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CHOOSING AND USING INTERNATIONAL CONSULTANTS

by

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EXECUTIVE SUMMARY AND OVERVIEW

As promised in our last article, this piece provides the franchise system which is considering hiring one or more consultants, to assist it in international expansion, with some guidelines for selecting and working with consultants. For the purposes of this article, “consultants” includes local legal counsel in the target market, international business development specialists, franchise marketing personnel, public relations firms, etc.

Consultants can provide invaluable assistance in introducing a system to a foreign market, particularly in North America, in the areas of legal compliance, franchise marketing, adaptation of a concept to local business practices and consumer requirements, identification of supporting professionals and vendors, and establishment of a test unit.

At the same time, references need to be checked, clear lines of communication and responsibility established, compensation defined within reasonable bounds and the work of consultants closely monitored.

With respect to the background of consultants, it is particularly important to learn what other franchise systems the consultants have worked for and with, as well as verifying whether or not they have had experience working with Franchisors from countries outside the USA.

(Full Disclosure: The authors are significantly involved in international franchising. David Holmes acts as legal counsel to systems engaged in international expansion and works extensively with domestic and international consultants. Bill Edwards works with U.S. Franchisors who are ‘Going International’ and Franchisors who are in-bound to the U.S. To the extent this might affect the opinions expressed here, you’ve been informed!)

DO WE REALLY NEED A CONSULTANT FOR INTERNATIONAL EXPANSION?

This question can probably be best answered by imagining that you were in the reverse situation: Suppose that a successful North American franchise system had contacted you, explained that they planned to expand into the Australia/New Zealand market through franchising and asked your advice. What would you tell them?

Well, you’d be likely to say that they would need the assistance of people familiar with Australian culture, methods of doing business, local contacts, laws and regulations, etc. You’d also say that they would need someone to assist them in the adaptation of their system to the local market, being careful to respect cultural differences, to assist them in conducting market research, competitor analysis, likely changes in the competitive environment, and so on. Also, you’d want them to have access to someone with sensitivity to regional differences (consider, for example, the differences between doing business in Queensland and Tasmania or Auckland and Christchurch.)

In addition, your advice would likely include a suggestion that they find someone who can identify needed professionals with a track record of competence in international and domestic franchising, who could assist them in finding other suppliers and vendors and in negotiating the maze of local laws that might apply to their franchising activities and the operation of retail units. The North American company coming to Australia will, of course, need local service providers, who can perform on a cost-effective and ethical basis. Obviously, a consultant with experience in working with local providers can be of immeasurable help in identifying the right support network.

In short, you'd tell them to identify and retain an experienced and competent consultant to assist them in expanding into such an important market. Well, just as that's good advice for someone entering the Australian market, it's just as good advice for a franchise system planning to enter the North American market, one that's in excess of ten times the size of the Australian/New Zealand market and probably even more complex.

The challenge in such a vast market as the U.S. is, of course, finding the best-experienced and most cost-effective consultants in all the fields you need to enter this market. Let's go through the steps of how to do that.

THE COST/BENEFIT ANALYSIS

Assume that we agree that a consultant may be able to provide valuable services. Since there's inevitably going to be a cost involved in retaining such a firm or individual, how should we balance that cost with the potential benefits?

Let's begin by considering both the upside of a successful North American "roll out" and the downside of an unsuccessful one.

If successful, the establishment of your system in North America could result in the establishment of literally hundreds of retail units – generating initial franchise fees and royalties (and, for some systems, product sales) for you back in Australia. Your Australian experience should allow you to calculate the potential value of initial franchise fees and the ongoing royalties generated by this type of network, without even taking into account the generally higher level of disposable income at the consumer level in North America or the eventual addition to the potential sale value of your entire system.

In addition, if your system is successfully established in North America before any Australian or U.S. competitors, their ability to challenge your system in that market will be reduced, since you may have already acquired the best franchisees and locations, established a level of consumer preference for your brand, etc.

Finally, if the North American rollout is successful, your concept will have been validated on the international stage, considerably adding to your global

brand value, and subsequent entry into other markets will be both easier and the value of the national franchises you may award will be that much greater.

Now let's look at the downside. Obviously, if the attempted expansion into the North American market is not successful, none of the positive results discussed above will have been achieved. In addition, the investment in the potential expansion (test units, legal investment, franchise marketing costs, etc.) will have been either wasted or an inadequate return generated. Also, if franchises have been awarded and proper legal and other steps not taken (note, for example, the very odd and counter-intuitive American restriction on discussing with prospective Franchisees possible financial results of operation!), legal liability may have been incurred, which may even reach back to the Australian parent company and/or its principals. And ... your Australian brand value will have been damaged.

