



## A Franchisee's Best Self-Defense

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More and more my practice seems to be shifting to meeting the challenges presented to franchisees by opportunistic franchisors who see the cure for all ills as taking more money out of the relationship with their franchisees. If they did this without diminishing the net revenue of the franchisees, it might not be so desperate a matter. However, in the present tense, the taking is completely without regard to franchisee profitability. It seems, at least on the surface, as though many franchisors really don't give a damn whether the franchisees survive or not. The immediate concern is the franchisor's bottom line and the devil take the hind most. Of course this isn't so with all franchisors, but it is with enough for the impact to drive franchisee groups in my direction.

On the other hand, there are many franchisors that cherish the survivability of their franchisees. It is the core of the value of their portfolio of franchise agreements. Agreements with dead people – financially speaking – aren't worth much. These companies are long view companies, what franchising is supposed to be all about. These companies also tend to have effective franchisee associations with whom they work for their mutual benefit. So much of what is good comes from the field, where the rubber meets the road, that the franchisee association is a positive force for optimizing the likelihood that the system will remain relevant and viable. Alas, there are too few of these. The others have to be trained to accept the prospect that franchisees are not property to be disposed of for the sake of short term expediencies. They can only be trained by people who have the fortitude to deal with the realities of having signed tough agreements with unworthy people.

A determined group of franchisees, with proper guidance, can accomplish a great deal by way of relationship improvement. It requires participation and support by a substantial percentage of a system's franchisee population and a level of mental toughness that is rare amongst people who are essentially business people conditioned to doing what is supposed to enable one to get along in a business relationship. While many franchisees are ex military, they don't expect to have to hunker down locked and loaded to manage a competent civilian business relationship in which their livelihood is produced. That isn't what it is supposed to be about and they were all told that they were going to belong to a franchise "family" chock a block with mutual respect and support. Rah Rah Rah, Sis Boom Bah! In so many instances, however, it just aint so. The benevolent senior family member and supporter, mentor turns out to be an ogre with a tough contract that was signed by people who thought they were dealing with a warm and fair human being.

To these franchisors, and to many courts, what is fair is anything that is permitted by the language of the agreement you signed when you didn't have a gun to your head. Having agreed to tough terms, you get what you agreed to – tough terms.

The only way to manage the situation when nice old Uncle Daddy turns ugly is to form and support an independent franchisee association. And that requires mental toughness as well as money. Actually, if you wait until Uncle Daddy turns ugly, it will take more money and more mental toughness to get the job done. If franchisees are astute enough to get the association established and supported before Uncle Daddy turns on them, it can be practically impossible for Uncle Daddy to get away with it. Usually, if the franchisees have early on established positive relationship protecting respect, Uncle Daddy somehow manages not to fall over the edge. That early on investment in a franchisee association is worth so much more that it is impossible to compare the two situations. Imagine a relationship in which the franchisor never gets to threaten franchisee profitability. Does that sound impossible? Well, it isn't. What you have to do is get the job done while it can still be done without having to wage war. War is expensive. War can also be dangerous. When it has already turned bad, much more mental toughness and more money is required – usually at a time when money is tighter.

Most franchisees have no idea what an independent franchisee association is supposed to do. They think that if they can get the membership cost down to where no one will think twice about the cost of joining, they are home. Forgetaboutit! An army runs on its stomach. It has an appetite. It must be fed and it must be supported. A Franchisee association is not a social organization. You can't just pick a name, start printing tee shirts and expect relationship improvements and respect. With a tough franchisor, you get respect by taking it. It is not otherwise bestowed. Power in such a relationship comes from strength, including financial strength. There is no free lunch when you are dealing with thugs. To be sure, there is never any free lunch. But the price of walking through a tough neighborhood is higher than normal. If you don't include the cost of effective vigilance in your budgets, the thugs will have your guts for garters – and they do every day with hundreds of weak willed franchisees.

