

Appendix 3

Report on a matter of parliamentary privilege

1.1 As noted in the first chapter of this report, a matter of parliamentary privilege arose during this inquiry.

1.2 Senate Parliamentary Privilege resolution 1(18) provides that:

Where a committee has any reason to believe that any person has been improperly influenced in respect of evidence which may be given before the committee, or has been subjected to or threatened with any penalty or injury in respect of any evidence given, the committee shall take all reasonable steps to ascertain the facts of the matter. Where the committee considers that the facts disclose that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee shall report the facts and its conclusions to the Senate.

1.3 A person who had made a submission to the inquiry drew the committee's attention to a letter dated 13 October 2008 that he had received from a representative of a legal firm. The letter contained the following statement:

Our client reserves its rights to take action in relation to any defamatory or libellous comments in the written submission, and is concerned to ensure that your client does not repeat them in verbal comments to the Federal inquiry. Given this warning, our client will view any repeat of the allegations to be deliberate and calculated to defame it.

1.4 The correspondence received by the committee provided clear evidence that the person who had made the submission was being threatened with a 'penalty or injury' as a direct result of making that submission.

1.5 When this letter was brought to the committee's attention, the committee directed the committee secretary to write, as a matter of urgency, to the person who wrote the letter that threatened the submitter, and warn them that the letter may constitute a contempt of Parliament and a criminal offence. This was done the same day, on 15 October 2008.

1.6 On 16 October, the committee received a response advising that the letter of 13 October had been unconditionally withdrawn. In that response, the writer also unreservedly apologised on behalf of himself and his clients. The committee was also provided with a copy of a letter sent to the person who had made the complaint to the committee, putting into effect the undertakings given to the committee and offering conciliatory terms.

1.7 The committee considers this to have been a serious incident. However, the committee has concluded that the purpose of the parliamentary resolutions, which is to

protect witnesses, has been fulfilled. As such, the committee does not consider that any further action in relation to this matter is warranted.

1.8 For the completeness of the record, the committee has attached all correspondence received and sent in relation to this matter in the following pages.

Mr Bernie Ripoll MP
Chairman



Deacons

RACV Tower
485 Bourke Street
MELBOURNE VIC 3000
AUSTRALIA
GPO Box 4592
Melbourne VIC 3001
DX445 Melbourne
Tel +61 (0)3 8686 6000
Fax +61 (0)3 8686 6505
www.deacons.com.au

13 October 2008

Mills Oakley Lawyers
St James Building, 4th Floor,
121 William St, Melbourne 3000

Attention: Warren Scott

Our Ref: 2650971

Dear Warren

Poolwerx Kew

We refer to the Terms of Settlement signed between your clients Skydive Hervey Bay Pty Ltd and Damien Hansen and our client Poolwerx Corporation Pty Ltd, and to subsequent dealings between the parties.

We are instructed that the current situation is as follows:-

1. Your clients have failed to cooperate to achieve the immediate sale of the Poolwerx Kew franchise, contrary to clause 2b of the Terms of Settlement. A cash offer of \$100,000 was made by a third party, Scott Carlile, but rejected by your client. Your client has made no meaningful effort to sell the business, and no other offer has been received. Our client considers \$100,000 to be a reasonable price.
2. Your clients failed to pay the Arrears of \$24,124.67 on June 30, 2008.
3. Your clients have failed to pay fees set out in the Franchise Agreement from 1 April, 2008 and currently owe our client a further \$17,790, being:-
 - a. Additional franchise fees from 1 April, which our client estimates at \$9,543 plus GST
 - b. Additional marketing fees, which our client estimates at \$5,640 plus GST
 - c. Other sundry charges payable under the terms of the Franchise Agreement including mobile phone charges, technology charges: \$827
 - d. Interest on these amounts pursuant to the Franchise Agreement, which our client estimates at \$890

(As your client has not provided sales figures for July, August or September 2008 fees are estimates. Our client reserves the right to claim any additional amounts once the sales figures are ascertained.)

