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The Future of Global Franchising: Innovations, Technologies, and New Markets

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WORKSHOP 3: MANAGING A MARKETING FUND

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I. Introduction.

Designing, implementing, and managing a brand fund for any franchise system is a significant challenge. Doing that in a cross border environment raises the bar considerably in terms of complexity in terms of business and legal considerations. This paper seeks to address some of those points, noting the issues that can arise in some, but not all of these environments.

Of course, the key considerations in almost every brand fund issue comes down to the parties' contract. Brand funds are creatures of contract – invariably created and governed by contract.

That contract – whether in the form of a unit-level franchise agreement, master franchise agreement, license agreement, or whatever form of agreement there is – creates the basis of the relationship pertaining to the brand fund among the franchisor, the franchisee (and perhaps other franchisees!), and the ad fund (if it is a separate entity). Therefore, the touchstone, for most inquiry is relating to how the brand fund should be established, upgraded, and maintained is the actual text of the franchise agreement itself.

Obviously, there are also overlays, which may consist of statutes, caselaw, lore, and patterns and practice that create expectations. Although business expectations typically do not rise to the level of changing parties' contractual obligations, they can create beliefs as to rights and remedies, which may or may not be true. And in the end, business headaches can (and often do) lead to legal nightmares.

In the United States, brand fund management can be impacted by state and federal franchise disclosure requirements. For example, the FTC Franchise Rule requires disclosure in Item 11 of the FDD as to whether certain details about how an advertising fund is set up, managed, and maintained.[1] These requirements are sometimes the point of special focus by registration state examiners, who may require added disclosure to meet the regulatory requirements. Likewise, in other countries, such as Australia, brand fund management is impacted by government regulation. These issues are explored below.

II. Strategy

a. Establishing an International Marketing Program

Establishing an international marketing program within a franchise system requires strategic and legal foresight, particularly when navigating the complexities of cross-border brand stewardship, regulatory compliance, and multilayered franchise structures. Unlike domestic programs, international marketing funds must balance global brand consistency with local market responsiveness, all while being structured

[1] 16 C.F.R. § 436.5(k)(4).

to reflect the legal, operational, and financial frameworks of the countries in which they operate.

b. Scope of the Marketing Fund: One Country or More?

A fundamental strategic decision in designing an international marketing program is determining the scope of the marketing fund: will it be national (serving a single country), international (serving multiple markets), or hybrid (a layered approach that includes both national and global elements)? Each option presents different implications for governance, fairness, and operational execution.

The optimal structure often depends on the franchisor's international operating model. In direct international franchising, where the franchisor contracts directly with unit franchisees in each country, the franchisor may retain centralized control of a global or regional fund and directly oversee its use. In contrast, under a master franchise model, the master franchisee is typically granted broader autonomy and responsibility for local execution, including establishing and managing a national fund to support subfranchisees in their territory.

Some franchisors adopt a hybrid structure, requiring each country or region to maintain its own national fund—overseen by the master franchisee or local franchisees—while also contributing a small percentage of sales to a global or international brand fund administered by the franchisor. This allows for investment in both localized campaigns and global brand-building initiatives. For example, according to the Arcos Dorados annual report, the marketing obligations for McDonald's Latin American master franchisee include:

> Pursuant to the [master franchise agreements], we create, develop and coordinate marketing plans and promotional activities throughout the Territories, and sub-franchisees contribute a percentage of their gross sales to our marketing plan. In addition, we are required under the MFAs to spend at least 5% of our sales on advertising, communications and promotional activities in the majority of our markets. Pursuant to the MFAs, McDonald's has the right to review and approve our marketing plans in advance and may request that we cease using the materials or promotional activities at any time if McDonald's determines that they are detrimental to its brand image. We also participate in global and regional marketing activities undertaken by McDonald's and pay McDonald's approximately 0.1% of our sales in order to fund such activities.[2]

[2] Arcos Dorados Holdings Inc., Annual Report (Form 20-F) (Apr. 29, 2024) at 19.

