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Kamikaze conflict — how might it damage your franchise system?

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ADR in franchise disputes

Kamikaze conflict — how might it damage your franchise system?

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This article considers the potential for franchising systems to be undermined by 'kamikaze conflict', involving people acting in ways that appear to be against their own best interests. It looks at the reasons that may lie behind such behaviour and suggests mechanisms which might be used in efforts to enable franchise systems to both avoid unnecessary conflict and effectively sort out those conflicts that cannot be avoided.

Conflict in franchising: an illustration

Jen and Charlie, and Rod's story

Jen and Charlie left their hometown to start afresh in a new place and decided to begin their own business. They looked at many possibilities and decided on joining a rapidly growing food franchise system. Projected returns were strong and they figured that joining an established system would take much of the risk out of starting a business. Things started well but after 12 months there are several serious concerns — a similar store has opened up nearby, promotion doesn't seem to be working, ingredient costs have soared and the franchisor, Rod, and his staff don't deliver on their promises. Jen and Charlie both agreed that all this is placing a serious strain on their relationship.

Rod has built his franchise system from scratch and things really took off five years ago. Growth has now slowed but Rod has plans for interstate and international expansion. He is very concerned about Jen and Charlie's business. Their lack of business knowledge is obvious but they seem to think the problems are all due to the franchise system. Rod doesn't accept that and when he last spoke with Jen and Charlie asked them why other franchisees were going just fine. They said it had more to do with the lack of quality shops nearby and with local roadworks which have been making it difficult for customers to access the shop. With the local economy slowing, Rod's lawyers have told him he can't afford to be seen to be soft with any franchisees.

Background

Tension and conflict are natural parts of our lives and often very prominent in workplace and business relationships. Our connections with other people generate both benefits and challenges and franchising relationships can make both these benefits and challenges quite significant. Franchising has seen significant expansion over the past decade in strong economic times and may now face economic conditions that will turn the spotlight on old conflicts as well as generating new ones.

Information contained in this newsletter is current as at June 2009

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Both sides of the Tasman have seen significant recent interest from government in relation to the franchising sector. The New Zealand Ministry of Economic Development issued a discussion paper on the regulation of franchising in August 2008 while the Australian Federal Parliamentary Joint Committee on Corporations and Financial Services received more than 150 submissions to its current Inquiry into the Franchising Code of Conduct. Substantial inquiries were also conducted in 2007–08 in both Western Australia and South Australia.

The *Franchises Inquiry* by the Economic and Finance Committee of the Parliament of South Australia usefully identified the 'atypical nature of the franchise contract — two business entities bound together in a contract seeking mutual and separate profitability' and noted that such arrangements are 'unsurprisingly susceptible to disputation'.

While franchising is promoted on the basis of limiting the risks involved in setting up a small business, there are major concerns about particular risks inherent in the nature of the relationship. Franchisees may believe they will be working collaboratively with the franchisor when in fact there is a range of aspects in respect of which the parties potentially have directly competing interests.

Much of the challenge relates to how we respond to conflict — both sensibly and in a timely manner. As with any relationship, it is important to keep in mind that it is not just about you, it is about both of you. In situations involving larger groups of people, it's about all of you.

Research on sources of franchising conflict

With support from the Australian Competition and Consumer Commission and the Australian Research Council, the Law School at Griffith University is currently conducting research on the causes of franchising conflict. Interviews with a wide range of people with franchise sector experience have identified different sources of conflict in franchising relationships. Franchisors view unrealistic expectations on the part of franchisees as a particularly significant source of conflict, raising questions as to how such expectations develop. Poor communication skills are seen as a difficulty faced by everyone concerned. Poor business decisions, including poor selection of franchisees and business sites, ineffective training of new franchisees and financial and cost pressures are all seen as generating conflict.

Change is seen as a source of conflict in franchise systems. Lack of consultation creates conflict as franchisees often feel forced into specific actions with limited information. Franchise systems which do not have a clearly defined development strategy (relying only on growth) and an ability to adapt to changing market trends are considered more likely to be involved in increased levels of conflict.

Third parties such as lawyers, franchise consultants, head office staff, accountants, franchise associations and regulators have all been identified as likely to exacerbate conflict in some situations, particularly in terms of miscommunication and hidden agendas. Effective communication within the system can enable most conflicts to be prevented or dealt with in a timely and effective manner.

