Critical Issues Affecting Payments From Your International Franchisees

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International Summit – Advanced Track
February 10, 2008
Setting the Stage

• Goal – Maximizing Revenue from International Operations
  – Short-term vs. Long-term Goals/Objectives

• Challenges
  – Uncooperative or Recalcitrant Foreign Franchisees/Partners
  – Governmental Obstacles
Critical Issues Affecting Payments - Overview

- The Development Stage – Scope of Fees Reviewed
- The Due Diligence Stage – Looking for the “Right” Partners
- Feeding the Monster – Government Appetite for Money and Oversight
- The Implementation Stage – How to Maximize Revenue
- The Enforcement Stage- Salvaging Revenue
The Development Stage – What Fees are We Talking About?

• What Fees are We Talking About?
• Initial Franchise Fees
  – Initial Franchise or Development Fees, Store Opening Fees
• Ongoing Fees/Charges
  – Royalty, Advertising, Technology Fees, Interest Charges
• Product Purchases
  – Payment Terms May be Under Separate Document
The Development Stage – Methods of Collecting Fees

• Timing of Payment – Upfront, Ongoing (weekly or monthly), Following Specific Event
• Calculation of Payments – Flat amount, Percentage of Sales, Installment
• Payment Method – Wire Transfer, Check, Automated/online Payment, Letter of Credit
The Due Diligence Stage – An Ounce of Prevention . . . Business Perspective

- Understanding Your “Partners” Financial and Operational Capabilities
- Determining Your “Partner’s” Financial Hygiene – “Capability” vs. “Performance”
The Due Diligence Stage – An Ounce of Prevention . . .

- Initial Due Diligence Tactics
  - Requesting Information From Franchise Prospect
  - Conducting Additional Due Diligence
- Ongoing Due Diligence
  - Establishing Reasonable Requirements and Enforcing Them
  - Using Information to Monitor Franchisee’s Financial Health
The Due Diligence Stage – Government Control over International Transactions

- Understanding the Ground Rules
  - USA PATRIOT ACT and Related Lists of “Bad People”
  - Sanctioned Countries – Government-Imposed Sanctions (e.g., Cuba)
  - Export Controls and Other Government Sanction Programs
The Due Diligence Stage – Implementing A Due Diligence Program

- Establish Standards – And Follow Through
- Introduce Redundancy to Reduce Reliance on Inaccurate/Incomplete Information
- Third Party Services – Determining When and How to Use Them
- Address Appropriately in Legal Documents
Feeding the Monster – Governments’ Ever Increasing Appetite for Revenues

- Governments’ (U.S. and Foreign) Search for Additional Revenue
- Different Taxing Schemes that can Lower Your Revenue Stream
  - Withholding Tax, Income Tax, Duties on Goods, VAT
- Government Roadblocks - Currency Restrictions, Other Government Approvals and Restrictions
- Government Tax Schemes to Create Incentives for Business
  - Free Trade Zones, Tax Treaties, Foreign Tax Credits
The Implementation Stage – Maximizing Revenue

• Building the Franchise Relationship
  – Providing Value to your Franchisees
  – “Sharing” the Risks and Rewards

• The Cultural Perspective
  – Recognizing and Addressing Cultures Different from Our Own
  – Understand What Motivates Your Franchisees
The Implementation Stage – Maximizing Revenue

- Structuring Fee Provisions
  - Addressing fluctuation in currencies
  - Reducing Impact of Certain Taxes
- Structuring the Deal to Limit the Impact of Government Taxing Schemes
  - Establish Offshore Entities to Reduce Tax Burden
  - Drastic Measures – Altering the Model
The Enforcement Stage – Salvaging Revenue

• Proactive Steps Through Informal Means
  – Direct Communication - Least Costly Option
  – When Do You Step Away from the Agreement?

• PreTermination and Termination Issues
  – Restricting Benefits – Is it Effective Overseas?
  – When Do You Issue a Default Letter?
  – Confirm Local Laws Restricting Termination
The Enforcement Stage – Salvaging Revenue

• Use of Dispute Resolution – Options
  – Arbitration Generally Preferred
  – Litigation Limited to Certain Situations

• Arbitration Issues
  – Cost, Venue, Arbitration Body, Arbitrators

• Alternatives – Buy-outs and Assignments to Other Parties
Final Thoughts and Questions

• Thank you
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