Choosing the right structure requires balancing brand consistency with local market responsiveness. Key considerations include how much operational control the franchisor retains, the maturity and capabilities of the local franchisee or master franchisee, and the transparency and accountability frameworks that can be reasonably implemented across borders.

c. Master Franchise Environment: Roles and Responsibilities

In master franchise structures, where a franchisor grants a master franchisee the rights to develop and operate the brand within a defined territory, the setup and management of marketing funds can vary significantly. The division of responsibilities between the franchisor and the master franchisee is largely a matter of contract and may reflect strategic, operational, and legal considerations, including the capabilities of the master franchisee, the maturity of the market, and the nature of the franchisor's global brand management approach.

i. Fund Establishment and Oversight

In many systems, the master franchisee is tasked with establishing and administering a local or national marketing fund to support brand awareness and customer acquisition within their territory. This approach leverages the master franchisee's proximity to the market and familiarity with local consumer behavior and media. Alternatively, some franchisors opt to retain greater oversight or even centralized control of certain marketing activities—particularly when brand consistency or cross-border campaign alignment is a priority. Hybrid models also exist, where the franchisor provides strategic direction while the master franchisee manages local execution.

ii. Expense Allocation and Access to Funds

The right to charge expenses to the marketing fund may rest solely with the master franchisee, solely with the franchisor, or be shared between both parties, depending on the contractual terms. Where both parties may access funds, clear parameters and approval processes are typically established to avoid duplication, confusion, or disputes regarding fund use.

iii. Compliance Risk and Accountability

Responsibility for compliance with fund-related obligations (e.g., collection, use, reporting, and auditing) may also vary. Often, the master franchisee assumes primary accountability for ensuring compliance with local laws and contractual fund requirements. However, franchisors may face brand or reputational risk if there is misuse of funds, especially in regulated jurisdictions. As such, some franchisors require periodic reporting or audits to maintain oversight and alignment with brand standards.

iv. Franchise Development Marketing Requirements

In some international franchise agreements, the franchisor may require the master franchisee to allocate a specified level of spending toward franchise development marketing activities. This obligation is often distinct from consumer marketing

requirements and is aimed at supporting the recruitment of new subfranchisees within the designated territory.

Rather than mandating the creation of a separate fund, the agreement may simply set a minimum spending threshold or impose performance-based triggers. For example, if the master franchisee is not meeting its development schedule or sales targets, the franchisor may reserve the right to require increased investment in franchise development marketing according to a mutually agreed plan.

This structure helps ensure that development efforts are adequately resourced and aligned with system growth goals, while maintaining transparency for subfranchisees whose contributions are intended solely for consumer-facing brand promotion.

d. Summary

Ultimately, there is no one-size-fits-all model. The choice of structure should reflect a combination of legal, operational, and brand management considerations, tailored to the specific dynamics of the market and the nature of the franchisor–master franchisee relationship.

III. Strategy

One question that befalls most franchisors is how to handle disputes involving the brand fund. There are differences between markets that are lightly regulated and highly regulated.

a. United States

i. FTC Franchise Rule

In the U.S., the primary regulation covering franchise offers is the FTC Franchise Rule,[3] which state franchise laws follow without material change in this area. As noted earlier, the FTC Franchise Rule mandates certain disclosure in FDD Item 11 relating to the brand fund,[4] specifically requiring that a franchisor do the following:

> *Describe the advertising program for the franchise system, including the following:*
>
> *(i) The franchisor's obligation to conduct advertising, including:*
>
> *(A) The media the franchisor may use.*
>
> *(B) Whether media coverage is local, regional, or national.*

[3] 16 C.F.R. Part 436.

[4] 16 C.F.R. § 436.5(k)(4).

(C) The source of the advertising (for example, an in-house advertising department or a national or regional advertising agency).

(D) Whether the franchisor must spend any amount on advertising in the area or territory where the franchisee is located.

(ii) The circumstances when the franchisor will permit franchisees to use their own advertising material.

