



FRANCHISING AND RESTAURANTS

Reputation Management in an Electronic Fish Bowl!

BY
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With your franchisee fully trained, the construction finally completed, the staff hired and a successful grand opening behind you, you can finally relax, comfortable in the knowledge that your restaurant franchise system has added another successful unit. Then, with nothing more than a keyboard and a connection to the Internet, an anonymous disgruntled patron casts a pall on your reputation by posting a horribly disparaging comment about their experience at this newest star in your franchise constellation on one of the increasing number of websites that profess to reveal the truth about eateries.

Then, one of your longstanding franchisees decides to engage in a debate about same sex marriage through their Twitter business account and the newspapers pick it up, as your franchisee has an innate ability to enrage everyone.

Next, a former franchisee decides to roast your system through their Facebook account, alleging that you engage in misrepresentations in the sale of your franchises, almost to the point of fraud. You find this out when a franchise applicant asks you to explain the posting.

Without a moment's thought, you are at your computer defending yourself on the food site, informing your franchisee that they cannot use their business Twitter account for personal matters and demanding that Facebook shut down your former franchisee's Facebook account.

Nice try, but your actions spawn a flurry of additional anonymous postings of poor experiences at a number of your outlets (maybe by competitors, but who knows), your longstanding franchisee says his agreement contains nothing about social media and he can do what he wants and Facebook writes back that your former franchisee is operating within their guidelines. Just to make things interesting, your newest franchisee places a panic telephone call to head office freaking out that their business is being ruined by all of this negative publicity.

Welcome to the electronic fishbowl!!!!!!!!!!!!!!

There is no denying that the ubiquity and power of the Internet has changed much about business practices these days. This change is very evident in the restaurant business, where reputation is so vital and so vulnerable and words travel, literally, at the speed of light. Making things worse is the fact that, absent some human intervention, information on the Internet is there forever. Matters get even more complex and challenging in the multi-level chessboard of restaurant franchising, where franchisees deliver the experience, but the franchisor manages the public image of the system.

How does one cope?

Getting out your message through advertising, public relations and judicious use of social media yourself can go a long way to blunting the effects of any negativity about your system, but it is important to understand how to do that in a credible way. In the social media and on blog sites, being too obviously defensive, combative or promotional will fail with the tech savvy younger crowd, who tend to spend more time communicating through their technology than person to person. **Tip:** Choose your fights wisely, as some issues are better left to die of natural causes than to be nurtured into full blown monsters by feeding them a high carb diet of public debate.

Today, franchisors are aware that their franchise agreements need to deal with their franchisees' use of the Internet and specifically social media. However, this awareness on the part of franchisors is only a few years old, whereas there are lots of franchise agreements that were signed 5, 10 and even 15 years ago and never contemplated the emergence of the Internet and

social media as major forces or potential headaches. A well drafted franchise agreement may, nonetheless, offer some tools for dealing with these troubles. Common provisions in such agreements include the requirement on the part of the franchisee to refrain from taking any actions which will negatively affect the system's trademarks and goodwill and the requirement to operate in accordance with the system's operating manual as amended from time to time. Manuals can then be revised, in some cases, to add provisions dealing with such matters. **Tip:** Seek opportunities whenever possible, i.e. on renewal and sale, to update franchise agreements, assuming the wording of the franchise agreement allows for such updating. Consider a system wide modernization of your existing franchise agreements by combining some benefits for franchisees in exchange for allowing you to beef up your control of the Internet and social media. Your sales pitch to existing franchisees will be enhanced by the argument that they need a strong franchisor hand on such issues for their own protection from the actions of other franchisees in the system..

The defamation laws apply equally to the Internet as to any other form of communication and that means a franchisor may have the ability to stop a campaign of disparagement or to clear up permanent unfair postings through the power of the courts. However, a problem exists when the posting is anonymous. It is possible, although potentially difficult and expensive, to overcome that problem by legal and non-legal means.

Legal means involves launching a defamation lawsuit, and bringing a court motion for disclosure of information. This is often a multi-part process where different layers of the anonymity onion are removed one at a time.

The first step is to obtain a court order to compel the host of the offensive content to disclose the "IP Addresses" linked to this content, as well as any other identifying information. These IP Addresses, which act like internet phone numbers, are then traceable to the internet service provider (*e.g.*, Bell Sympatico) who is allocated these numbers. A second court order is then required once those IP Addresses are traced to compel the internet service provider to disclose the account information associated with the IP Addresses at the time the offensive content was posted. This process may need to be repeated, or take place in foreign jurisdictions, depending

on the sophistication and location of the defamer. The cost for such proceedings is easily in the \$25k to \$50k range, or much higher if foreign jurisdictions are involved. The damage to your reputation has to justify these costs!

Tip: Ask and you shall receive. Many webmasters do not want their sites used by unscrupulous people intent only on causing damage to others. Therefore, making your case to the webmaster may be the quickest and certainly the cheapest way to have the offending posting removed, permanently. While there are some requirements imposed by privacy law, webmasters are often loath to be sued, and may take down offensive material, or provide the IP Addresses without the need for a court order. More sophisticated hosts, such as Facebook, however, have deep legal defences and strong privacy policies, and will not easily divulge this type of information.

Conclusion

In the good old days, reputations took a long time to build and, absent some cataclysmic event, took a lot to destroy them. In this new world of instant and easy communication to everyone, our reputations are much more vulnerable. It is no longer enough to do the right things, you now must be vigilant about who is saying or typing things about you and be prepared to take the right action, decisively, when necessary.

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