Franchisees have notions about how franchisee associations ought to work that have nothing to do with reality. They see it more as a social organization that has the protection of their business interests as a secondary goal. They want to be officers and directors, to go places and have conventions and meetings, and to have toys, like bulletin boards and blog sites. They were conditioned to think this was proper by organizations that specialized in telling them what they wanted to hear in order to get small contributions out of them that afforded nothing of substance when the rubber had to meet the road. They gave out awards and held conventions with songs and dances – all total bullshit. And of course nothing came of it that was ever of significant use to franchisees in need of competent representation of their interests. Meetings, songs and toys have no place in this picture. Meetings can be had less expensively if confined to meetings of those needed to come to decisions and the meetings are held over the telephone. If you want to get together with your friends and socialize, drink, dance and sing, do it at your local pub. Bulletin boards and blog sites are poisonous artifices at which franchisees say things that their franchisors can later use against them. The franchisors always infiltrate these places. Judas franchisees are always reporting what is said, done and posted as well as giving out their user ID and passwords to the franchisors so that direct monitoring can be done. No franchisee association is ever without a Judas or two who thinks he can feather his own nest by selling out his brothers and sisters. Toys are dangerous. The organization that used to provide them was run by people with no competent appreciation of how to deal with confrontation. They believed you could just talk bad people out of doing bad things.

That is absurd and the organization was absurd. Reality is the only approach in dealing with tough people with whom you signed tough contracts.

I will admit that once the franchisee association has been well established and has accomplished much of its goals, celebration may be in order. After success celebration is justified. Before success conventions are exactly like George Bush flying onto the Aircraft Carrier Abraham Lincoln and declaring victory in Iraq – ridiculous and the subject of endless jokes about his stupidity. Until goals are met in significant measure, there is nothing to celebrate. It's about goals, not about just setting up an association. Focus on the goals. Focus on getting broader membership. Focus on screening your own leadership for their own vulnerability.

The leadership of a franchisee association needs to be gig proof. They need to be in compliance with their franchise agreements. If they are subject to simply being defaulted out of the system, your association will not get established, as the franchisor can simply scare them off. After the association is up and running, you still need to vet your leadership to assure that you are not allowing non compliance to become one of your resource consuming issues. You can't let the leadership consume association resources to defend their own non compliant positions. This happens more often than you would think, and bad franchisees sometimes try to hijack associations for their own agendas. Your credibility is also undermined when you allow bozo franchisees to come into positions of influence in the association.

In thinking about setting up an independent franchisee association, it is important to appreciate that everything about it will immediately become known to the franchisor. There are some things that can be done about that at the very beginning, but the fact that some Judas will rat out the association whenever he can must be dealt with in real terms. For that reason, when I first work with the initial leadership group in trying to set up an association, I do it as an attorney-client project, not as an association project. What that means is that once we come to a decision about what the initial message to the franchisee population at large is to say, it is said by me on my letterhead on behalf of unnamed franchisees who are my clients. That initial work costs relatively little, and if it does not get sufficient support then my clients are not named and they know that they should not risk problems with the franchisor on behalf of people who will not help themselves. If there is not adequate support, we simply go no further. Their communications with me are privileged and confidential. They have taken no public position for which they are out on a limb, so to speak. Of course, if they have already put themselves out on a limb before they came to me, I can't stuff that back into the horse (as we say in Texas). It is better to come for guidance before you run your mouth in public. But even if you have, my initial approach does not change. We don't go out for franchisee membership support with people who have their own high exposure for not doing what they agreed to do. The franchisees can appreciate that I have required my clients to deal up front with their own exposures before going public with problem franchisees and asking the others to get on board with them.

You would be amazed at how often there is no adequate support. Franchisees that yell and complain about being abused and about lack of profitability frequently want someone else to just hand them workable solutions without their having to support the work or help bankroll the project. It doesn't work that way. The franchisees must get on board or the problems will eat them alive. That is an axiomatic truth.

Consider the following illustrative situation. Many franchises are sold on representations of buying power inherent in group purchasing. Most of the time those representations are false. They are false because in the beginning a small group of franchisees have no buying power. Large groups have buying power. However, in most such situations the franchise contract provides for the franchisor designating vendors. That provides a whole other revenue stream for a franchisor, as the right to restrict vendors is the right to extract fees from the vendors for the privilege of a monopoly vendor price opportunity. The franchisees never get competitive pricing. In all of those scenarios – yes, all of them – there are rather standardized quality benchmarks for that particular business and vendors make their products to those standards generally. Franchise vendor restriction is not required for quality control. A simple requirement that purchases be to standard will suffice.

When buying power is achieved in this kind of franchise, the value of the buying power does not go to the franchisees, but rather it goes to the franchisor. That is what makes the buying power representations false.

