

The LSLC Shell

Issue 3 Vol 2 Winter/Spring 2007



Lynda's Corner:

A belated welcome to our Winter come Spring Edition of the LSLC Shell. Winter is very safely behind us as we look forward to a Spring Carnival without horse flu and a little holiday for me in November (I am already counting down the days until I am again mesmerised by the sunsets on the shores of Cable Beach, Broome - my most favourite spot in the world next to Paris ☺).

To say the past few months have been busy is an understatement. We have taken on the responsibility of all legals for an exciting new franchise, Pole Divas and are now also in charge of all competition legals for the Counter division of Hallmark Cards. We have welcomed many new and varied export clients to our stable as a result of some very successful Austrade presentations and have continued our work for other franchisors who continue to expand their empires.

I am also going to be trying my hand at blogging, having been invited to blog regularly on export legals on www.smartcompany.com.au, a new business website overseen by a few ex BRW journalists. Check it out for some helpful tips from other experts on business.

Our feature this edition is a summary of the recent changes to the Franchising Code of Practice which come into effect in March 2008, plus all the regular news and tid bits. Enjoy!

Lynda ☺



LSLC News:

LSLC July Top 10

In keeping with our tradition of rewarding our top clients as part of our client loyalty program, in July 2007, the following clients received a 12 month subscription to Australian Gourmet Traveller magazine.

In the past months, we have assisted these clients with a range of services including franchising, leasing, acquisition of business, shareholders agreements, confidentiality agreements, employment agreements, international and local trade marking, terms and conditions of trade and design registration.

We thank our Top 10 in particular but also all of our other loyal clients for their continued support and faith in the quality of our services.

1. **Endota Spa** - National franchise chain of day spas.
2. **SED Consulting** - National franchise of management, business and specialist consultants.
3. **Financial Principles** - Financial Planning business.
4. **Silly Yak Foods** - Manufacturer of gluten free foods and owner of gluten free café.
5. **Priority One Training** - corporate training providers in work life balance.
6. **Pole Divas** - the newest fitness craze, this pole dancing school is now franchising nationally.

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LSLC News Contd:

7. **Mozi** - stationery, giftware and homewares designers and wholesalers taking Australia and the world by storm.
8. **Winbur Nominees** - Manufacturer of women's fashion and support stockings.
9. **Darren West (Ashburton Physiotherapy)** - entrusted LSLC to take care of his property needs.
10. **D&C Design** - Designers of an exciting new children's product called "Door Dress Ups" and other innovative designs.

Energise Enterprise 2007 Small Business Festival - Export Panel

Lynda was invited to take part in The Panel Series of this year's Energise Enterprise, Victoria's small business festival. As a recognised Export expert, Lynda presented on the Panel alongside Austrade Senior Export Advisor Andrew Peters, Business Values Consultant Brian Moran and Old Colonial Cookie Company owner and winner of the 2005 Premier of Victoria's Food Export Award Howard Dray on Saturday 25 August at the State Library. The panel format was a new way of presenting for Lynda who had to cut down her usual hour long presentation to 10 minutes while still managing to put the fear of God into participants who would dare to embark on an export adventure without proper contracts in place! The Office of Small Business had this to say about Lynda's presentation: *"Thank you for the time and energy you put into making this event so successful. Your presentation truly encapsulated the Festival's mission to 'energise' Victorian small businesses by providing inspiration, ideas and information. The feedback we have received by attendees has been extremely positive. We recognise that your involvement was a key element in the success of The Panel Series - Export event..."*

Awards - Great Exposure for your Business and more...