(iii) Whether there is an advertising council composed of franchisees that advises the franchisor on advertising policies. If so, disclose:

(A) How members of the council are selected.

(B) Whether the council serves in an advisory capacity only or has operational or decision-making power.

(C) Whether the franchisor has the power to form, change, or dissolve the advertising council.

(iv) Whether the franchisee must participate in a local or regional advertising cooperative. If so, state:

(A) How the area or membership of the cooperative is defined.

(B) How much the franchisee must contribute to the fund and whether other franchisees must contribute a different amount or at a different rate.

(C) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether those contributions are on the same basis as those for franchisees.

(D) Who is responsible for administering the cooperative (for example, franchisor, franchisees, or advertising agency).

(E) Whether cooperatives must operate from written governing documents and whether the documents are available for the franchisee to review.

(F) Whether cooperatives must prepare annual or periodic financial statements and whether the statements are available for review by the franchisee.

(G) Whether the franchisor has the power to require cooperatives to be formed, changed, dissolved, or merged.

(v) Whether the franchisee must participate in any other advertising fund. If so, state:

(A) Who contributes to the fund.

(B) How much the franchisee must contribute to the fund and whether other franchisees must contribute a different amount or at a different rate.

(C) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether it is on the same basis as franchisees.

(D) Who administers the fund.

(E) Whether the fund is audited and when it is audited.

(F) Whether financial statements of the fund are available for review by the franchisee.

(G) How the funds were used in the most recently concluded fiscal year, including the percentages spent on production, media placement, administrative expenses, and a description of any other use.

(vi) If not all advertising funds are spent in the fiscal year in which they accrue, how the franchisor uses the remaining amount, including whether franchisees receive a periodic accounting of how advertising fees are spent.

(vii) The percentage of advertising funds, if any, that the franchisor uses principally to solicit new franchise sales.

This level of detail is described in franchisors' FDDs and usually takes several pages to explain. In substantive terms, the disclosures are neither difficult nor onerous to prepare.

In some instances, franchisees may request an "accounting" of how advertising funds are spent – as contemplated under the disclosure requirements and, typically, as governed in the franchise agreement. A not-uncommon clause in a franchise agreement might read: *"We will prepare and make available to you upon reasonable request an annual statement of the operations of the Systemwide Brand Fund as shown on our books."*

ii. Cases

There certainly have been disputes in court involving advertising funds, virtually all of which centered around contract clauses.

The most prominent of these cases is the 1998 federal appeals court decision in *Broussard v. Meineke Disc. Muffler Shops, Inc.*[5] In *Broussard*, the U.S. Court of Appeals for the Fourth Circuit reversed a $390 million jury verdict against the franchisor in a case where a putative class of franchisees alleged that the franchisor misused the advertising fund.[6]

In one recent case, a trade association attempted to bootstrap a contract claim into a state unfair and deceptive practices act claim. In *Great White N. Franchisee Ass'n-USA, Inc. v. Tim Hortons USA, Inc.*,[7] the plaintiff (a franchisee trade association) claimed that an alleged contract violation involving (among other things) a franchisor's advertising fund was a violation of the disclosure requirements under the FTC Franchise Rule and, therefore, derivatively actionable under the Florida Deceptive and Unfair Trade Practices Act ("FDUPTA").[8] The court rejected that reasoning, concluding that there was no viable FDUPTA claim and noting that:

> [A]lthough Plaintiff attempts to recast its claim as independent from the Franchise Agreements, the alleged practices relate directly to Defendants' performance pursuant to the terms of those Franchise Agreements. Thus, taking Plaintiff's allegations as true regarding the price-gouging scheme, equity-stripping policy, and misuse of the Advertising Fund, the [second amended complaint] states claims that amount to no more than breaches of the Franchise Agreements."[9]

The court dismissed the case, noting the language in the underlying franchise agreement, which provided that:

> [T]he Franchisor … undertakes no obligation to ensure that the Franchisee or any individual Tim Hortons franchisee benefits directly or indirectly in its local market or otherwise from the placement of such advertising and, for greater clarity, the Franchisee acknowledges that

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5 155 F.3d 331 (4th Cir. 1998).

