



FRANCHISOR'S CORNER

It's a Small World After All

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NO, THIS IS NOT AN ARTICLE about one of America's favourite amusement parks where the title of this article is repeated in song as one, in a few moments of fantasy, quite literally travels "around the world" through the magic of modern technology. Rather, this is an article about how a Canadian franchisor has tackled the franchise world, emerging from obscurity in a few short years to become a major player in the international franchising community. Like the amusement park, this company has also been making a name for itself with its cutting-edge technology. This company has risen like a phoenix in a short few years to challenge many of the long-established industry leaders around the world for recognition as a company that is likely to be one of the most significant franchisors of tomorrow in the worldwide franchise community. It is a company that may be thought of as a Canadian David coming out of obscurity to meet the challenges of the Goliaths of the highly competitive world we all know as the world of international franchising. That company is WSI, a company I serve as General Counsel, a position I have held since joining WSI in the spring of 2002.

Before you say just "who" is WSI, here is a little information about the company. WSI, headquartered in Toronto, Canada, stands for "We Simplify *the* Internet." We are the leading provider of Internet solutions to small- and medium-size businesses the world over. While providing a cutting-edge website is at the heart of our product and service, offering a complete Internet solution involves much more than just a website. We call our solutions the ABC's of the Internet: A for advanced technologies, B for being found and C for consulting. The client gets all three of these in every solution we deliver. WSI works with a network of independent production centres and authorized suppliers all over the world to provide the very best and latest technology to its franchisees and to their customers by offering them these solutions.

WSI's business is obviously directly related to the spectacular growth of the Internet, and to the growth of e-mail and websites, all vehicles that have revolutionized the way business is done in the twenty-first century. There has been so much progress in this now taken-for-granted technology in just a few short years. How many of us remember the not-so-distant past when all our letters and documents had to be generated by hand on a typewriter, and we relied mainly on the mail and on couriers to communicate with one another? Those days are consigned to the dustbin of history, since today computers have taken over many of these functions. How has the world changed as a result? Now we use computers with technology that surpasses anything we might have predicted just a few years ago and, of course, the Internet, e-mail and websites have totally revamped how we carry on business, learning new information from one another online and communicating in mere seconds. Naturally, new technology always creates new problems which need to be solved, and WSI is uniquely positioned in the global economy to meet that twenty-first-century challenge as well. This is not a franchisor that rests on past laurels, looking backward. Indeed, rapid growth, a focus on continued growth, sourcing and delivering leading-edge technology and tools to businesses economically, and keeping several steps ahead of the current business needs of small- and medium-size businesses have always been the goals of WSI.

WSI is indeed a real Canadian success story. The WSI network was founded in 1995 in Toronto, Canada. It has since gone through a period of stellar growth while very much out of the spotlight, preferring to quietly maintain its steady growth, and leaving to others the glare of the spotlight of attention. From its modest beginnings, WSI has grown into a formidable international force in international franchising. Each year we have gone from strength to new strength. It was quite a thrill a few years ago to crack the top 200 ratings, and then, shortly after, the top 100 in *Entrepreneur* magazine's annual franchisor rankings. In the latest 2006, ratings WSI cracked the top 50. This survey is well known among international franchisors, who anxiously await its results every year.

From its humble beginnings, and in its few short years of activity, WSI has grown to include over 2,000 franchises located in eighty-seven countries and it has left in its wake many would-be competitors. The prestigious *Entrepreneur* magazine, in its brand-new January 2006 "Franchise 500" listings, reviewed over 22,000 franchise systems worldwide and awarded WSI a number 46 out of 500 when ranking the world's franchisors overall. That is quite an achievement. It has also named WSI as the number one Technology Services franchise in the world, and furthermore WSI moved up a record 23 spots just this past year in the

survey, currently placing 6th among the top 10 global franchises. Each year, WSI has taken a quantum leap in the *Entrepreneur* rankings, in recognition of WSI's superlative growth seen again just over this past year with a triple-digit increase in franchises. It is truly a real Canadian success story and with WSI's new *Entrepreneur* rankings this company has now attained one of the highest industry ratings ever enjoyed by a Canadian franchisor. Indeed, I believe no other Canadian franchisor has come so far in such a short time!

Rapid growth and moving from the fairly narrow confines of franchising in the Canadian market to being a global player competing with the "big boys" internationally admittedly has its challenges. International waters can be choppy and it has not always been clear sailing. Like any other company, as it expands beyond its home base there can be a whole host of interesting challenges, some of which I will discuss later. The message though, for those companies that may be considering taking a similar plunge into the international marketplace, is that it really is a matter of understanding the challenges that lie ahead and determining how best to proceed. I think our own experience at WSI proves that challenges are simply that: they are merely obstacles to be overcome, not barriers that are impossible to ascend.

