

The 'New Normal' Post Covid-19



Over the next few pages, Maninder Gill, Partner and Head of Retail at Simons Muirhead & Burton Solicitors, and previously Legal Director of Harvey Nichols, takes some time out of his busy schedule to take a look at what franchising may look like once the global pandemic passes and people try to return to their 'new normal'.

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Economies internationally are in virtual shutdown and, with a deep worldwide recession predicted, retail is bracing for tough times. It's almost impossible to plan ahead with so many variables and the only certainties are, that this economic downturn will eventually come to an end, and that we should be prepared for another pandemic in the future..

Retailers will, in all probability, have to adapt to a 'new normal' where many people will continue to work from home as companies realise that it is possible to be productive with a partially off-site workforce. Online shopping for every necessity, luxury, groceries and meals have become the norm. People dress differently and prefer informal clothes. More cook at home as they have more time as they don't have to commute.

Every square inch of a physical store adds to overheads and in response to the new normal, retailers will inevitably accelerate the trend to having fewer but better flagship stores to showcase their brand and products, attract new customers, develop brand loyalty and boost online sales whilst concurrently investing more in their e-commerce offering as they implement lessons learnt from the quarantine experience to further optimise and scale up their operations. The physical stores will provide fewer products but more theatre. Retailers will benefit from savings not just on rent but on payroll, rates, insurance and utilities. Further investment in e-commerce will result in increased digital interaction like hosting virtual parties for customers to attend and investment in brand exposure in digital pastimes like Louis Vuitton's interaction with League of Legends, the online battle arena game which is the most-played PC game globally, with 80 million monthly users across 145 countries.

Consumers will of course return to the high street. While rampant consumerism may be optimistic, we can all relate to the pent up craving to leave our homes and to enjoy some semblance of normality and to shop for something other than food and anti-bacterial products. There are already recent reports of huge sales at some reopened luxury stores in China. Returning shoppers will, however, demand high levels of hygiene and safety as their experiences of the pandemic will have influenced how they interact and shop. Retailers will be expected to convince their customers that they will be safe while shopping in their stores and will have to assure shoppers that they disinfect their premises frequently and provide hand sanitisers, wipes etc, with staff wearing appropriate masks if they come close to customers e.g. at a fitting. Heat maps at the entrances of stores to identify customers with fevers are already common in the Far East. Signage and markings on shop floors to set out physical distancing requirements are becoming the norm as are additional protective measures for checkout staff like clear Perspex screens. Visible and reassuring steps to assuage health concerns will enhance a brand's reputation and franchisors can take the lead in requiring franchisees to adopt these measures which merely reflect the recalibration of consumers' social awareness. We have seen how most consumers now insist on keeping a safe social distance from others, avoid crowded shops and even avoid paying by cash. This paradigm shift could lead to some customers avoiding crowded malls and department stores altogether and to more traffic for smaller independent shops.





Retailers should advertise the additional steps taken to safeguard their customers but any advertising should comply with all local advertising codes e.g. the UK's ASA code which can be found at www.asa.org.uk, be responsible and avoid scaremongering.

Innovative retailers will invest in increased advertising and examples of legendary successes from increased investment in difficult economic times include Kellogg's in the Great Depression deciding not to follow its competitors and cut costs but instead to double its ad budget, move aggressively into new advertising platforms like radio and to launch new products, the result of which is that it became the dominant cereal company worldwide. Chrysler marketed a new relatively cheap model (the Plymouth) and, on the back of its success, became one of the biggest carmakers in the USA. There was Hyundai's immensely successful ad campaign in the last financial crisis, 'Right now, buy any new Hyundai. And if, in the next year, you lose your income, we'll let you return it' when Hyundai concluded that consumers still had sufficient savings but were holding back because of the lack of job security. Their innovative money back guarantee met these concerns head-on and sales went through the roof and few cars were returned.

Some structural economic changes will be permanent such as 'deglobalisation' and more 'localisation' especially with regard to the supply chain as companies try to hedge their vulnerability to future pandemics and reduce their over-reliance on China in this brave new world where borders close at the first sign of an epidemic. The US trade war and rising labour costs in China are also reasons why retailers are diversifying their supply chain to countries such as Ethiopia, Philippines etc.

In these turbulent times, the strengths of the franchise model with the symbiotic relationship between franchisor and franchisee will be appreciated more than ever, with the franchisee able to leverage off the franchisor's experience, gained across numerous markets, and its proven resilient business method, while the franchisor would benefit from the franchisee's intimate knowledge of the local market and, crucially, the local customer.

Franchisors that recognise the 'new reality' and who adapt quickly will prosper as potential franchisees seek to benefit from adopting the brand values of an innovative company with a reputation for taking the lead to meet the concerns and priorities of a post-pandemic consumer base.

Template franchise agreements should however be updated to facilitate speedy responses to any future pandemic, for example, to:

- Require implementation of specified or approved safety procedures for customers and staff and compliance with government guidelines relating to safe distancing and capacity limits etc;

- Introduce innovative responses to any mandatory closures of shopping malls or dine-in services at restaurants by e.g. providing additional incentives for online shopping and takeaways;

- Allow franchisees to mitigate their losses by tapping into new revenue streams e.g. selling and home delivery of anti-bacterial products and clothing or even of groceries;

- Update the suitability of the wording of the force majeure clause and whether to specify a pandemic as amounting to a force majeure event, ensure there is clarity on when a party would be unable to perform its obligations under the franchise agreement (as opposed to merely facing obstacles or an economic downturn or government regulations making performance problematic) and consider the possibility of deferment of the payment of royalties, opening of new stores and refurbishment of existing stores etc;

- Similarly review the force majeure clauses in franchisee's leases but this can be problematic because of translation requirements and the landlord's (and sometimes the franchisee's)

insistence on keeping their leases confidential and encourage a shift to turnover rents where the risk of success and closure due to pandemics is shared between retailer and landlord;

- Take steps to protect their positions in the event of franchisee business failure by e.g. by including "retention of title" clauses so they can recover the products they have supplied to the franchisee from any administrator, where payment has not been received, failing which the franchisor will just be an unsecured creditor.

Franchisors should also apply lessons learnt to their supply chain by including in their contracts the right to defer receipt of product or to make payment or to apply discounted pricing, reduced consignment charges and the waiver of minimum order requirements in the event of a pandemic.

The plethora of regulations, incentives and compensation offered by various governments have also highlighted the importance of keeping abreast of these developments and therefore maintaining a relationship with local lawyers or accountants whose advice can quickly be called upon can be invaluable.

There are many lessons that have been learnt from the pandemic to date, and many more to learn in the future, but a silver lining to the sad recent demise of numerous brands is that there a large pool of very qualified retail staff whose experience and insights can be drawn upon to assist retailers preparing for the new normal.