

AUSTRALIAN BUSINESS LAW REVIEW

Volume 44, Number 3

July 2016

EDITORIAL 155

ARTICLES

Investigating the goodwill issue in franchising: An exploratory analysis

– *Maurice Roussety, Lorelle Frazer and Evan Douglas*

In this conceptual article, the authors explore the problematic issue of goodwill in franchisee-operated businesses in Australia which creates conflict between franchisors and franchisees in resale or exit events. This article addresses the paucity of research on this topic and establishes why goodwill generated in franchise businesses is different to that in independently operated businesses, and highlights the contractual triggers and regulatory motivations for the identification and valuation of goodwill generated by the franchisee. The article illuminates the salient issues and thereby provides guidance to existing and prospective franchisors when contemplating and structuring their franchise agreements, and suggests areas for further research to address this controversial issue. 158

Registration errors, priority rules and the policy behind the PPSA: In pursuit of certainty or fairness? – Linda Widdup

The promotion of commercial certainty is perhaps the most significant interpretive policy of the *Personal Property Securities Act 2009* (Cth) (PPSA). To reflect this policy, the PPSA creates a full range of priority rules to address competing security interests in personal property. The dominant feature of the PPSA regime is the Personal Property Securities Register which houses a record of security interests in personal property. Maintaining the integrity of this register is of paramount importance. Commercial certainty is furthered by applying strictly the priority rules to ensure that third parties who rely on the register are protected. To this end, registration errors should not easily be forgiven. This article will illustrate the importance of maintaining the integrity of the register and assess recent case law to reveal that courts are overlooking this in favour of reaching a fair result for a secured party who made a registration error. 175

Misleading premium claims – Stephen Corones

One powerful way for suppliers of goods to distinguish their product from those of their competitors and thereby establish consumer preferences is to make a premium claim in relation to them. Premium claims (sometimes referred to as credence claims) involve a representation of a premium or special quality that differentiates one product from another. It may be difficult for consumers to verify these claims. Suppliers who make premium claims for their goods will generally spend on advertising and selling to convey this information to consumers. If the supplier succeeds in influencing the tastes of consumers that its product is better or superior in some way to those of its competitors that will allow it to charge a premium price. Where such claims are false they result not only in consumer detriment, but also harm existing competitors by taking away market share and creating an artificial barrier to new entry. Since 2013, the Australian Competition and Consumer Commission has significantly increased its enforcement activity in relation to false or

misleading premium claims. This article examines these developments.	188
---	-----

Forensic accounting: Professional regulation of a multi-disciplinary field

– *Jeanette Van Akkeren, Sherrena Buckby and Julie-Anne Tarr*

The regulatory environment in which accountants operate is reasonably complex. The field of forensic accounting, which is the focus of this article, elevates that complexity to a heightened level as practitioners in this field now regularly advise across a broad range of fraud, commercial disputes and analytics areas. Persons discharging these roles are drawn from the accounting and non-accounting professions and this multi-disciplinary composition and the implications that flow from this are at the heart of this study. This article examines how the overlapping of diverse occupational jurisdictions influences the professionalisation process of forensic accounting practice in Australia and how self-interest and public interest considerations impact the pursuit of independent professional status. The article identifies the complexity of the forensic accounting role due to the overlapping of other occupational jurisdictions and the challenges this creates for professional accounting bodies in their attempts to regulate and govern forensic accounting practice.	204
---	-----

COMPETITION LAW AND MARKET REGULATION – *Professor Stephen Corones*

Recent successes for the Australian Competition and Consumer Commission – <i>Robert Baxt AO</i>	216
--	-----

COMPANY LAW AND SECURITIES – *Professor Robert Baxt AO*

Assessing the capabilities of the Australian Securities and Investments Commission and other issues – <i>Robert Baxt AO</i>	219
--	-----