

MARKETING FUNDS ARE IMPORTANT

All franchisors will be interested in marketing their brands. How is this done? Normally by way of national marketing where the franchisees pay a percentage of turnover; and also by local marketing where a franchisee markets in a particular territory or area.

The national marketing fund can total a considerable sum of money so where is that money held? In New Zealand there is no mandatory requirement to keep the marketing funds in a separate bank account except if a franchise agreement prescribes the requirement to do just that.

There is no franchise-specific legislation in New Zealand but the Franchise Association of New Zealand has a Code of Practice and Code of Ethics, but both are silent on marketing.

Where marketing funds are held is a hot topic and there should be a mandatory requirement for all franchisors to keep the marketing fund in a separate bank account which is tantamount to a trust account. After all, the franchisees pay the marketing levies and the franchisor uses those funds to market the brand to benefit all franchisees.

A franchise agreement drafted by Stewart Germann Law Office includes the following clause:

“The National Marketing Amount paid by the Franchisee to the Franchisor shall be held by the Franchisor in a separate bank account which shall be deemed to be a trust account along with all other marketing levies received from other franchisees and the Franchisor shall use such funds solely for the purpose of marketing as determined by the Franchisor.”

In Australia the position is slightly different. If a franchisee is required to contribute to a marketing fund then the franchisor must provide certain information to the franchisee about the fund. The franchisor must prepare annual financial statements detailing all of the fund’s receipts and payments. The statement must provide the franchisee with meaningful information about sources of income and items of expenditure. The statement must be audited by a registered company auditor unless 75% of franchisees who contribute to the fund vote not to audit the statement.

Over the past two years Stewart Germann Law Office has acted for separate groups of franchisees who have become unhappy with the respective franchisor’s handling of the marketing fund and the financial reconciliation. All franchisors should provide an income and expenditure statement in relation to the marketing fund which must be transparent and available to all franchisees in a particular system, in my opinion.

The Board of the Franchise Association of New Zealand agrees that this is an important topic and it is highly likely that in 2023 the Code of Practice will be amended to make it mandatory for all franchisors to keep the marketing funds in a separate bank account and to account annually to the franchisees. This is very important as it takes away any doubts or suspicions by franchisees towards the franchisor.

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