

As described above, Franchisor/Franchisee relationship is unique amongst commercial relationships; although the relationship is described as being “independent” there are many instances of mutual interdependence. The following represents a general list of the common disagreements between Franchisors and Franchisees:

- (a) Use of advertising funds and effectiveness of marketing campaigns. Most Franchise Agreements impose on the Franchisee the obligation to pay, in addition to ongoing royalties, a contribution to advertising and marketing campaigns. The purpose of these campaigns is to raise public awareness of Franchisor’s System. Theoretically the monies spent by Franchisor on advertising and marketing should translate into increased sales for Franchisees and/or in increased values for Franchisee’s individual businesses. Advertising and marketing contributions should be construed by Franchisors as being “trust” monies. That is Franchisors are being entrusted by their Franchisees to use the advertising and marketing contributions for their stated purposes. Some Franchisors do not treat these monies with the care that is needed.
- (b) Encroachment issues. Inherent in the grant of a Franchise is that Franchisee has the ability, if properly run, to earn a profit from the operation of the Franchised Business. This will of course depend on a variety of factors. However as discussed under the Heading “WHAT ARE THE ESSENTIAL TERMS OF A FRANCHISE AGREEMENT”, “*Grant*”, a Franchisor may wish to reduce the size of Franchisee’s territory; open up a similar business which is the same, or competitive with the Franchised Business, or distribute the products/services through alternative channels of distribution. The foregoing may have an adverse affect on the profitability of the Franchised Business;
- (c) requirement to implement system changes; cost of changes; lack of testing of changes.
- (d) cost of transfer or assignment;
- (e) continuing purchase obligations between Franchisees and companies not acting at arm’s length with Franchisor;
- (f) franchise concepts which are not fully developed; and
- (g) failure to provide ongoing support services/quality of ongoing support services.