

FRANCHISING UPDATE

ISSUE 3, JULY 2009

IS FRANCHISING A PANACEA IN AN ECONOMIC DOWNTURN?

Offices at:

Brisbane

Level 28 Central Plaza One
345 Queen Street
Brisbane

Beenleigh

99 George Street
Beenleigh

Caboolture

9 Elliott Street
Corner Morayfield Road
Caboolture

Cleveland

141 Shore Street West
Cleveland

Gold Coast

64 Marine Parade
Southport

Ipswich

55 Limestone Street
Ipswich

Telephone

Freecall 1800 652 969

mail@quinnscattini.com.au

www.quinnscattini.com.au

Surveys suggest the current economic downturn and with it loss of employment is having an influence on the decision making process of individuals considering operating their own business. In particular, owning a franchised business as opposed to a stand-a-lone business has certain appeal.

There are many reasons why a franchised business has such appeal. These include:

- start up costs of the franchised business maybe less;
- the franchise system is known and proven;
- the franchise system is associated with a pre-established brand image and reputation;
- the franchisor can provide support and training;
- assistance and guidance maybe obtained from other franchisees in the system;
- there could be benefits to the franchisee associated with the franchisor's economies of scale;
- the franchisee has access to operations, marketing and other manuals for guidance;
- the franchisee has the benefit of the franchisor's ongoing research & development;
- the franchisee can tap into the franchisor's know-how and experience;
- the franchisee may have a dedicated territory in which to exploit the good or service.

As with any business, however, the franchising industry is not immune from failure. Recent well publicised examples of franchised systems operating in Australia which have failed and either had administrators appointed or needed re-structure or re-capitalise include (among others):

- the jewellery chain – Kleins;
- the Traveland chain of travel agents;
- the delicatessen chain - Price Deli;
- the real estate chain - Century 21 Pty Ltd
- the white goods company - Kleenmaid Group;
- the car care company - Midas Australia;
- the furniture retailer – Samsara.

These are just a sample.

It is important to note however that the collapse of a franchisor does not inevitably lead to the conclusion that the brand also evaporates or in fact that franchisees will also fail. For example, the Century 21 franchisees were able to continue trading under a new ownership structure and franchise model. A large number of Traveland franchisees were also able to continue operating either on their own account or as part of other travel agent chains.





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Some franchisees in other situations were able to form buying syndicates to acquire the franchise system and intellectual property and continue trading. Not all franchisees are so fortunate so this must be borne in mind. Either way it is a stressful time for those involved. Time will tell what will be the outcome for the Kleenmaid, Midas and Samsara franchisees.

The lesson from these failures is that a franchised system is not immune from harmful internal and external forces. As such, prospective franchisees should undertake a thorough due diligence and obtain appropriate legal, financial, business and accounting advice before committing themselves to a Franchise Agreement. In addition, franchisees should carefully consider what structure, risk minimisation and succession planning strategies they will adopt. We can assist you on these questions if you wish.

Raymond Duffy, Associate, Quinn & Scattini Lawyers

If you would like to ask any question about this or any other similar issue Raymond may be contacted on 5499 3622 between 8.00am to 5.30pm Monday to Friday or email rduffy@quinnscattini.com.au