6 *Id*. at 352. *See also Hendrix v. Jim Sheridan, UES, LLC*, 421 P.3d 774 (Kan. Ct. App. 2018) (court concluded that franchisee did not prove damages relating to allegation that ad fund was misused); *G. I. McDougal, Inc. v. Mail Boxes Etc., Inc.*, No. B196029, 2008 WL 2152911, at *1 (Cal. Ct. App. May 23, 2008) (court evaluated whether franchisor had contractual obligations to franchisees with respect to marketing*); Int'l Deli & Caterers, Inc. v. Shields*, No. W2000-00269-COA-R3CV, 2001 WL 873460, at *4 (Tenn. Ct. App. July 31, 2001) (franchisor did not breach marketing fund obligations; parties had agreed to waive that contractual clause). *Cf. KFC Nat. Council & Advert. Co-op., Inc. v. KFC Corp.*, No. CIVA5191-VCS, 2011 WL 350415, at *29 (Del. Ch. Jan. 31, 2011) (court considered rights of advertising council balanced against those of franchisor).

7 No. 20-CV-20878, 2020 WL 8024349 (S.D. Fla. Dec. 21, 2020).

8 *Id*. at *2.

9 *Id*. at *10.

this Agreement confers no right to benefit directly or indirectly, in a pro-rata manner or otherwise, from the Franchisee's Advertising Contribution or any general or specific use thereof and/or the Advertising Fund at large."[10]

b. Australia

In certain jurisdictions, such as Australia, regulatory frameworks significantly shape the operation and oversight of marketing funds.

We note here the key obligations imposed by the Australian *Competition and Consumer (Industry Codes—Franchising) Regulations* 2024 (Cth) (the "Code") as well as the risks of non-compliance and offer practical insights on marketing fund management and dispute mitigation.

i. Regulatory Framework: The Franchising Code of Conduct

In Australia, marketing or advertising funds operated by franchisors are regulated by the Franchising Code of Conduct, which is the mandatory industry code under the key consumer protection legislation, the *Competition and Consumer Act* 2010 (Cth). A new Franchising Code of Conduct came into effect on 1 April 2025 introducing the concept of a Specific Purpose Fund.

The Code defines a specific purpose fund[11] as a fund:

(a) that is controlled or administered:

(i) by a franchisor or a master franchisor; or

(ii) for a franchisor or a master franchisor by an associate for the franchisor or master franchisor; and

(b) to which, under a franchise agreement, a franchisee is required to pay money (whether the franchisee is a franchisee or subfranchisee of the franchisor or master franchisor); and

(c) that, under the franchise agreement, must be used for a specified common purpose relating to the operation of the franchised business.

Note: Examples of specific purpose funds could include a marketing fund for advertising or a cooperative fund for information technology.

Where a marketing fund exists, franchisors must:

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10 *Id*.

11 Section 6 of the *Competition and Consumer (Industry Codes—Franchising) Regulations* 2024 (Cth).

1) Disclose the purpose of the fund in the franchise disclosure document;

2) Maintain accurate financial records of fund income and expenditure;

3) Within 4 months after the end of a financial year, prepare an annual financial statement for the Marketing Fund for the financial year and give franchisees a copy of the annual financial statement within 30 days of preparing it;[12]

4) Within 4 months after the end of the financial year, have the annual financial statement audited by a registered company auditor and give franchisees a copy of the auditor's report within 30 days of receiving it[13] unless 75% of franchisees vote to waive the audit requirement;[14]

5) The annual financial statement for the Marketing Fund must detail all of the fund's receipts and expenses, including:

    a) sufficient detail of the fund's receipts and expenses to give meaningful information about:

        i) sources of income; and

        ii) items of expenditure, particularly with respect to the specified common purpose; and

    b) the percentage of the total income spent on each of the following:

        i) expenses:

            (1) of a kind that have been disclosed to franchisees in the disclosure document; or

            (2) that are legitimate expenses for the specified purpose for the fund; or

            (3) that have been agreed to by a majority of franchisees that are required to make payments to the fund; or

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12 Section 31(2)(a) and (b) of the *Competition and Consumer (Industry Codes—Franchising) Regulations* 2024 (Cth).

