ASPECTS OF A FRANCHISE AGREEMENT – POST TERMINATION REQUIREMENTS

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Upon termination or expiration of the franchise agreement, the franchisee will be subject to several obligations that survive the termination of the franchise agreement. These include:

Return information/signage of the franchisor

The franchisee must return all branding and insignia of the franchisor. They will also need to remove any branding on cars or other items provided by the franchisor in order to operate the business, eg manuals, customer databases, phone numbers. If the franchisee is also vacating the lease, it must remove the branding/signage at the premises and return all branding to the franchisor.

Cannot disclose or use information about franchisor's brand and system

The franchisee cannot disclose or use any of the confidential information it received to operate the business to any third party.

Not permitted to use the franchisor's intellectual property

The franchisee is not permitted to use the franchisor's intellectual property, including trade marks or register a similar trade mark to the franchisor. It also cannot display the trade mark and insinuate that it is still a part of the franchisor's brand after termination.

Indemnity

The franchisee indemnifies for any breach of the agreement for the period that the franchisee was operating the business. This can involve customer complaints of poor service or money owed to a supplier. The franchisor can either ask the franchisee to pay directly, or pay the costs/settle the customer complaint and seek the costs incurred from the franchisee.

Not to be involved in a similar business

This restraint is the most controversial and has been the subject of many cases. The franchisee is not permitted to be involved in any manner in any business similar to the business unless it has received the prior written consent of the franchisor. The franchisor has provided specialist training for a business and system and it is unfair for the franchisee to take that business and know how developed over many years to establish a similar business. For this reason, the franchisee is restrained for a period and an area (usually the territory). They are also restrained from soliciting customers and employees for a certain period of time.

Any restraint must be reasonable to protect the franchisor's legitimate interest, but also take into account the franchisee's need to earn a living. Courts can amend the restraint period and area if it feels that the restraint was not reasonable.

Many franchisees have challenged their restraint of trade clauses. In our next two articles we will discuss the latest cases relating to restraints.

This article was written by Khushbu Sundarji and Stewart Germann.