look for trends and learn from each experience
 - Are these systemic, system-wide issues?
 - Are you seeing issues in a particular segment of your franchisee population?
 - Is there inadequate initial training?
 - Is there a general sales decline?

Questions?

Thank you!

Contact Information

Dominic Mochrie

- Partner, Osler, Hoskin & Harcourt (Toronto, ON)
- 416-862-5994
- dmochrie@osler.com

OSLER

Harris Chernow, Moderator

- Partner, Reger Rizzo Darnall LLP
- 215-495-6532
- hchernow@regerlaw.com

James Susag

- Partner, Larkin Hoffman Daly & Lindgren Ltd (Minneapolis, MN)
- 952-896-1572
- jsusag@larkinhoffman.com

Larkin Hoffman