13 Section 31(2)(c) of the *Competition and Consumer (Industry Codes—Franchising) Regulations* 2024. (Cth).

14 Section 31(2)(c) of the *Competition and Consumer (Industry Codes—Franchising) Regulations* 2024 (Cth).

ii) the reasonable costs of administering and auditing the fund.[15]

These obligations are legally enforceable, and failure to comply may attract regulatory action by the Australian Competition and Consumer Commission (ACCC) and significant penalties and compliance costs as we saw from the Ultra Tune Case.[16] The *Ultra Tune* proceeding is one of the most significant decisions handed down by Australian Courts since the Code commenced in 1998 and has had far-reaching implications for franchisors and has led to changes and a strengthening of the marketing fund provisions in the Code.

On 19 May 2017, the ACCC took Ultra Tune Australia Pty Ltd (Ultra Tune) to the Federal Court for alleged breaches of the Code and the Australian Consumer Law (ACL) exercising, for the first time, its powers to seek civil penalties under the then Code.

The ACCC claimed that in 2015, Ultra Tune made false or misleading representations to the prospective franchisee; did not act in "good faith" in its dealings with a prospective franchisee and failed to:

- provide the required documents to the prospective franchisee before accepting a non-refundable payment
- prepare, audit and provide marketing fund statements to franchisees
- update its disclosure document, or provide copies of it, within the time periods set in the Code.

The ACCC sought a refund of the prospective franchisee's payment, declarations, injunctions, pecuniary penalties, compliance and adverse publicity orders.

Justice Bromwich found that Ultra Tune, in its dealings with a prospective franchisee, had:

- failed to act in good faith in breach of the Code;
- made false or misleading representations in breach of the ACL relating to the price of the franchise, the ongoing rent of the premises and the age of the franchise and by telling the prospective franchisee that a $33,000 deposit was refundable when it was not;

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15 Section 61(4) of the Competition and Consumer (Industry Codes—Franchising) Regulations 2024 (Cth).

16 *Australian Competition and Consumer Commission v Ultra Tune Australia Pty Ltd* [2019] FCA 12

- failed to prepare marketing fund statements within the required time frames specified in the Code;
- failed to provide these statements and audit reports to franchisees; and
- failed to include sufficient detail in these statements.

The focus of this paper is that part of the decision that relates to the Marketing Fund.

One of the breaches found by Justice Bromwich concerned Ultra Tune "skimping" on the level of detail contained in marketing fund statements provided to franchisees.

The then Code required a franchisor to provide to its franchisees annual marketing fund financial statements which included sufficient detail of the fund's receipts and expenses so as to give meaningful information about the sources of income and items of expenditure, particularly with respect to marketing.[17] The Code at that time imposed a maximum civil penalty of $63,000 for a contravention of the provision.

It is important to note at the time and even now there is no template or accounting standard given as to the form the annual marketing fund financial statement should take.

Ultra Tune's marketing fund statements took the form of an ordinary balance sheet, with a limited number of line items listed as either "income" or "expenses" together with dollar figures and percentages of overall expenditure.

In rejecting Ultra Tune's submission that its marketing fund statements contained sufficient detail, Justice Bromwich found:

- what is required to be provided is sufficiently detailed meaningful information, which is useful and practical, not merely minimal accounting information.
- The franchisee should be in a position to know what the income and expenses of the fund are for the purpose of making some meaningful assessment of whether that use is appropriate.
- What is sufficient detail to give "meaningful information" on a fund's income and expenditure will vary from case to case. Similarly, what may be a sufficient level of detail for certain items or categories of expenditure may be insufficient for others.
- Generally, the more significant an expense is, the more important it will be to a franchisee, and therefore the greater the level of detail that will be required to facilitate an informed assessment by the franchisees concerned. There may be

[17] Clause 15 of the *Competition and Consumer (Industry Codes—Franchising) Regulation* 2014.

cases in which more detail is needed for a lesser expenditure in order to understand why it is appropriate.

