Site Relocation, Reconfiguration, Redevelopment or Refurbishment

Good network management necessitates that a franchisor has a detailed knowledge of each dealership site and it is essential to have all internal and external footprint of a dealership (sales, service, parts, used cars, other brands etc.) marked up on clearly laid out plans in the dealer agreement. Without this you won't know what the dealership site comprised when the dealer agreement was entered into and it will be hard, if not impossible to identity changes which may have occurred on site.

Dealers wishing to relocate a dealership to an entirely different location is common, especially for multi-franchised dealers. Increasingly, dealers are seeking to relocate parts and/or service to another location if capacity is scarce on the site. Multi-franchised dealers may be looking for the economies of scale associated with consolidating operations into shared service or parts facilities.

Most dealer agreements will require dealers to obtain franchisor consent in the case of any relocations or significant changes to a site.

This also applies to relocations in event of sale of a dealership. Dealers should not assume that they can sell to someone who will operate the dealership from another location. Dealers will probably find that the franchisor has a complete discretion on relocations in these circumstances and it would usually be a reasonable basis for a franchisor to withhold consent to a proposed dealership transfer (sale).

There will be other instances where the car company wants a dealer to relocate. This may be due to such things as a dealer outgrowing the size constraints of a particular site or the dealership location being outside the optimum locality in a particular territory. Dealer agreements will not usually contain the right for a franchisor to require a dealer to relocate during the terms of a franchise. The franchisor will have to wait until expiry of a term and negotiate something with the dealer as a condition of renewal. This is where 'evergreen' or on-going agreements with automatic renewal or 'roll over' provisions can be quite problematic for car companies with changing network requirements.

It is not open to a car company to require a relocation to occur in the event of the sale of a business unless the parties agree. The selling dealer has the right to sell the dealership in its current location.

Refurbishments and Redevelopments

There will usually be some ability of a franchisor to require a dealer to refurbish or update a dealership throughout the term of an automotive franchise. It may be necessary due to deterioration in the condition of the dealership or perhaps revised branding and retail visual identity (RVI) requirements. These will always be pushed by car companies as global standards which must be rolled out across the entire network and can come down to such things as the type of floor tile in the showroom.

The scope of the franchisor's right to require improvements will always be a question of degree and what is reasonable taking account of the individual circumstances. The following are relevant considerations:

- The length of tenure remaining on the franchise agreement. The discussion may need to involve an early renewal if the franchise term is nearing the end.
- How much dollar contribution is coming from the franchisor. Some car companies have a policy of 50/50 on RVI elements and offer credit facilities for the dealers' proportion to be paid off over time. The issue of ownership of the assets should be clear in the case of a joint contribution to the RIV and will impact on the ability to depreciate the items as a business expense and what happens in the event of closure of a dealership.
- An assessment of the level of additional investment required verses the returns of the business. If the business is only making a modest net profit and the return on investment is low, a significant spend on capital works will be hard to justify. This is a consideration which car companies tend to be quite ignorant of.

Again, I would argue that a sale of dealership is not a good opportunity for a car company to impose refurbishment or redevelopment requirements. If they had these rights available, they should have raised the matter with the current dealer. Being demanding at this time is dangerous territory for a car company as it may compromise a sale of business or the price that a buyer may be willing to pay which could lead to an claim from the current dealer.

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