

# DEALING WITH FRANCHISE DISPUTES

The franchise relationship is often referred to as a marriage (whether rightly or wrongly). As we know every relationship, including marriages, have their good times and their bad times. Sometimes people get grumpy with each other for no reason or because of miscommunication or because of well, virtually any reason.

## A dispute need not be a big issue in franchising

One of the features of a franchise system that is a member of the Franchise Association of New Zealand (FANZ) is the required dispute resolution procedure. FANZ requires a specific dispute resolutions procedure to be incorporated into its member's franchise agreements, along with various other items designed to promote a better standard of franchising.

In essence, the dispute resolution procedure required by FANZ specifies a mediation if the franchisor and franchisee can not work things out between themselves. Mediation is an established dispute resolution procedure designed to enable the parties to come together and with the help of an entirely independent and experienced person, (the mediator), achieve a resolution of the matter of annoyance between the two parties involved. Legal representation may be required as well during this meeting.

The process is similar to family guidance counselling but on a business level. It provides the following:

- a forum to air one's dispute

- an opportunity to hear the other party's response
- a safe environment
- a procedure to work out a resolution (with the help of the mediator)
- the ability to continue the business relationship – if this is the desired outcome
- a formula to terminate the business relationship on a mutually agreeable basis

Greg Nathan, the highly respected international franchise expert and corporate psychologist, has an unsurpassed understanding of the franchise relationship. Greg has written several books on franchise disputes. A number of these are available from the Franchise Association website at [www.franchiseassociation.org.nz](http://www.franchiseassociation.org.nz).

Your franchise agreement (provided you are entering a relationship with a FANZ member) will have a disputes resolution clause containing either the required FANZ wording or a reference to the FANZ required disputes resolution procedure.

If you are not dealing with a FANZ member, matters may be (and more often than not are) quite different. If you are considering contracting with a non-FANZ member, make sure that your solicitor completely understands franchising and the reasons why FANZ membership provides such a benefit to a franchisee. If your solicitor does not understand this, go and see a solicitor who does. For your own protection, your chosen solicitor should have an expert knowledge of franchising.



## Disputes occur for a number of common reasons

- 1. Poor (or non-existent) franchisor support.** Typical of a poorly setup system (from a franchisee's point of view) is where there is a fee charged for the initial grant and then either no ongoing fees or set fees payable on say a monthly basis. With this scenario, clearly there is no financial benefit for the franchisor to help the franchisee achieve greater sales. So why would he? Will he? More often than not the answer is in the negative to both questions. There are, however, some highly reputable systems that do work on this basis. Complaints often heard in the 'failure to support' area generally follow a similar pattern. Franchisee complaints go something like this "He took my money and I have only seen him twice in the last two or three years. I get an occasional email saying my figures aren't up to scratch." Ongoing support and training should be a 'given' for any franchisee.
- 2. Poor advertising programmes.** National advertising is usually something under the sole control of a franchisor. If national advertising is undertaken, generally it is not cheap. A television advertisement is an expensive thing to put together and

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to broadcast. Franchisees seeing this expense and no financial return clearly get upset. Similarly, large newspaper/magazine advertisements, as well as offers of discounts, can be disappointing when they do not pull in the anticipated numbers. If continued advertising campaigns fail, franchisees become disheartened and disgruntled.

**3. Not enough money coming in.** You can just about bet that the reason for general unhappiness is there being insufficient money or less than expected money. A franchisor who oversells the projected financial performance to a potential franchisee is obviously marching down the route to a dispute. In difficult economic times all businesses suffer, but a good franchisor will be really stepping up their game to help their franchisees at least continue to achieve the same bottom line. Committed franchisors will help their franchisees to increase both market share and profit. There are a number of franchises that are really excelling at the moment. The old saying ‘money sops up the blood’ is very true in any financial relationship. If the returns to the franchisee do not reach those claimed, or if they decrease, then matters which may have irked whilst there was plenty of money sloshing around will soon come to the fore. Franchisors beware!

There are a number of franchise systems that commonly appear on my ‘complaints list’. These are generally run by people who:

- have little business franchise experience or knowledge
- have not established their system with the appropriate input of professional franchise consultants and experienced franchise lawyers

- care little for their franchisees
- deliberately churn

Your specialist franchise lawyer will be able to assist you with any concern you have regarding such systems and can advise you as to whether indeed the system you are looking at slips into any of the above categories.

### Conflict resolution

One of the benefits of buying a franchise is the amount of advice available from specialists in the franchise community. Such advice can help you make a better business purchase choice.

From a practical perspective, the disputes procedure contained in most franchise agreements (and all FANZ member’s agreements) gives the following benefits:

- It is a way of terminating the relationship on terms agreed by the parties, with such agreement being achieved through the mediation process.
- It avoids costly litigation. Under current rules, any application to the District Court will result in the court requiring a compulsory settlement conference as part of the judicial process. It is also likely that the High Court (with jurisdiction above a \$200,000 claim) will eventually have a compulsory settlement conference process included in its rules. Having a compulsory mediation process in the franchise agreement does away with the need to issue (or defend) costly court proceedings to get to the same result.
- The process by and large produces mutually acceptable outcomes.
- The process reduces the costs incurred by each party, compared to going through the judicial process.

- Going to court is for most people a very emotional and stressful time. Mediation is a significantly less stressful process.
- Whilst producing an outcome, it is unlikely, and experience tells us this, that the parties will continue their relationship.

A properly prepared franchise agreement will contain a mediation procedure that benefits both parties. FANZ requires this procedure in its members’ agreements. When/if disputes arise, the mediation process works well and is an excellent alternative to court proceedings (where you may end up in compulsory mediation anyway). FANZ has a panel of qualified mediators with specific knowledge of franchising and the franchise relationship.

Finally, as we know, differences of opinion and/or disputes are part of any ongoing human relationship. With the appropriate clause in your franchise agreement, such matters can be dealt with in the most cost-effective and least stressful manner.

**David Foster is a Director of Harris Tate Solicitors. He is the Franchise Association’s Co-ordinator for Waikato and the Bay of Plenty. David is a frequent speaker and author on franchising and regularly appears on television on franchising and business matters.**

**Harris Tate is a well-established law firm. Their knowledge, experience and way of working contribute significantly to the success of their clients.**

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