Lynda will be attending the Governor's Awards on 2 October at Government House. On Lynda's travels on the speaking circuit, it has become more and more obvious that participation in Awards competitions is an excellent way for business owners to do some real navel gazing and analyse their successes and failings. The Awards processes are often a bit daunting but apart from the excellent PR you receive if you are successful in the Awards it is a very rewarding experience. You will be pleasantly surprised at how much you actually don't know about your own business until you are forced to write it down for someone else! Some of the more popular and prestigious Awards LSLC clients may consider nominating themselves or being nominated for are:

- Telstra Business Awards
- Telstra Business Woman of the Year Awards
- Governor of Victoria Export Awards
- Premier of Victoria Export Awards
- Australian Business Excellence Awards
- Your local government's Business Excellence Awards (these would normally be sponsored by the Leader newspaper in your area and are based on customer satisfaction)
- My Business Awards
- Ernst and Young, Entrepreneur of the Year Awards

Congratulations to our clients Belinda Fraser and Melanie Gleeson of **endota spa** who were finalists in the Ernst and Young, Young Entrepreneur of the Year Awards this year and were pipped at the post by Carolyn Cresswell of Carman's Fine Foods.



Feature Article: Changes to Franchising Code of Conduct

All franchisors and franchisees should make themselves aware of the changes to the Franchising Code of Conduct, which regulates the Franchising Industry in Australia. The changes have been released by the Federal Government's Office of Small Business and will come into effect on 1 March 2008.

The changes will require Franchisors to amend their existing Disclosure Documents and collect additional information for preparation of the Disclosure Documents. There will also be additional restrictions to the content of Franchise Agreements preventing waivers of Franchisor representations. Finally the other major change is that there will no longer be an exemption in the Franchising Code of Conduct for foreign Franchisors with only 1 Australian Master Franchisee.

The major changes to the Code are detailed below. Further information may be obtained from the Franchise Council of Australia or contact us at LSLC should you have any further queries.

New Disclosure Requirements

- Copies of all associated agreements and contracts eg. Leases, Indemnities, Confidentiality Agreements and Guarantees that the Franchisee will need to sign must be now provided to the Franchisee at the same time as the Disclosure Document, Code and Franchise Agreement or as soon as they become available.
- The Franchisor will be required to disclose certain information to Franchisees within very tight time frames ie: 14 days. This includes:
 - Disclosure of any undertakings made under the Trade Practices Act to the ACCC
 - Continuous disclosure of materially relevant facts which may include changes in majority ownership of the Franchisor company, proceedings, judgements, changes in ownership of intellectual property, information about the Franchisor's directors as well as information about the Franchisor.
 - Disclosure in relation to changes to the scope of the Franchise Agreement eg. expansion of the Franchisee's territory, changes to the Franchisee's site etc. Such changes will trigger a need for a new Franchise Agreement and Disclosure Document at least 14 days before the change occurs.
- There are also requirements under the new Code for information to be disclosed to Franchisees that was not required to be disclosed in the past. This includes:
 - Disclosure of convictions of serious offences by the franchisor or its directors. This includes contravention of any provision of the Corporations Act 2001 which is quite onerous as it may cover very minor contraventions such as failure to submit the annual statement to ASIC.
 - Disclosure of the name and contact details of past Franchisees instead of only the numbers of past Franchisees. This is to allow potential Franchisees to more easily contact past Franchisees. It will be crucial for Franchisors to ensure that they have consent of past Franchisees to their details being disclosed.
 - Disclosure of rebates obtained by the Franchisor in relation to goods and services supplied to the Franchisee.

Changes to Content of Franchise Agreements

Apart from additional disclosure requirements, there are also now new prohibitions in relation to information provided to Franchisees in the Franchise Agreement. The main change is that the new regulations prohibit waiver of any verbal or written representations made by the Franchisor prior to the Franchise Agreement being entered into. This means that from the outset of the Franchisor/Franchisee relationship (ie: when recruiting or renewing franchises) any approach to the prospective franchisee including emails, conversations and informal meetings need to be carefully reviewed to ensure that inappropriate representations are not made, as these representations will still be valid and cannot be waived in the Franchise Agreement. Any existing clauses dealing with waivers of representations will now need to be deleted from Franchise Agreements.

Most Franchisors will find that they currently make significant disclosure to their Franchisees as part of good business practice, however, we highly recommend that all documentation is reviewed asap in preparation for the implementation of the changes to the Code in March 2008. Franchisees should also take note of the changes to the Code so that they know what to look out for and what information they are entitled to when seeking to enter into or renew a Franchise Agreement.