This is a frequent point of contention for the formation of franchisee associations. They want access to competitive pricing and they want the promotional money to come to the franchisees instead of being siphoned off by the franchisor. In short, they want a normal situation rather than the artificial restricted vendor situation provided for in the franchise agreement. The antitrust laws no longer provide a remedy for that. If it was disclosed at the outset, franchise disclosure laws may not provide a remedy either. Only self help is left as a remedy for this rip off.

The franchisor in this situation will not give up this cash flow because it is preventing the franchisees from greater profitability, and he can't be talked or sued out of it in most instances. But he can be made to face irresistible business pressure from a competently organized and militant franchisee association. Issues that can't simply be thwarted by threat can be linked to other issues that the franchisor needs cooperation with, and in that manner a sensible and livable middle road can be reached. But that solution is not available without a competent franchisee association.

This one illustration by itself should suffice to show even the most reluctant franchisee group that a good franchisee association more than pays for itself over time. Such a group must be ready to fight to protect itself in order to get to that stage of effectiveness, as that kind of franchisor will try to kill it. The franchisor must come to understand that his franchisees have established and adequately funded the wherewithal to make him accept the association through direct confrontation if need be. Militancy must be a demonstrated feature of every new franchisee association as well as a given in opposing a mature association, The more obvious capable militancy is, the less likely it will be that the fight no one wants will have to be waged.

The franchisor will soon learn the amount of support behind the organizing effort. He will know how many are in the group and he will know how much the group has put up in resources to fund the association. If there is not widespread support and sufficient resources to accomplish what is needed and protect the group from attack, the franchisor will attack. But he won't attack widespread support. No matter how bad he may be, he can't fight everybody. What needs to be recognized is that if there is very widespread support and a competent treasury, you win. Conversely, if there is not widespread support and a competent treasury, you lose. It's that bloody simple. It must be like a rising tide. The impact of rising tide organization, lots of force in a very short span of time, cannot be thwarted by a bozo franchisor. Moreover, the new FTC franchise rule requires franchisor recognition of the

association in its FDD given to all new franchisee prospects. These potential franchise investors, unless they are incredibly stupid, will come to the association for guidance and will, if properly handled, join the association immediately. They will be educated to appreciate that if they are not in the association, they will be out in the cold without the support of their fellow franchisees. With a competently managed association only fools decline to join.

It is an eternal truth that, while no one wants confrontation, being ready for confrontation is the best way to avoid it. One never gives assurance that the association is not being formed without confrontation being part of the equation if confrontation is what it takes to get the point across. No bad aggressive franchisor would ever have any reason to come to the table if he had nothing to fear. He must be motivated. He has the right to confront you and would never give you any non confrontation assurances. Similarly, you cannot take that card off the table and expect not to be eaten alive. This isn't a tea party. You also cannot raise membership by telling your fellow franchisees that confrontation is not what the association is about. They must know and support the position that, while the association is not being created for purposes of confrontation, confrontation will be provided if it is necessary to accomplish the goals of the franchisees. If you do not have militancy as one of the ingredients in your association formula you are doomed to failure. You may get some members, but you will never accomplish anything that you need to accomplish to protect the value of your franchise investment. The militant attitude cannot be left out. I am old enough to remember the attempts to appease the worst dictator of the 20th Century, and dealing with a rogue franchisor is no different. If he thinks you are weak, he will consume you.

Unfortunately, most of the franchisees that come to me for association guidance do not have the support of their brothers and sisters. People find it unpleasant to accept the prospect that they have to spend scarce resources to deal with problems that should not be part of any civilized business relationship. They are right. It is unpleasant. But the consequences of not doing it are more unpleasant. Will franchisee attitudes change so that more and more of them stand up for themselves and get better results? As this era of franchise abuse worsens, I think they will. No one wants to be part of another Quiznos, Dunkin Donuts, UPS scenario. The suffering of those franchisees ought to be sufficient to galvanize franchisees into action. Anyone wishing to learn about their historical agonies can see almost all of it on [www.BlueMauMau.org](http://www.BlueMauMau.org). Early establishment of effective independent franchisee associations could have prevented those horror stories. There are many positive business management opportunities within any franchise system that can be facilitated by independent franchisee associations. The money spent on them returns many fold over time.

Wealth comes from strength. Remember that!