Jen and Charlie, and Rod's story continues

Jen and Charlie find themselves in a very difficult situation. Their business continues to slide and they find they are arguing all the time. Jen decides to move back to their home town to have a break from all the troubles she and Charlie are facing. Charlie feels alone and very bitter. He confronts Rod, going to his office and yelling at him in front of staff and others. Rod reacts badly, telling Charlie that he's finished, that he's hopeless and he just can't cut it. Charlie feels he can't talk with Rod any more yet sees his world is tied up with Rod's franchise system.

The nature of kamikaze conflict

What is distinctive about kamikaze conflict is that it involves at least one party acting in ways that undermine their own interests. Their decisions might be based on limited or wrong information or they might be making

poor decisions under pressure. They might be focused on other more urgent needs or they might be focused on causing pain or inconvenience to others. Alternatively, they may be more comfortable with taking risks than many of the rest of us.

It is important to understand that conflict can develop and escalate in unexpected ways and this unpredictability is significant. Once some action is taken following a stalemate, things can move very quickly. This can see you unintentionally contributing to the development of a 'perfect storm' which could significantly damage your business.

Some conflicts that turn toxic could have been effectively addressed early on. Various writers on the dynamics of conflict management emphasise the importance of addressing conflict in a timely manner, when the people involved understand the issues they face but before they have become too entrenched in positions which they have disclosed to the public and from which it would be difficult to back away.

Franchise conflict has the potential to become very public and, in some instances, to be highlighted in web-blogs and by the media. This can be embarrassing for those involved as well as for people observing the behaviour. How to respond is a very challenging issue. You can't appeal to the interests you share with the other party ('our common interests') if the other party cannot see any such interests.

It may be useful to think in terms of how people tend to react when they feel cornered, with nowhere to turn. In such situations, face-saving is often important. No-one enjoys being humiliated. We all want to be respected and it is important to keep this in mind when dealing with someone who is under pressure and feeling threatened. In his book, *Getting Past 'No'*, William Ury provides the very useful insight, 'Bring them to their senses, not their knees'. Forcing someone to submit to your wishes is no basis on which to maintain a productive ongoing relationship.

We also need to recognise that we all make poor decisions, at least some of the time. The propensity for making bad decisions increases when people are under pressure. They may have insufficient information on which to decide what to do or may be facing personal issues unknown to others. They may have received poor advice or have other needs which are more important to them.

In the context of franchise-related conflict, a lack of respect for your business partners can be a key problem. In his book, *The Franchise E-Factor*, Greg Nathan refers to three fundamental emotional needs:

1. to have the respect of others;
2. to feel a sense of belonging or connection with others; and
3. to believe life has meaning and makes sense.

Anger can also impact on the ability of someone to make sensible decisions. Research refers to how anger may hinder one's ability to enter a situation with objectivity and rationality. This makes sense, especially in relation to concerns that have become very personal to those involved. Avoiding the temptation to react when you feel provoked can be helpful in a range of situations. Aristotle referred to the difficulty of being angry at the right time, for the right purpose and in the right way.

Nonetheless, it is important to let others know if you don't like their behaviour. It can be useful to explain your concerns, using examples of what has happened and what you think about the actions of the other person. You need to be prepared to listen just as much as to talk.

Mediators often remark on how people can see the same events in such very different ways. To illustrate the scope for very different perceptions of issues, we need look no further than the current global financial crisis and share market volatility. Some, such as investor Warren Buffett, view this as an opportunity to purchase shares at less than true value while others believe matters will just get worse and simply want out as soon as possible.

Another insight into why someone may act in ways contrary to their own interests is provided by the German word, *schadenfreude* which refers to pleasure derived from the misfortune of others. This is a pleasure that may explain why someone who feels they have little to lose can take aim at what they perceive as the source of their problems with little regard for the impact on their personal interests.

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Charlie and Rod both lose

Charlie receives a letter from Rod setting out a series of defaults that need to be addressed and this sends him through the roof. Some of the details are wrong and Charlie sees the letter as very insulting. A phone call between them quickly turns to insults. Charlie starts contacting and visiting other franchisees and talking about his problems with Rod. He also attends a meeting of franchisees where he disrupts Rod's efforts to talk and highlights how badly he is being treated. This turns into another shouting match between Rod and Charlie.

