



**Australian
Competition &
Consumer
Commission**

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24 March 2009

Ms Julie Gration
Independent Dairy Farmers Franchise Owner
Flatout Programming and Consultancy P/L

By email

Dear Ms Gration

COMPLAINT REGARDING DAIRY FARMERS / NATIONAL FOODS

I refer to our telephone conversation on 23 February 2009 and subsequent emails in which you expressed a number of concerns regarding Australian Co-operative Foods Limited (**Dairy Farmers**) conduct towards its franchisees.

As you may be aware, the ACCC is an independent statutory authority responsible for administering the *Trade Practices Act (TPA)*. The TPA prohibits a range of anti-competitive conduct and provides for the protection of consumers, small businesses and franchisees through the prohibition of misleading, deceptive and otherwise false and unconscionable trading practices. The TPA also prohibits breaches of relevant industry codes.

The Franchising Code of Conduct (**FCC**) is a mandatory code, declared under section 51AD of the TPA, and as such applies to all franchise agreements.

You have provided me with a number of documents including a copy of your franchise agreement and an email from another franchisee, Mr Kevin Cook of Refate Pty Ltd outlining his concerns. From these documents and from other information you have provided, I understand you are concerned that Dairy Farmers:

- is refusing to pay the difference between the cost price and retail price as agreed;
- has imposed trading terms of 7 days on franchisees but not on other purchasers;
- is or has provided confidential information to Fresh Co;
- is allowing other vendors to sell to franchisees' exclusive customers;
- requires franchisees to purchase products for delivery to Dairy Farmers' Key Account customers contrary to the franchise agreement;
- now requires some franchisees to pick up product from a depot which is not the depot agreed to in the franchise agreement;
- has not dealt with inaccuracies in the SuperVend computer system which results in inaccurate rebates to franchisees; and
- require franchisees to sell products at a price specified by Dairy Farmers.

Having read your franchise agreement I note that it provides you with a dispute resolution process. The FCC also contains a similar process which is specifically designed to give franchisees and franchisors access to an efficient and inexpensive means of resolving disputes.

I understand that you met with other franchisees on Sunday, 22 March 2009. I would expect that any issues arising out of that meeting would be brought to the attention of either Dairy Farmers or National Foods so that they may have an opportunity to respond. If that process fails it is open to you to invoke the mediation process contained within your franchise agreement or the FCC.

The ACCC would not ordinarily become involved in a matter until the mediation process is exhausted. If you find that the issues are not resolved after mediation is exhausted then I would invite you to contact me again and the ACCC will assess whether any TPA issues arise.

Private action is also available to you under the TPA if you consider that you have been adversely affected by illegal conduct. You may wish to seek independent legal advice about the matter.

Although I am unable to offer more assistance on this occasion, I thank you for bringing this matter to the attention of this office.

Yours sincerely



Mike Kiley
Acting General Manager
Enforcement