Finally, from a business standpoint, if the initial attempt to enter the North American market is botched, re-entry may be very difficult, if not impossible. The Franchisor will be required to disclose its earlier efforts, as well as word having made its way around the franchising community and the relevant industry in which the system operates. Prospective master and unit franchisees will be aware of the prior problems and will be understandably reluctant to invest in a concept that has already failed in the U.S. or Canada at least once.

Placed against these potential upsides and downsides, the investment involved in retaining the right consultant(s), to appropriately assist you in your entry into the North American market, begins to seem relatively easy to justify, especially if you lay that investment against the costs associated with even one serious mistake that would have been prevented by the involvement of a competent and experienced consultant or the value of even one good idea brought to you by that consultant.

If you consider the consultant's fee to be a form of insurance allowing you to maximize the chances of you reaching a fully developed system in North America, as well as allowing you to tap into their experience and knowledge in the local market, that investment seems to be merited.

CHOOSING THE RIGHT CONSULTANTS

Let's agree, then, that retaining a consultant (or consultants) generally makes good business sense. What qualities should we look for in these people?

Knowledge and experience in international franchising is probably the first and most important quality, at least for legal counsel and the primary business consultant.

Note that knowledge and experience are different things and that you should be looking for both. Knowledge can be gained through professional

education, seminars, self-study, etc. Experience can only be gained through actual work with clients in the international arena, preferably by dealing with both types of international transactions; representing Franchisors resident in the legal counsel's or consultant's home country intending to "export" their concept abroad and representing incoming foreign systems as they plan to "import" their system to North America. This broad range of experience will bring an invaluable level of perspective and judgment to each step of the international expansion project.

In-depth knowledge and experience in the target market (North America, in this case) will prove equally important. That knowledge and experience will, depending on the consultant's area of expertise, relate to the practical aspects of franchise sales, selection of franchise candidates and sites/territories, and working with regional subfranchisors. We recommend that the legal, operations and franchise systems and marketing consultants you engage in the U.S. have experience working directly for Franchisors

Of course, since the North American market has a number of critical considerations related to legal aspects, access to a law firm with detailed knowledge of, and experience in working with, relevant legal requirements (especially as to franchise law, franchise system structure and documentation, trademarks, intellectual property protection, trade dress, copyrights, URL/Website legal protections, choice of business entity, etc.) will be invaluable. Note that some law firms work primarily with Franchisees and relatively few law firms have personnel who have served "in-house" for major U.S. Franchisors. Firms able to supply that background "have seen it done right" and can be an invaluable asset to you.

Ask who you will be working with in the Consultant's company or the law firm to be engaged. While very large companies have lots of resources, individual Clients (you!) might find yourself negotiating a consulting agreement with a senior Partner, only to find yourself working most of the time with a junior Partner or Associate who might not have the experience and knowledge you need to succeed. (See below)

Finally, a compatible "chemistry," that indefinable quality which allows people from different backgrounds to work together effectively, will also be necessary to an effective working relationship. On occasion, we've seen instances in which a particular client and a consultant experience difficulties in working together, while the same client and a different consultant, or a different client and the same consultant work together brilliantly.

Experience shows that there's simply no reliable way to determine if X client and Y consultant will hit it off together, although competent consultants can usually adjust their working styles to accommodate a wide range of client personalities and corporate cultures. Our judgment is that there's simply no substitute for a period of face-to-face interaction to make the determination as to whether or not the requisite chemistry is present.

REFERENCES, EXPERIENCES AND RELEVANCY

Obviously, no consultant should be engaged without an appropriate reference check. All reputable consultants will be pleased to present a complete *curriculum vitae* (note that Americans sometimes call it a 'resume'), accompanied by a list of representative clients with which they've worked in the recent past.

Make sure of three things as you review and speak with these references:

First, a significant number of the references should be recent. Work done for X company eleven years ago may have contributed to the consultant's base of knowledge and experience, but successful completion of a project for Y system two years ago should demonstrate that the consultant is still "on his game."

Second, make sure that the references relate to the actual personnel you'll be working with. While Smith Consulting, Inc. may have a fine reputation and Ms. Smith may be one of the recognized leaders in her field and may be the person with whom you strike the consulting arrangement, if 90% of your interaction will be with Mr. Jones and Ms. Brown, who have a grand total of four years' experience between them, then you'll at least want to know that and, possibly, want to make sure that Ms. Smith stays fully involved with the project.

Third, make sure that the references, and the related CV, demonstrate relevant experience. For example, if your franchise system plans to expand in North America through regional subfranchising, does the consultant (and the lawyers) you plan to use have experience in that type of franchising? While experience in a particular industry (food service, house cleaning, etc.) may be useful, it's generally not critical and your own system's personnel should be expected to bring that knowledge to the table; what the consultant should be expected to bring is in-depth knowledge of the specific skills needed for the type of expansion plan you're undertaking.

