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Do You Have What it Takes to Franchise Your Business?

By
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Are you thinking about offering a franchise? This is a surprisingly common business experience: you have started a successful business and been approached by people who want to pay you substantial money to grant them the right to clone your success. Now what do you do?

One piece of commonsense advice I review with every client of mine considering franchising is this: Franchising is a business method, unique unto itself, that requires its own knowledge base and its own skill set to be successful. If you are in the (whatever: restaurant, hotel, convenience store, auto dent repair) business now, when you launch into franchising you will be in that business *and* in the franchising business, too. You'll need to learn how to do both well.

Let's take a step back and look at some common indicators that a business can be successfully franchised:

- Strength in Numbers. Is yours is a retail business whose independent unit owners will benefit from a common identity? This is at the essence of franchise success: benefiting from a common identity in the eyes of your customers and the franchisee's dollar leverage that comes from being part of a larger group of merchants. In a healthy franchise program, these benefits easily outweigh the cost of the monthly royalty.
- Transfer of Know-How. Can you teach other people how to be successful in your business? The procedures and techniques that have spelled

success in the past must be written down in an orderly fashion. You will use this training/operations manual to teach your new franchisees how to independently run one of your franchised business units. The creation of that Manual is the single largest task faced by most companies when creating a new franchise offering.

- Trademark Strength. Is your trademark is well designed, attractive, and federally registered? Not yet having your federal registration is no bar to franchising, of course, but you will be licensing others to use your mark, and you don't want any surprises by someone using the same mark who has superior rights to your own. Federal registration does not guarantee no surprises, but in the hands of competent legal advisors it is an application process that will identify most problems in advance.
- Franchisee Investment Level. Most successful franchise systems are relatively simple businesses of modest investment: limited menus, uniformity, small-scale units, few moving parts, and limited labor requirements. That's why the growth of franchising has been so explosive in the fast food arena. There are not many restaurant franchises, for instance, that require \$2M or \$3M to build a single unit. Gold plated investors at those levels are hard to find and the few numbers of prospective franchisees could cripple the growth of a fledgling franchise program.
- Your Temperament. Just as not everyone is cut out to be a franchisee, not every management team is well suited to run a franchise program. A successful franchisor must realize and fundamentally believe that franchisees are valuable business partners; they are not employees and can't be treated like employees. Hard driving control freaks will find most frustrating the soft edges of franchising and the leadership challenge of

herding entrepreneurial cats.

- Capital. Is your financial house in order? A franchise program will require the franchisor to provide audited financial statements and regulators in the registration states will throw roadblocks in the way if you have a weak set of financials. I have consulted with dozens of companies who are in a great hurry to franchise because they have been offered a large sum of money for a franchise, and the offer looks for all the world like unearned windfall cash. Believe me, it's not. You will need sufficient capital to carry the loaded up-front costs of franchising.
- Disclosure. Is your organization ready for the bright lights of franchise disclosure? The UFOC will reveal litigation and bankruptcy backgrounds of your key people. What will tumble out of their closets?
- Good Legal Advice. Do you have the right advisors? Like most areas of the law, franchise regulation is a specialty where experience counts for a lot, and a good franchise attorney, like a qualified accountant and auditor, is an essential member of your franchise team. **Look online at attorney directories and ask lawyers you know for a referral to a franchise specialist.**

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Side Bar:

Six Steps to Franchising Your Business

There are a few documents and legal steps that are absolutely necessary if you head your business down the path of offering franchises.

- **Legal Review.** Once you have located an experienced franchise attorney, you should expect to receive a thoughtful and detailed review of the franchise agreement in particular as well as the rest of the UFOC. He or she will explain the obligations imposed by the contract and help you evaluate whether this is a document you can commit to, and whether there are specific provisions that you should negotiate over.
- **Create an Operations Manual.** This document will be your system's bible. It will be used to train your franchisees and give them operational guidance as they establish
- **Secure Your Trademark.** No law requires it, but if you have not done so already you may want to apply for federal registration of your trademark.
- **Prepare Audited Financial Statements.** You will need an audit of your most recent three years, or your most recent year if you have not been audited before. You might also need recent unaudited statements since the end of your fiscal year.
- **Create a Franchise Agreement.** This legal document will govern the franchise relationship, and it had better be tight. This contract must be included in the UFOC, and of course signed by the franchisee and franchisor when a franchise is granted.

- **Create a UFOC.** Federal law, and the law of more than a dozen states require that you deliver a complete and current Uniform Franchise Offering Circular to a prospective franchisee at the earlier of (1) the first personal meeting to discuss the sale or potential sale of a franchise, or (2) 10 business days before the prospect pays money or signs a binding franchise agreement.
- **Comply with State Franchise Law.** A number of states will require that you register your offering before making any offers in that state, and a few others will require that you file an exemption under a state business opportunity law before you offer your franchise program. Under many of the state franchise laws, the restricted activity before registration includes advertising for the franchise offer.

-- A.A.C.