

Money for Nothing by Dire Straights

Now look at them yo-yo's that's the way you do it
You play the guitar on the MTV
That ain't workin' that's the way you do it
Money for nothin' and your chicks for free

Hire the Lawyer and Get Your Chips for Free©

By Donald W. Hudspeth

The best value of a consultation with a business lawyer about a particular matter and the law may be something the client does not even pay for directly; that is, the lawyer's knowledge and expertise in business matters in general as well as the client's business and problem in particular. With both compliments and apologies to Dire Straits: "that's the way you do it."

Legal Review

Say you operate or want to buy a franchised physical fitness business. Together the franchise disclosure document, franchise agreement, lease rider, trademark agreement, confidentiality, territory, and perhaps other agreements, typically run 200 pages or more. There is a definitely a need for a lawyer's review of the documents. Although established franchised companies are not willing to negotiate the terms of their franchise documents point by point, some important elements such as trade area, transfer fees, and training fees may be negotiable. Even if they are not, there is great benefit in knowing the "landmines," i.e. negative provisions. I discuss this point in my One Minute Lecture on "Landmines." In a nutshell, in that Lecture I say that while we may not be able to make all the changes we want to or in a legal document, we can focus on and try to change the least favorable "landmines." And, after review and consultation the lawyer and client will know where the rest of the landmines are in that transaction. Thus, the client can avoid inadvertently breaching a contract because the client didn't understand or know what was in it.

Practical Experience

The above is the fairly standard process of a lawyer's review, consultation and revision of legal documents. But, with the right attorney there can be whole other level of consultation and advice. This is possible where the attorney has practiced in the area and represented other clients with the same or similar problems.

General Questions. For example, considering the franchise hypothetical mentioned above, there are a number of practical questions and issues. Why does one buy a franchise? Factors one might consider are the strength of the brand, the franchisor's knowledge, experience and expertise in the industry, financial strength, the quality of training and operations manual,

uniqueness of concept and its replicability. For example, if the franchise just started then it has no brand or market awareness. Whatever the client is paying for, that is not it. If the fitness franchise was started by bankers, then there may be no track record in the industry. Unless there is something special about the fitness services and programs, the franchise will be operating in a mature industry and it is more or less easily replicated. Typically, it is the lawyer or franchise consultant who will raise and comment on the practical issues.

Specific Information. In addition to discussing the practical questions relating to the underlying question whether this franchise is, in general, a good business investment, the attorney may be able to share other practical information. This could include the fact that other clients who have purchased other fitness franchises have failed or are having a tough time because in the name of “standardization” the franchisor refuses to allow changes to the services or products offered or to the pricing. As other local fitness centers have better programs or pricing or both, buying the franchise as it is may be a recipe to fail. Worse, the fitness franchise company may sell customer leads to the franchisee. This model has not worked well and can be a major cause of failure. Finally, two major, very large fitness centers have recently closed their doors. Is that because the centers were too big or because the industry is changing, e.g. with at-home equipment.

This general and specific practical information which the attorney can learn over time by practicing in the area can be invaluable to the client. And, it goes beyond the franchise document review.

The Above Point Applied. At this firm all of our clients are business owners, large and small, local, national and international. For about twenty-five years and for about 40-50,000 billed hours, I have represented and served the firm’s business clients on business matters. And prior to going to law school I spent ten years or so running my own small businesses. Although the client comes to the firm for legal, not business, advice, and although we are lawyers, not business consultants, still the substantial knowledge that comes from the years of being in practice can be of tremendous value to the client. There is a very good chance that while the client’s issue may be a once in a lifetime event for the client, it may be something that we here at the firm have seen and handled several times before. And because we are not business consultants this background of knowledge and understanding is basically free to the client.

In a nutshell, as said in the opening paragraph, in some cases the best value of the lawyer consultation may be something you do not pay for directly; that is, the lawyer’s knowledge and expertise in business matters in general and perhaps the client’s business and problem in particular. One pays for the legal review and gets the practical “chips” for free.