Insight into Vantage Hospitality Compliance with AAHOA's 12 Points of Fair Franchising

Stanley Turkel examines how Vantage Hospitality promotes its compliance with AAHOA's 12 Points of Fair Franchising

By Stanley Turkel, October, 2008

Earlier this year, I reported on the AAHOA Performance Appraisal Reports of Accor, Carlson, Choice, La Quinta and Wyndham. Now, I will begin a series of reports about hotel franchise companies who promote their compliance with AAHOA's 12 Points in detail. These reports are based on self-evaluation by each of these companies.

This month, I will focus on Vantage Hospitality, which offers franchises for Americas Best Value Inn (ABVI) and the Lexington Collection.

POINT 1:
Early Termination and Liquidated Damages

AAHOA Position: 1(a) Most Franchisors assess liquidated damages at unfair and punitive rates, often 36 to 60 months of royalty fees. AAHOA states that Franchisees should only have to pay 6 months of royalty fees.

Vantage Position: Simply put – there are none. It is our belief that if we are performing as a brand and giving our licensee all the support systems he or she expects, and we are generating reservations at the most reasonable fee structure in the industry, then we will not have to hold a licensee's feet to the fire. They will not be able to find a better deal anywhere else.

POINT 2:
Impact/Encroachment / Cross Brand Protection

AAHOA Position: All Franchisors should establish a fair and reasonable formula to protect a Franchisee's assets, and the formula should be included as a contractual provision in their franchise agreements, including a geographic "area of protection" (AOP).

Vantage Position: At Lexington, we feel that intentionally impacting our licensees is the equivalent of eating your young.

At ABVI, we go directly to our members when we get an application for a potential property in that vicinity. If they are okay with it, we'll go ahead with the process; if not, we will halt. We will never grow our numbers by taking away business from the current membership.

POINT 3:
Minimum Performance & Quality Guarantees

AAHOA Position: If a Franchisee's hotel is not able to maintain certain occupancy levels over a designated period and has not received a minimum level of reservations, Franchisee should be able to terminate the agreement without penalty.

Vantage Position: In 2008, ABVI instituted the "100% ROI Promise" which promises to deliver more revenue than what an owner pays in membership fees. If it doesn't, we will waive the membership fees and action plans will be implemented until acceptable delivery of business is realized. Although the "100% ROI Promise" does not yet apply to the Lexington Collection, owners are allowed to exit without penalties if the brand is not working for whatever reason.

POINT 4:
Quality Assurance Inspections / Guest Surveys

AAHOA Position: All Franchisors should have the same standards for each of their facilities operating under a specific brand name in the franchise system. All Franchisors should conduct their Quality Assurance (QA) inspections in a fair, reasonable and unbiased manner, and use their best efforts to prepare QA reports that are accurate and complete.

Vantage Position: Both ABVI and Lexington are in full agreement with AAHOA's position. Lexington members must maintain the equivalent to AAA's minimum standards for a three-diamond property, although all are encouraged to go beyond the minimum. On the occasion that the owner does not want to or cannot implement the necessary changes, Vantage and the member will come to a mutual agreement to end the relationship.

POINT 5:
Vendor Exclusivity

AAHOA Position: In general, all Franchisees should be free to buy conforming goods from any vendor, not just those mandated by the Franchisor.

Vantage Position: Although a strong list of Preferred Vendors exists for both ABVI and Lexington, members are under no obligation to use them and, most importantly, Vantage does not profit from its vendors - any and all savings are passed along to the members.

POINT 6:
Disclosure and Accountability

AAHOA Position: There should be greater disclosure and accountability on the part of the Franchisors concerning the expenditure of marketing and reservation fees collected from their Franchisees. On an annual basis, all Franchisors should disclose how the marketing and reservation fees are spent, including identifying the specific products and services that are paid for with the fees. A Franchisor should not profit directly from the marketing and reservation fees it collects from the Franchisees, or use such fees to pay for marketing and advertising related to a Franchisor's sale of hotels.

All Franchisors should have their books and records audited on an annual basis concerning the collection and disbursement of marketing and reservation fees, and should share the results of the audits with the Franchise Advisory Councils (FACs), or the designated audit committee of the FACs.

Vantage Position: Vantage is a privately owned company; however, members of both brands are welcome to audit P&L statements at the annual conference in December.

POINT 7:
Maintaining Relationships with Franchisees

AAHOA Position: All Franchisors should strive to maintain and build on their relationships with the Franchisees by actively seeking feedback from the Franchisees themselves, and by working with the various councils and associations that represent the Franchisees, including the Franchise Advisory Councils (FACs) and AAHOA.

Vantage Position: This point is the cornerstone of Vantage's philosophy – it's a hotel company run by hotel owners. Input and involvement from members is not only encouraged – it is expected.

Both brands are overseen by a member-led Advisory Board and Advertising Council which meet several times throughout the year to discuss and approve expenditures and opportunities. Vantage is the only large hotel company that does not compensate its Board and Council members. These elected members are required to travel, at their own expense, to the annual December conference in Las Vegas and a Spring Board Conference in Coral Springs. They also must be available for phone conferences and any other incidental travel that may occur during the year.

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During the December conference, both brands present voting topics that are discussed openly within the respective membership and require a minimum 66 percent approval before passing. Administrators and staff are not allowed to vote and must abide by the membership's final decision.

