

Hamilton Pratt Article

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WHY A BRAND IS SO IMPORTANT IN FRANCHISING?



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registering it!*

There are four basic elements of a franchise and one of these is the right to use the franchisor's brand. A brand is a key component yet one that is often overlooked by prospective franchisees.

A brand is something that differentiates one business or trader from another. It can be a name, a symbol, or any other feature that identifies one seller's goods or services as distinct from those of other sellers. When you invest in a franchise opportunity, a large proportion of what you will be paying for is the brand, including the franchisor's intellectual property. The franchisor's intellectual property will, most commonly, comprise of the trade secrets, confidential information, copyright, for example in the operations manual, and, of course, the franchisor's name.

The only effective way that a franchisor can protect its name is by registering it as a registered trade mark. Some franchisors only register their name, others register both their name and logos, some only protect their logos. When making enquiries you should ensure that you always ascertain whether or not the franchisor has any registered trade marks and if so, what they are, i.e. name or logo or both. It is not necessarily better to have one or the other but what is important is to ensure that whichever carries the most weight in distinguishing the franchisor from other similar businesses, whether it is the name or the logo, is registered. If a franchisor does not have any registered trade marks you should tread carefully. It may well be that the franchisor has applied to register his trade marks recently and that the applications are still pending. If this is the case, you may wish to make further checks, for example check what stage the application is at and the likelihood of the application being accepted or rejected.

The things to look out for are:

- A statement which is usually contained in the recitals to the franchise agreement that the franchisor is either the owner of, or has the licence to use and sub-license, the intellectual property including the registered trade marks. If this statement is missing your alarm bells should be ringing.
- You should also check that the franchise agreement gives you the licence to use the franchisor's trade marks for the duration of the term of the agreement.
- And finally, check that the franchisor's trade marks are valid, i.e. that they are registered for the territory in which you will be operating and that they have not expired.

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However, a brand is more than just a name or symbol, it is an association that individuals develop from experiences which either they or somebody that they know had from dealing with a particular business. A brand is a promise of quality and consistency. Take for example, McDonald's. When you see a McDonald's restaurant you know exactly what to expect, precisely what is on the menu and you know that you will get the same "Big Mac" in London as you will in Paris, Berlin, Moscow or anywhere else in the world. The menu may differ slightly to accommodate seasonal variations and country-specific extra items but generally the core elements will always be the same. It is the knowledge of the food and service that you will receive, the consistent performance and quality that you know you can expect that will turn you towards McDonald's rather than an unfamiliar local fast food outlet down the street.

Building a successful brand takes time and money. Advertising is one aspect of brand building and you should check what advertising and marketing initiatives the franchisor undertakes. Some franchisors collect a marketing fee or marketing levy (usually between 2 – 4% of the franchisee's gross revenues) and undertake all of the marketing themselves, others undertake marketing and advertising on a national basis only with franchisees responsible for local marketing.

Finally, it is worth asking the franchisor how it protects its brand. Does the franchisor take action and if so, what action does the franchisor take, against individuals who infringe on the franchisor's rights or misuse the brand? What are the franchisor's policies on use of their brand on the internet?

Given that a brand is a key element which makes one business stand out from all other businesses it is surprising how little importance is attributed to it during the due diligence exercise. Don't forget, a brand is what you are paying for so check what you are getting!

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