- The real defect in the marketing fund statement was how the bulk of the expenditure (76.65%) was itemized - simply as “Promotion & Advertising – Television”

Justice Bromwich stated:

- where it is indicated that approximately 80% of a fund has been applied to something as non-specific as “Promotion & Advertising – Television”, the statement does little more than suggest, in a circular fashion, that Ultra Tune spent the majority of the marketing fund on marketing. This is plainly inadequate for the purposes of the Code. To whom have the fees been paid? What services were obtained, and when?

- The information is not just lacking the quality of providing “meaningful information”; it has the active quality of providing largely meaningless information except as to raw quantum.

Justice Bromwich also noted that:

- The purpose of the provision is to provide accountability and transparency in the use, and potential misuse, or even inappropriate or ineffectual use, of marketing funds.

- Just because they are running a business franchisees are not to be taken as having accounting expertise. It is the ordinary franchisee, not their accountants, who must be placed in a position to understand how marketing funds are being deployed.

Justice Bromwich concluded that a separate contravention had occurred for every franchisee in the network that received or was entitled to receive the non-compliant marketing fund statement – 185 contraventions in total.

A total penalty of $2,604,000 was imposed on Ultra Tune - $1,504,000 was for contraventions of the good faith obligation and contraventions of the ACL. The balance related to contraventions of the disclosure obligations in respect of the Marketing Fund. The following contraventions were found:

- failure to maintain each of the four separate disclosure documents in existence at the time by failing to update each separate disclosure document within four months of the end of the 2014-15 financial year;

- failure to prepare each of the five financial statements for the five separate marketing funds within four months of the end of the 2014-15 financial year;

- failure to provide to franchisees one of the five different marketing fund financial statements that related to their region within 30 days after each having been

prepared for the 2014-15 financial year and the failure to provide to franchisees an auditor's report for each of those marketing fund statements.

It is important to note that many franchisors would have been in contravention of the Code marketing fund provisions at that time.

Although the penalties were reduced from rom $2,604,000 to $2,014,000 on appeal to the Full Federal Court, the final penalties awarded against Ultra Tune are nevertheless substantial, and likely to serve, as the trial judge intended, as a "significant deterrent penalty, to encourage future and ongoing compliance by Ultra Tune, as well as franchisors more generally who might otherwise be tempted to skimp on the information provided to their franchisees…".

Ultra Tune was also ordered to appoint a compliance officer and to implement a compliance program and take steps to ensure they did not contravene the ACL or the Code in the future.

Franchisors who operate Marketing Funds in Australia must ask themselves:

1) does each line item in the marketing fund statements give enough detail to enable franchisees to make an informed assessment as to its appropriateness?

2) besides simple numbers, is it clear what the money was spent on and where, how and when it was spent?

3) does the information make sense to an ordinary reader (rather than an accountant)?

4) has the franchisor tailored the information to the circumstances, for both significant expenses and smaller expenses? Using basic, accounting profit and loss forms and balance sheets is not sufficient.

Unfortunately, the pain didn't stop there for Ultra Tune. In 2022 the ACCC commenced proceedings alleging that Ultra Tune had contravened the compliance orders, specifically:

Breach	**Actual conduct**
Failure to update the disclosure document for FY20 prior to 31 October 2020	Late by 10 days
Failure to prepare the Marketing Fund Statement for FY19 prior to 31 October 2019	Late by 7 weeks
Failure to prepare the Marketing Fund Statement for FY2020 prior to 31 October 2020	Late by 8 months

Breach	Actual conduct
Failure to provide quarterly briefings about the compliance program to the Ultra Tune board of directors	No briefings for the June, September and December quarters of 2021

