

CANADA
The Gateway to Franchising in North America
BY
EDWARD (NED) LEVITT*

As the birthplace of modern franchising, the United States is often at the forefront of franchise developments, such as franchise specific legislation, the growth of multi-unit franchising, using the Internet to market franchises, etc. In this vein, over the last decade or two, U.S. franchisors have ignited the world's interest in international franchising. As franchising in countries outside of the U.S. continues to grow in size, scope and economic impact, these franchise systems, like never before, are attempting to penetrate the rich and fertile U.S. franchise market. Unfortunately, this is one endeavor that really looks much easier than it is and the U.S. foreign franchisor graveyard is large and getting bigger. How can the odds of success be improved? The answer is so very simple; start in Canada.

Canada's proximity to the U.S. franchise behemoth has historically positioned it as the first destination for international expansion by U.S. franchisors. U.S. franchisors find a great deal that is familiar in Canada, but with enough challenges to start to build their international resources and expertise. What makes all of this even more fascinating is that it works beautifully for franchise expansions into North America . Foreign franchisors, particularly from Europe, see Canada as being a unique entry point into the North American markets. They find Canada, on many levels, more familiar and compatible to them, as they hone their international expansion skills, take the measure of and prepare for the unique characteristics of the U.S. market.

Canada has more successful master franchisees of U.S. brands and more experienced master franchisees generally than anywhere on the planet. This means that there are many Canadians who are comfortable with and receptive to purchasing master franchise rights from foreign franchisors no matter where they come from. Canadian tastes, preferences and culture are very similar to the U.S. and at the same time we Canadians celebrate our deep multi-cultural heritage. This leads to a very unique opportunity for foreign franchise systems to learn the do's and don'ts of franchising in North America and to adapt their concepts in a more receptive market before jumping into the highly competitive, fast moving and challenging U.S. market. Even though Canada is vast geographically, its population is concentrated in and around just a few major cities, which are in close proximity to even larger U.S. population centers. Canada and the U.S. are each other's largest trading partners, so the economic veins and arteries of the two countries often flow more North/South across the border than East/West within each country. English is the common language in both countries, but French is the common language in the Canadian province of Quebec and Spanish is spoken in many parts of the U.S.

While not a perfect match, the financial performance of a business in Canada is usually indicative of what the U.S. experience would be and, if there is any difference, the U.S. results are likely to be better. This allows a franchisor to use Canadian financial success as a validation for U.S. projections. While six of Canada's ten provinces have franchise disclosure legislation (many more states in the U.S. and the federal government have such legislation), there is no requirement for registration of the

franchise disclosure document with any government body in Canada, as is the case in fourteen of the U.S. states. This, combined with the well-known Canadian politeness (resulting in less franchise litigation than in the U.S.), the legal spend for franchisors is often considerably lower in Canada than in the U.S.

Financing is another key element in expanding a franchise system in the North America. Here too, Canada and the U.S. are similar but, at the same time, different. Both countries have government backed small business loan programs and the nature of lending broadly follows similar patterns and requires similar criteria in both countries. However, in the U.S. there are far more sources of capital than in Canada and the appetite for risk is considerably greater in the U.S. Therefore, from a finance point of view, a franchisor expanding from Canada to the U.S. will find that their financial skills developed in Canada will serve them very well in the more relaxed U.S. financial game.

Finally, prospective U.S. franchisees will be very comforted by demonstrated acceptance of a franchise concept in Canada. Even if a franchise concept is successful in, say, Europe, prospective U.S. franchisees will want to know that the concept transitions well into the North American market.

Having said all of this, any franchisor adopting a Canada first strategy for entering North America should follow all of the best practices for international franchise expansion, including good market research, adaptations of the concept, securing solid supply sources, legal compliance, trade mark protection and dedicating sufficient human

resources, to mention a few. The nice bonus is that such practices will not only make the expansion from Canada to the U.S. safer, better and faster, but also less expensive, as some of the development in Canada will apply to the U.S. or will be adaptable at a reduced cost.

* Edward (Ned) Levitt is a Certified Franchise Executive, a partner at Dickinson Wright LLP, Toronto, Canada, and provides legal services to Canadian and international clients on all aspects of Canadian franchise law. He was General Counsel to the Canadian Franchise Association (2000-2007) and is a member of the American Bar Association Forum on Franchising, the International Bar Association and the International Committee of the International Franchise Association. As a member of the Ontario Franchise Sector Working Team, Ned was instrumental in the creation of Ontario's franchise legislation and has had significant input in the franchise legislative process throughout Canada. Among his many publications is the leading text, *Canadian Franchise Legislation* (2001, LexisNexis/Butterworths). Ned can be reached at 416.646.3842 or nlevitt@dickinsonwright.com.

TORONTO 99998-1771 1413031v1