The contrarian

Ben & Jerry's – socially responsible meltdown?

Ice cream giant Ben & Jerry's is bedevilled by accusations from franchisees says Jon Entine

Caveat emptor

There's trouble in Vermont. Those friendly neighbourhood Ben & Jerry's scoop shops that dot the downtowns and suburban malls of America, and kiosks around the world, are dropping like flies – and the independent franchisees who run them are scared and angry.

I've been contacted by franchisees representing dozens of the estimated Ben & Jerry's 600 shops worldwide. The complaint? "Business is shitty. Franchisees face bankruptcy or losing their homes. We opened shops only to find out the company inflated financial projections by 50%."

Here's the scoop. On its website, the company tantalises prospective franchises, boasting a "20+ year proven track record" and declaring: "There's never been a better time to become a franchisee." That's in need of an update. Sales are sliding. Ten per cent of shops close each year.

Most problems emerged after Unilever's takeover in 2001. Ben & Jerry's embarked on an expansion binge to triple its franchise network by opening mostly neighbourhood shops – the weakest performing stores in the franchise system.

It's been a disaster. Will Patten, director of retail operations, is now scaling back yearly openings from 100 to 40. He says the warm and fuzzy management team inherited from founder Ben Cohen was ill-equipped for the fumbled expansion. "It overtaxed our capabilities. Only recently have we brought in people with real franchising expertise," Patten says.

The biggest gripe centres on the stated financial prospects for prospective franchises

Even staunch supporters among franchisees are disgusted. "It was really easy to be in Vermont, sit on your laurels, and be blinded by the adulation," says Robert Reed, head of the Franchisee Advisory Council.

No guarantees

Despite the management debacle, Patten believes franchisee gripes are unfounded. "We're an ethical business. But we don't guarantee success. Prospective franchises need to do their own due diligence."

Morrie Baker, who owns 20 Canadian shops, says: "About one third in every franchise operation are malcontents. It comes down to choosing your location and execution. It's much easier to point fingers at everyone else instead of saying, 'I made a strategic mistake.'"

The rump group says older franchises, many of which operate under sweetheart deals that were penned on napkins and sealed by sitting down with Cohen, have no clue what business is like for the post-2001 generation. Only newer franchises pay royalty fees and have no protection against predatory distribution strategy.

Phyllis Schultz, a Charlotte franchisee since 1987, favourably settled a suit that accused Ben & Jerry's of cannibalising her market by pushing ice cream into gas stations and video stores. All the franchisees are angry that ice cream sold at big supermarkets can sometimes cost customers less than what franchisees pay Ben & Jerry's wholesale for the same product.

The biggest gripe – and one that has franchisees threatening a class action suit – centres on the disclosure statement where the company lays out the financial prospects for prospective franchises. It is filled with "buyer beware" caveats, but it is also enticing, setting sales for the "average" shop in 2004 at $374,490.

"That's bullshit," says one franchisee, echoing others. "Almost all franchises sold in recent years have been in neighbourhoods or strip malls, where the company's own numbers put the average at $225,000." That lower figure is confirmed by Patten. The disgruntled franchisee goes on: "When you are forced to spend $400,000 to build out a new store, you're lucky to service your debt."

"Ben & Jerry's has been very prominent on our radar screen," says Robert Purvin of the Association of Franchisees and Dealers. "The people that have bought franchises in recent years feel there was a misrepresentation of what the business would do."

When asked why Ben & Jerry's did not provide complete data for the type of store each franchisee was buying – neighbourhood stores generally fare far worse than kiosks in train stations, for example – Patten cited potential lawsuits, saying: "Providing too much information could come back to haunt us." But then he backpedalled: "Maybe that's the best way to go, being more disclosing." Franchisees sent me a copy of an email from last year in which Patten had made a similar promise, but no numbers made it into the latest financial prospectus.

"I can't tell if Ben & Jerry's is just incompetent or criminally negligent," said one franchisee, who is pumping $50,000 a year into his sinking stores. "It spends tens of millions of dollars each year marketing itself as 'socially responsible' and a 'saviour of the family dairy farm'. What about thousands to save its own franchisees from bankruptcy?" ■

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