Ultra Tune pleaded guilty to the charges but contended that the non-compliance occurred despite its best efforts and intentions to comply. Ultra Tune submitted that the pecuniary penalties should be reduced on the basis that:

- Ultra Tune and its auditors' operations were disrupted by the Covid-19 government mandated lockdowns;
- its auditor was unwell and caused a delay in finalizing the auditor's solvency statement;
- the person with carriage of preparing the Marketing Fund Statement was unfamiliar with the Franchising Code, the franchisor's accounting systems and had disagreements with the franchisor's accountants;
- Ultra Tune attempted to amend its accounting systems to better prepare the Marketing Fund Statement and financial statements. However, changes to the accounting system proved to be complex and lengthy;
- the compliance officer was unwell and could not provide the quarterly reports to Ultra Tune's board of directors; and
- the accountants were unfamiliar with Franchising Code requirements and had prepared a deficient Marketing Fund Statement that needed to be corrected.

Ultra Tune was fined $1.5 million for contempt of Court. They appealed the decision arguing that:

- the Court could not impose a fine for contempt of Court where the Court did not warn Ultra Tune of the consequences of failing to comply with the original Orders; and
- the fines were calculated incorrectly and were too large.

The Full Federal Court dismissed these arguments, and held that the fines are not 'manifestly expensive' given that UltraTune's is a 'serious matter'.

ii. Legal and Practical Risks of Non-Compliance

Failure to meet Code obligations exposes franchisors to a range of legal, financial, and reputational risks. These include:

iii. ACCC Enforcement Action

The ACCC may issue infringement notices, seek civil penalties, or obtain injunctive relief in the Federal Court. Recent enforcement trends show a growing focus on marketing fund transparency and misuse.

iv. Franchisee Disputes

Common causes of franchisee complaints include:

- Use of funds for corporate benefit rather than shared and/or “true” marketing;
- Lack of transparency in fund management;
- Failure to conduct audits or provide statements on time.

Such disputes may escalate to mediation or litigation, and can undermine franchisee relations and network cohesion.

v. Breach of Contract and Misleading Conduct

Improper administration of the fund may amount to a breach of the franchise agreement or contravene Australian Consumer Law, especially where misleading or deceptive conduct is alleged in relation to fund representations.

vi. Audit Procedures, Fines, and Compliance Training

Franchisors should proactively manage their compliance obligations by adopting robust internal controls and ongoing education. Key considerations include:

- **Audit process:** Commission an independent audit and circulate results.
- **Record-keeping:** Detailed records of fund contributions, expenses, and allocations should be maintained and be easily retrievable.
- **Training:** Marketing and finance personnel should be trained on Code compliance, particularly around fund usage restrictions and reporting deadlines.
- **Communication:** Transparency with franchisees can reduce disputes and facilitate smoother audit waiver processes.

Failure to maintain records or complete audits may result in infringement notices and significant penalties under the Code.

vii. Obtaining Franchisee Consent and Practical Fund Management

A core compliance pressure point is the requirement to audit the fund unless a 75% franchisee waiver is obtained. In practice, this consent can be challenging, particularly in networks with a large or disengaged franchisee base.

To address this, franchisors should:

- Circulate clear, timely communications explaining the costs and benefits of waiving the audit;
- Use franchisee advisory councils or forums to discuss marketing fund transparency;
- Share data-driven impact reports on fund usage (e.g., campaign ROI, digital reach metrics); and
- Present draft financial statements ahead of time to invite feedback and build consensus.

By positioning the fund as a collaborative tool rather than a compliance burden, franchisors can foster franchisee trust and reduce conflict.

viii. Conclusion

Marketing funds in Australia are not only subject to contractual agreements but also stringent regulatory obligations under the Franchising Code of Conduct. Franchisors must be aware of their responsibilities in maintaining fund integrity, preparing accurate disclosures, and managing potential disputes. A proactive and transparent approach to marketing fund governance, combined with strategic franchisee engagement, is critical to ensuring long-term compliance and franchise system stability