



CREA LEGAL

Competitive Franchises

Assuming a dealer agreement does restrain a dealer from taking on another franchise without the franchisor's consent, it will be necessary for a dealer to make an application and the franchisor to consider the matter. The following items are relevant considerations and should be addressed in the dealer application and also in the franchisor assessment process:

- Is the proposed new brand to be housed on the same site as the existing brand?
- If on the same site, will the proposed new brand compromise the space available to the existing brand on site or the visual prominence of the existing brand?
- Will the proposed new brand be sharing any facilities of the existing brand such as service facilities?
- Will the new brand have a separate Dealer Principal?
- Will the new brand and the existing brand be structured separately using different legal entities?
- How competitive is the proposed new brand to the existing brand? Do they compete in the same vehicle segments and look to attract the same buyer types?
- How expensive is the land and is another brand required to pay the rent, or achieve an acceptable return on investment if the land is owned?
- How many other multi-franchised dealerships are in the network, in this region or with this size of dealership?
- How is the dealer's performance for the existing brand? See separate Crea Legal article entitled 'Dealer Performance' for more information on this topic.
- How will the dealer's performance for the existing brand be effected by the introduction of the new brand? This is the biggest question really and unfortunately, being a future prediction, it probably can't be answered easily.

Dealers tend to argue that as performance will improve because resources can be consolidated, economies of scale achieved and the expansion into other brands will attract more customers to the business.

Franchisor will be concerned that shared resources may result in less resources for their brand, cross selling will occur which may reduce sales and the level of focus of the owner and/or Dealer Principal will be reduced.

For advice on this or any other franchising matter, Steven Crea can be contacted on 0411 777 695 or steven@crealegal.com.au.