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FRANCHISING UPDATE

ISSUE 4, SEPTEMBER 2009

FRANCHISE DISPUTES

The success of any Franchise system depends significantly on the relationship between the Franchisor and its Franchisees. Unfortunately there will be times when that relationship is strained or broken and which inevitably leads to a dispute. Disputes can arise for various reasons including, for example:

- Poor communication between the Franchisor and Franchisee;
- Failure of disclosure by a Franchisor;
- Failure by the Franchisor to provide adequate training & support to the Franchisee;
- Misrepresentations by Franchisors as to earnings information or other key elements of the franchise system;
- Breaches by Franchisees of the franchise agreement;
- Termination of the franchise agreement.

The *Trade Practices (Industry Codes — Franchising) Regulations 1998* known as the Franchising Code of Conduct (“the Code”) regulates franchising in Australia.

Australian Competition and Consumer Commission (“ACCC”)

The ACCC is an independent statutory authority formed to administer the *Trade Practices Act 1974* and other acts, including industry codes such the Franchising Code of Conduct.

As well as providing general educational and information services, the ACCC also provides a consumer complaint handling procedure and can take both investigative and legal action for breaches of the Trade Practices Act.

Mediation

The Code also provides a mechanism to assist Franchisors and Franchisees to resolve disputes. Under the Code a franchise agreement must provide a complaint handling procedure that complies with clauses 29 and 30 of the Code. These clauses essentially provide as follows:

The complainant must tell the respondent in writing:

- (a) the nature of the dispute; and
- (b) what outcome the complainant wants; and
- (c) what action the complainant thinks will settle the dispute.

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The parties should then try to agree about how to resolve the dispute. If the parties cannot agree on how to resolve the dispute within the timeline set out in the Code, either party may refer the matter to a mediator. If agreement cannot be reached as to who should be the mediator, the Code also provides a process for a government appointed/ or recommended mediator.

Once a time and place for mediation is nominated each party (or their representative) must attend the mediation and try to resolve the dispute. If a resolution of the dispute is unlikely the mediator can terminate the mediation.

Litigation

If an aggrieved party is unable to resolve a dispute:

- by way of negotiation with the other party;
- through mediation; or
- through intervention by the ACCC,

they may consider commencing legal proceedings to protect their rights.

If you are in dispute or feel you are being unfairly treated or are interested to know what your rights may be, we recommend you contact Quinn & Scattini Lawyers so we can assist you.

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

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