Ideally, the references and related experience will allow you to select a consultant (and law firm) that has all of the following qualities:

- An experience level that's directly related to the skills you need to accomplish your expansion objectives and guarantee that you're not paying a consultant or law firm for their learning curve. Someone else should have done that years ago!
- Their background and references should be in franchising, to the maximum degree possible, and in the type of franchising structure which you propose to use.

- They should have had in-house experience (as an employee of a large and successful franchise organization), so that they've had an opportunity to see, from the inside, how expansion, development and administration of a franchise system is done properly.
- Their experience should be broad, covering a wide range of industries, franchise system structures and countries in which they've done business.
- They should have a high standing in the franchise industry, having published a number of articles and given a series of lectures, sat on professional boards and committees, and had years of service to the franchising community.

PROFESSIONAL RELATIONSHIPS AND COMPENSATION

Relationships with consultants can be structured in a number of ways. One methodology is to retain a lead consultant, who will then identify and work with specialists in various fields. This approach simplifies administration for the Franchisor by making a single person (the lead consultant) responsible for consistent communications and an integrated development plan, as well as avoiding situations in which specialists receive "mixed signals" from various members of your management team. The lead consultant can provide this management role and provide a single point of contact for entry into the North American market.

Also, use of a lead consultant can allow that individual to closely monitor, on your behalf, budgeted performance and coordination of the work of various professionals. At the same time, we would urge that prior to the hiring of any specialist or professional who will be working with the lead consultant, the Franchisor review both their compensation arrangements and their levels of knowledge and experience, so as to be comfortable with the professionals chosen.

Alternatively, a franchise system can choose to not work with a lead consultant and can separately identify specialists as necessary. While this approach may offer initial savings, it runs the risk of failing to have professional advice as to the types of specialists needed and input as to the best specialists available, as well as losing the benefits of "on-site" monitoring by a lead consultant fully familiar with the process and the needs of the target market.

An appropriate budget should be established, in consultation with the lead consultant, if that approach is chosen, with sub-budgets relating to each specialist. While deviations from budget are occasionally necessary, it's the joint responsibility of the Franchisor and the lead consultant (if one is in place) to monitor performance within the established budget and any deviations from it. Good consultants can present weekly cost and expenditure reports and this is one area (among many) where a Franchisor is best served by not adopting a "wake me up when it's over" posture!

Compensation arrangements probably vary as extensively as there are consulting relationships in the franchising field. Reputable consultants will present a formal engagement letter covering estimated investment, billing procedures, retainer arrangements, etc., and generally will only work under a retainer arrangement.

Actual billings can be on an hourly basis (hourly fees for each individual professional should be specified in advance), periodic payments (X dollars per month), flat fees (incorporation or other entity formation and certain trademark filings, for example), not-to-exceed arrangements, percentage commissions (common in the franchise sales area) or a multitude of other arrangements. Some U.S. consultants will even quote time and costs on a project basis.

As noted above, Franchisors should consider a system of tracking consultants' and specialists' performance against a monthly budget, so as to retain control of costs and monitor performance. At the end of the day the Franchisor should use the same management techniques it has successfully used in its home market and not leave good business practices behind at the airport! This can be done by the lead consultant who you have engaged to manage your process of entering the North American market, with suitable oversight from you.

You should be aware that some lead consultants operate under an arrangement whereby they receive compensation, in the form of a percentage of billings, as a referral fee or otherwise, from the specialists to which they direct you. While there is nothing inherently wrong in such an arrangement, (1) it should be fully disclosed to you, including the compensation levels involved, (2) the fees charged to you by the specialists should be reasonable and not have been increased to compensate for any payments to the lead consultant and (3) you should be assured that the specialists utilized have been selected on the basis of their professional abilities and cost-effective performance, and not selected merely based on their willingness to pay a portion of billings to the lead consultant. As a general rule in the United States, law firms are not allowed to pay such amounts to non-lawyers.

NEXT

In our next article, we'll explore some of the dynamics involved in making the move to North America, including integrating your management team with any consultants and local specialists, and provide a roadmap for entering the North American market.

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Mr. Edwards is the President of Edwards Global Services, Inc. (EGS), a California-based firm that advises companies on efficient and cost-effective international market entry, operations and development. EGS also advise Clients on the viability of their business concept in the USA and other world markets. EGS are a team of over 30 proven international specialists in 12 countries with extensive, on-site experience in many countries and functions related to international business development. Mr. Edwards has over 30 years of international business experience having lived in 7 countries and worked on projects in over 60 countries. He can be reached at bedwards@edwardsglobal.com

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