In addition to giving members a voice and a vote in each brand's direction, Vantage offers its members the most comprehensive resources in the industry. With 27 worldwide divisional offices, two reservations systems, and over 100 employees available to its members, Vantage has literally set the benchmark for excellent franchise relationships.

POINT 8:
Dispute Resolution

AAHOA Position: In all franchise agreements, the Franchisors and their Franchisees should commit to establishing an independent and fair process for the resolution of any disputes concerning the terms of the franchise agreement itself, or the relationship between the parties. Specifically, the Franchisors and their Franchisees should agree in good faith to participate in an informal, in-person meeting between the authorized representatives of the parties in an attempt to resolve their disputes.

If the informal meeting is unsuccessful, the parties should agree to participate in a non-binding mediation, before a mediator who is neutral and mutually acceptable to the parties, including a mediator associated with the National Franchise Mediation Program.

If the mediation is unsuccessful, the dispute should not be submitted to binding arbitration unless and until all of the parties agree to do so, including mutually agreeing on the arbitrator who will hear the dispute, the location of the arbitration proceedings, and the corresponding rules and procedures for the arbitration.

Absent an agreement by the Franchisor and Franchisee to use binding arbitration to resolve their dispute, any party should be entitled to pursue its claims against the other party in a court of law. There should be no waiver of the right to a jury trial by any party. There also should be no caps or limits on the amount of damages that a party can seek or recover against another party, including a cap or limit on the amount of punitive damages that can be recovered against a party as allowed by law.

Vantage Position: Vantage has rarely been faced with lawsuits from its members simply because it offers short-term one-year contracts. Vantage says that it is completely committed to an independent and fair process, including mediation, if necessary.

POINT 9:
Venue and Choice of Laws Clauses

AAHOA Position: In the event a dispute between a Franchisor and Franchisee has not been resolved by participating in an informal, in-person meeting with authorized representatives from the parties, or by participating in mediation proceedings, the party pursuing its claims in a court of law should do so in the country and state in which the subject Facility is located. Further, any lawsuit or claims should be governed by the laws of the country or state in which the lawsuit or claims are filed.

Vantage Position: As a Brand that is responsible to its members and shareholders to remain fiscally strong and conservative in such matters, Vantage has maintained the necessary language in its membership agreements to allow it to require jurisdiction in South Florida. Certainly, the legal system can be abused and a choice of jurisdiction/venue clause in an agreement is one means by which the Brand can protect itself from abuse. However, as a matter of practice, the Brand has not found it necessary to enforce these clauses in a protective fashion. In fact, in the few instances where a lawsuit has been filed by the Brand, the suit was filed in the hometown of the Member.

POINT 10:
Franchise Sales Ethics and Practices

AAHOA Position: All Franchisors should mandate fair and honest selling practices among their salespersons and agents.

Vantage Position: In full agreement with AAHOA's position.

POINT 11:
Transferability

AAHOA Position: In situations in which a Franchisee seeks to transfer its property to an unrelated third party, the Franchisor should not delay, withhold its consent, or impose conditions on the transfer in an unreasonable, arbitrary or capricious manner. Transfer fees should be fair and reasonable (i.e., generally no more than $1,500), and based solely on the estimated administrative costs to process the transfer.

There should be no fees for a Franchisee's transfer to a spouse, child, parent, sibling, niece, nephew, descendent, spouse's descendent, or other family member, if the transferee is legally competent to assume the Franchisee's obligations under the franchise agreement.

There also should be no transfer fees for a Franchisee's buyout of other shareholders or partners who have an interest in the Facility, or for the addition of any shareholders or partners who will gain an interest in the Facility.

In the event of a requested transfer, the Franchisors should not condition the granting of the request on a requirement that the Franchisee or new owner adopt an extensive renovation or modernization plan for the subject property. Any required renovations for the subject property in connection with a transfer should be limited to only those specific items identified in the last two (2) quality assurance (QA) inspection reports for the subject Facility that were issued prior to the requested transfer.

To the extent a Franchisor approves a requested transfer, the Franchisor should not seek liquidated damages (LDs) from the prior Franchisee, or seek any increased fees from the new Franchisee owner of the subject Facility because the Franchisee sought to transfer its Facility prior to the scheduled termination date of its franchise agreement.

Within ten (10) days of the completion of an approved transfer of a subject Facility, the Franchisors should automatically release the prior Franchisee from any and all obligations it had under the terminated franchise agreement, and provide it with a written letter to release in connection therewith.

Vantage Position: In full agreement with AAHOA's position.

POINT 12:
Sale of the Franchise System Hotel Brand(s)

AAHOA Position: The new franchise company should maintain the same or higher level of quality as the prior franchisor and strive to ensure that the transition is a smooth one. The new franchisor should work closely with the existing Franchise Advisory Councils and honor existing guest loyalty programs.

Vantage Position: In full agreement with AAHOA's position.

Stanley Turkel, MHS, ISHC operates his hotel consulting office as a sole practitioner specializing in franchising issues, asset management and litigation support services. Turkel's clients are hotel owners and franchisees, investors and lending institutions. Turkel serves on the Board of Advisors and lectures at the NYU Tisch Center for Hospitality, Tourism and Sports Management. He is a member of the prestigious International Society of Hospitality Consultants. His provocative articles on various hotels subjects have been published in the Cornell Quarterly, Lodging Hospitality, and on the Hotel Interactive, Hotel-Online, AAHOA Lodging Business, etc.