Charlie consults lawyers and instructs them to commence legal action, claiming damages for misleading and deceptive conduct. Charlie decides he wants to get even and goes on talk-back radio and explains some of the dirty-tricks of Rod's franchise system, in

terms of recruiting franchisees and the running of the stores. He also contacts taxation authorities and corporate regulators and suggests that, if they offer him an indemnity from prosecution, he will 'spill the beans' on the dodgy practices of the franchise system and Rod in particular.

Rod tries to talk to Charlie but it's too late for that now. Rod can see the damage that is being done to the franchise system. Charlie's store is seriously sliding and becoming an embarrassment to the system. Rod cannot understand how someone could run down their investment in this way.

Charlie sees the franchise as having robbed him of his happiness. The one thing on which he and Rod agree is that this is now a lose–lose situation.

Suggestions for addressing such conflict

It is not possible to avoid all conflict within any system, including a franchise system. Business environments change quickly, with technology, competition, personnel changes, economic conditions and consumer tastes all contributing to create a climate in which clear and calm thinking is critical to business sustainability. Franchise systems need effective structures for developing and maintaining shared understandings. This is the first step in enabling a system to avoid unnecessary conflict.

The conflict in which Rod and Charlie find themselves has taken some time to develop and is now unlikely to be resolved in a way that will be acceptable to both of them. They may not see that they have options which could be explored to identify the least painful way forward. They need to find ways in which to listen to each other and express their understandings of what has taken place. Looking for outcomes which integrate the interests of all parties requires trust and clearly there is currently no trust in this situation. Indeed, there is what John Wade has described as 'negative intimacy'.

In any business, people need to accept that some conflict is inevitable and that there is a need to respond in a clear-headed way when it does arise. Clear-headed responses require effective communication skills and the key people in any franchise-related organisation need to have an understanding of the dynamics of conflict. Christopher Moore's book, *The Mediation Process*, refers to five sets of conflicts:

- relationship conflicts — often involving strong emotions, misperceptions and poor communication;
- data conflicts — generated by a lack of information, the presence of misinformation, different views about relevance and how certain actions should be assessed;
- interest conflicts — involving perceived or actual competition. Differing perceptions can be very significant here;
- structural conflicts — the context of relationships in terms of unequal control, unequal power and authority; and
- value conflicts — including different ways of life, ideology or religion.

These conflict sets can provide us with insights when we think about the conflict between Charlie and Rod, especially the relationship, data, interest and structural dimensions of their conflict.

While I am proud of having worked as a lawyer for many years, I am acutely aware of the limitations of some legal processes. In a range of situations, the use of only rights-based approaches to resolving conflict will not be very helpful. Lawyers and other advisors need to have a varied suite of options to recommend to clients depending on what best suits the particular situation. This is an example of the value of taking a systems-wide approach.

Mediation can be very helpful in assisting people to move forward when they are unable to see for themselves how that might be achieved. Supporters of mediation refer to the benefits of informality, confidentiality, accessibility and relatively low cost. Mediation is a term used to describe a range of processes and you should check how any such process will work. Informal processes need to be used skilfully so take care in the selection of a mediator. There is potential for the flexibility of such a process to be used to reinforce existing power imbalances in favour of one party (generally the franchisor) and this may create difficulties. Concerns have also been expressed regarding the lack of enforceability of agreements made in mediation.

Further insights can be gained from the literature on the design of conflict management systems. In their book, *Getting Disputes Resolved*, Ury, Brett & Goldberg outlined the following principles for dispute systems design:

- put the focus on interests;
- provide low-cost rights;
- build in 'loop-backs' to negotiation;
- build in consultation, both before and after receiving feedback;
- arrange procedures in low-to-high-cost sequence; and
- provide the necessary motivation, skills and resources to those involved in making the system work.

Systems also benefit from being regularly reviewed. There can be real value in having third parties involved in finding ways forward when issues arise. Likewise, having a third party review your approaches to managing conflicts and disputes can be useful. The right person needs to be 'franchise-fluent' but also 'conflict-fluent'. You don't want someone who thinks they already have all the answers. This is where knowledge of the industry might get in the way of identifying what approaches are likely to work best.

Six key points

To finish, these are six key points that provide a framework for addressing kamikaze conflict in franchising:

1. You and your staff need effective communication skills.
2. You need systems which anticipate and identify concerns early so they can be clarified and addressed in a timely manner.
3. Show respect while clearly explaining your interests and concerns.
4. Listen even when you want to react.
5. Treat every conflict on its merits.
6. Reflect on your approach and be open to change when helpful. ●

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