No country has a lock on the global franchising marketplace and any other Canadian company interested in taking a global approach should not hesitate to do so once it has done its homework. That is the real issue, I think: doing one's homework before going outside Canada's borders into the great world beyond. Or, as we lawyers refer to it, each business needs to do its "due diligence." No company should be afraid of moving outside its borders and competing with other world-class franchisors in their own markets. It is simply a matter of knowing what hurdles await you, whether they are business or legal or both, then ensuring

that you prepare and adjust for them.

What are some of these hurdles to "going international?" The first thing to consider is whether the system fits the existing business model in every country into which you want to expand? It is important to recognize that business is not always conducted in the exact same way everywhere. In the food business, for example, the challenges of standardizing restaurant menus from one country to the next to respond to differing laws, cultures, religious requirements, ease of supply, etc. are intricate and expensive. But this is no less daunting a task than is the internationalizing of the service that goes into an Internet business in the eighty-seven countries where WSI currently operates. All franchisors will, to some extent, need to understand and design their model with a mind to understanding local circumstances in target markets that could impact on the success of their businesses abroad. WSI has a global reach and local presence via franchisees requiring the company to understand and address localization issues and opportunities such as the web-accessibility laws that are prevalent in the United Kingdom, Australia and Europe.

At WSI we have found, for example, that some countries are more technologically developed than others and that our franchisees in some countries enjoy greater competitive advantages over others when selling Internet solutions in that market, advantages that may not be as readily available to franchisees located in other countries with different market conditions. Although the Internet is a universal, international phenomenon, found to some degree everywhere, the business fit is not necessarily the same everywhere and we have had to recognize that reality in our own expansion plans. However, that is true of any franchise system. A honey-baked ham franchise, for example, would obviously choose to stay out of markets where pork products offend the majority of a country's religious sensitivities.

Our development team also looks at local conditions to determine if a WSI franchise makes sense and if there is a good fit with the business model. There are certain markets where, after close examination, we have concluded that the WSI business model just cannot operate competitively, or we have found other impediments to be overcome before we can consider entering that market. Therefore, it is a matter of carefully studying each new market before deciding to go forward with expansion.

Sometimes, after this due diligence has been completed, we do choose to stay out of a market where there is still too much uncertainty, even though the potential pay-off for generating franchise revenue may be huge. In WSI's case, for example, we are temporarily choosing to stay out of certain large markets like China until we are more comfortable with the local infrastructure and with some of the still-developing legal requirements in that country, both for franchising in general and for operating an Internet-solutions type of business specifically.

That said, it is definitely the exception rather than the rule that we close off a major country with significant market potential from the possibility of franchise sales, even temporarily as we have done with China. As stated above, overall WSI is experiencing high growth and, where we think the risks are worth taking, we will definitely proceed into a new market as soon as we are sufficiently comfortable with the challenges that may lie ahead.

Another hurdle for franchisors expanding abroad has to be language issues. For WSI, this continues to be a concern raised by new franchisees in countries where the dominant language is not English, and it will always be an issue whenever a franchisor expands internationally into such countries. However, in some businesses, in my experience, the need for local translation can be much more extensive than in others. A restaur-

rant business, for example, will require localized menus and translations of all printed items, a substantial expense to be sure, whereas in the case of an Internet-based business we have found that most items we distribute as a franchisor do not, in fact, need to be translated for all franchisees. We offer guidance to our franchisees in translating their local marketing material and we require that our production centres build their websites to produce them in all of the world's main languages. Nevertheless, from the outset WSI is marketed as an English-only system and we make no representation to our franchisees that we have comprehensive translation of the entire system and all of its supporting materials available in all languages.

My personal recommendation, when seeking to expand outside of Canada, is to always seek to balance the need for local translations in any system with what actually makes good business sense for that system. Sometimes, for example, franchisees can look after or assist with translations of marketing and certain other materials themselves, especially in markets where business sense simply does not justify the franchisor itself making substantial expenditure on translations. When necessary, the franchisor can always work together with the franchisees to share this cost. These strategies have worked well overall for WSI.

Another common issue faced by franchisors going abroad is selecting the appropriate method for their expansion outside Canada. Some of the more common methods used by franchisors to expand are (i) by master franchising, where a master franchisee buys rights to a territory and re-sells rights to sub-franchisees; (ii) by entering into a joint venture with a local partner; (iii) by area representation, where an area representative agrees to find franchisees for the franchisor; (iv) by using local franchise brokers to sell their franchises; (v) by re-franchising, where the franchisor sells company-owned units to local franchi-

sees; and (vi) by conversion franchising, where established local independents agree to re-brand into the franchisor's system.

