

RIGHTS WHEN THINGS GO WRONG

Both franchisees and franchisors have a variety of legal and contractual means available to rectify problems that inevitably arise in franchise systems.

FOR A FRANCHISEE

The franchisee who experiences a serious problem with its franchisor should turn first to the franchise agreement for an understanding of what rights and remedies may be provided for problems the franchisor anticipated when the franchise agreement was drafted and sold. The difficulty for the franchisee, however, is that to the extent that a franchisor can anticipate problems, its lawyers will usually draft provisions to deal with them that tend to be biased in its favor. Problems that the franchisor failed to anticipate, almost by definition will not be covered by the franchise contract, leaving the franchisee to seek other and more uncertain means of recourse.

Fortunately for franchisees in Minnesota, the state franchise law and regulations provide strong protection for Minnesota franchisees in certain areas. A prospective franchisee should become familiar with these regulations to understand what ground rules Minnesota law provides for various circumstances.

It goes without saying that in this area, as with many of the other areas touched on in this book, consulting an attorney, preferably one experienced in dealing with franchise matters, is highly advisable in any circumstances that have created a significant problem for the franchisee. While most problems that arise in a

franchise system are business problems that should and can be dealt with effectively through the ordinary business relationship between franchisee and franchisor, the franchisee still may be able to deal more effectively with problems, even within ordinary business channels, by having a better understanding of what the franchisee's legal rights and responsibilities are in a particular circumstance.

In this sense, franchisees must remember that franchise problems, like problems in any other area, can be dealt with most effectively if they are addressed constructively. Methods that usually don't work include harsh or adversarial demands on their franchisor, or running to a public enforcement agency at the first sign of trouble. Methods that sometimes do work, however, include a constructive, if frank and forceful, approach to the appropriate officials of the franchisor organization with a clear articulation of the franchisee's needs and goals. This approach must also take into account and accommodate the legitimate business and legal interests of the franchisor.

Working collectively with other franchisees can be quite effective – either on an *ad hoc* basis or through a franchisee organization – if structured along the same constructive, business-oriented lines.

FOR A FRANCHISOR

Franchisors have various means available to solve problems with franchisees, even though the franchisee is the beneficiary of the relationship regulation enacted by the State of Minnesota.

First, the franchisor, like the franchisee, must turn to the franchise agreement to ascertain what contractual rights and obligations may apply in a given set of circumstances. A healthy measure of judgment is also indicated to assure that contractual rights are only exercised in a prudent and appropriate manner. Just as a pedestrian may have a legal right to step off the curb into a crosswalk, but would be prudent not to exercise that right

arbitrarily, a franchisor may have ample legal recourse under its franchise agreement in a particular set of circumstances, but be better advised to work with the franchisee or a franchisee association on a business level, or through some other less forceful means to resolve a problem.

Most legitimate power exercised by a franchisor beyond the literal terms of the franchise agreement derives from the Federal Trademark Act of 1946, known as the Lanham Act. Accordingly, franchisors should consult frequently with their trademark counsel not only to help create the franchise agreement in the first place, but also to understand how and when the rights accorded to the owner and licensor of a federally registered trademark might be helpful in dealing with problems with a franchisee.

Termination and litigation rights held by a franchisor can be powerful and effective tools when used in appropriate circumstances, but are regarded by most responsible franchisors as methods of last resort in dealing with problems with franchisees. Because termination of or refusal to renew a franchise are closely regulated by the Minnesota Franchise Act, a franchisor should never undertake either of these ultimate steps without first consulting its franchise lawyer.