While each of these methods has advantages and disadvantages and while the most common method of international expansion selected is probably by master franchising, it is important to assess what will likely work best for each individual system before settling on the method. There is no one-size-fits-all solution to international expansion.

For example, a franchise system seeking rapid expansion into a remote location with a different language and culture from that of the franchisor may find that the best person to guide this international expansion is someone who is a local in that market already, to whom the functions of the franchisor can then largely be delegated. That person knows the local market and is best positioned to meet local requirements. This minimizes the expense and direct involvement of the franchisor ("head franchisor"), but it does mean splitting revenues with the master, and it also entails a certain loss of control by the head franchisor because the franchise agreements are not entered into with the head franchisor directly, rather there are sub-franchise agreements entered into by sub-franchisees with the master franchisee. Other concerns of master franchising include how to deal with what happens to all sub-franchisees in the event that the master franchisee becomes insolvent, or what happens to them if the master franchise agreement is terminated by the head franchisor.

Although master franchising seems to be the most commonly chosen model for international expansion by franchisors, it is a method that WSI has itself tried and rejected. For our system, where most of the business activity is already online (including how we advertise our opportunities and from where we harvest our applicants), the need for masters is simply not there, and we find

that direct franchising works best, selling our franchises internationally in the same way we sell franchises in Canada. Clearly, what may work for one system may be totally wrong for another.

Yet another issue one must address is the effect of the local law in the jurisdiction on the system and the franchisor's ability to operate there. Are there, for example, laws prohibiting the free flow of currency abroad? If so, the collection of franchise fees and royalties from a foreign franchisee, where the franchisor is based in Canada, is going to be a problem. Are there differences in treatment of employees when hiring or locating employees in foreign countries such that employment protection statutes may impose significantly more onerous requirements on employers than we are used to in Canada? Are certain products and services offered by the business prohibited or, if permitted, are they more heavily regulated than in Canada? Are there agency laws to consider wherein franchisees may seek to register themselves as commercial agents? These can be very problematic for franchisors and may well impact on the franchisor's rights of termination or non-renewal, notwithstanding what may be said about these issues in the franchise agreement. Specific to franchising, are there laws governing any aspects of franchising in that country? A number of countries have passed pre-sale disclosure laws that require the franchisor to prepare and maintain a variety of disclosure documents and then to provide pre-sale disclosure to an applicant for a franchise in that territory. Some countries have also enacted franchisee relationship laws that govern various aspects of the ongoing franchise relationship. Naturally, the general laws of a country can certainly also impact on how a franchisor must operate in a country. To comply with all these legal requirements, a franchisor must find competent legal advice in the jurisdiction. At WSI, for example, we work with a network of well-qualified and recog-

nized franchise law experts all over the world. Such contacts are vital, given the number and variety of legal systems in which we do business.

A final hurdle to consider in international expansion is protection of your system's intellectual property abroad. There are many types of IP that may be worthy of taking formal steps to protect abroad, including trademarks, trade names, patents, copyrights, industrial design and trade secrets. This is a complex area of law, too detailed to try to review here, but an IP review with local counsel in the proposed territory where the system expansion is intended is to be recommended before the expansion gets underway. Once your system is established in the country, it may be too late!

I will confine my comments to a couple of trademarks considerations, noting that the bulk of the IP that we must protect at WSI is its trademarks when we look at expanding into new countries. It is important to understand that in most countries of the world trademark rights are only acquired through registration, and not through mere continued use of an unregistered mark. Thus, for companies with unregistered marks in Canada, using and protecting those marks in other countries can be problematic if the marks have not already been registered in those countries, or if there are no international treaty priority protections available based on some prior foreign registration elsewhere. The last thing a company wants is to plan an expansion into a country, only to find that someone else has already registered the trademark; that the mark is not registrable in that country for any other reason; or that the mark, although legally registrable, needs to be changed due to some other perceptual problem.

For example, the translation of anglicized word marks into a local foreign language sometimes presents problems. Translating English marks into a foreign language is not as simple as it sounds. There may be no comparative word for

the English word in the other language at all, or worse still, the exact local translation may result in something that has very negative connotations locally.

These hurdles or considerations, when planning an international expansion, are of course not exhaustive. Others may apply to only certain types of franchises. However, for WSI, the issues noted have been the most common ones we have had to focus on when planning to expand the system into a new country. As stated in the beginning, while there are certainly challenges, it is indeed a small world out there. Our own experience has shown that foreign expansion is not to be feared. Do your homework before going down this path. I can only encourage other systems interested in expanding abroad that, with proper preparation, the risks can be well worth the rewards. WSI has proven that a Canadian franchisor can be a very successful player in the global marketplace.

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