Other Offices

Brisbane
Canberra
Perth
Sydney

**Independent
Affiliated Firms**

Hong Kong
Indonesia
Malaysia
People's Republic of
China
Singapore
Taiwan
Thailand
Vietnam

13/10/2008

4. As set out in clause 2fii of the Terms of Settlement failure to pay the Arrears entitles our client to interest on the Arrears from 1 April 2008, meaning that as at the date of this letter your clients owe our client a total of \$41,914, being:-
 - a. \$24,124.67; and
 - b. \$16,900; and
 - c. \$890
 - d. As no sale has occurred your clients are not entitled to the credit of \$15,000 described in clause 2g of the Terms of Settlement. If a sale occurs the credit will be allowed. However if our client has to terminate the Franchise Agreement no credit will be applicable.
5. Your clients failed to attend the Poolwerx National Convention in August, thereby breaching clause 14.3.17 of the Franchise Agreement and depriving them of the opportunity to increase their skill level and gain management information.
6. Your clients have not completed the requested direct debit authority in breach of clause 8.2 of the Franchise Agreement.
7. Your clients have failed to provide the sales and other information to our client as required by clause 9 of the Franchise Agreement. Such failure also inhibits PoolWerx's capacity to review your client's business and develop an understanding of your client's claimed lack of profitability.

Our client has served several notices of breach. None of the breaches has been remedied, and our client is able to immediately terminate the Franchise Agreement.

We are instructed to provide your client with one final opportunity to avoid termination of the Franchise Agreement. Realistically it seems that sale of the business to Scott Carlile is the only viable option that will leave your client with net funds, and will entitle your client to the \$15,000 credit. However our client remains open to your client continuing as a franchisee provided the identified breaches are remedied.

Could you please obtain your client's urgent instructions on this matter and let us have your response before 5pm on Thursday October 16, 2008. If no response is received, or the response does not address the breaches of the Franchise Agreement set out above, our client intends to terminate the Franchise Agreement.

In the meantime could you also please remind your client of the obligations of confidentiality contained in the Franchise Agreement and the mediation arrangements. We note your client has referred to our client by name in a written submission to the current Federal Inquiry concerning the Franchising Code of Conduct, and may intend making subsequent verbal representations to the Inquiry. Our client disputes the truth and accuracy of most of your client's remarks. In addition the written submission raises issues that were central to the mediation, and comments inappropriately and in our view inaccurately on the conduct of the mediator and others in the mediation as well as the outcome of the mediation. This is a clear breach of the Mediation Agreement and the general principles under which mediation is conducted.

We also note that your clients have in clause 2i of the Terms of Settlement agreed to a mutual release of all claims, actions, costs and demands.

Our client reserves its rights to take action in relation to any defamatory or libellous comments in the written submission, and is concerned to ensure that your client does not

repeat them in verbal comments to the Federal Inquiry. Given this warning, our client will view any repeat of the allegations to be deliberate and calculated to defame it.

We await your urgent response.

Yours faithfully

Stephen Giles
Partner
Deacons
Direct line: +61 (0)3 8686 6965
Email: stephen.giles@deacons.com.au



15 October 2008

Mr Stephen Giles
Partner
Deacons
RACV Tower
485 Bourke St
MELBOURNE 3001

Dear Mr Giles

I refer to your letter of 13 October (ref 2650971) to Mr Warren Scott, Mills Oakley Lawyers, representing Skydive Hervey Bay and Damien Hansen.

In your letter at pages 2 and 3, you state the following:

Our client reserves its rights to take action in relation to any defamatory or libellous comments in the written submission, and is concerned to ensure that your client does not repeat them in verbal comments to the Federal inquiry. Given this warning, our client will view any repeat of the allegations to be deliberate and calculated to defame it.

This letter was today brought to the attention of the Parliamentary Joint Committee on Corporations and Financial Services, which is conducting an inquiry into franchising.

The committee has considered this letter and has directed me to write to you to warn you that the letter may constitute a contempt of Parliament and a criminal offence. Relevant Parliamentary resolutions provide:

Interference with witnesses

(10) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence another person in respect of any evidence given or to be given before the Senate or a committee, or induce another person to refrain from giving such evidence.

Molestation of witnesses

(11) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a committee.

Such action may also constitute a criminal offence under Section 12 of the *Parliamentary Privileges Act 1987*. Penalties may include fines or imprisonment not exceeding six months.

I recommend that you warn your client of the potential implications of threatening or seeking to influence Mr Hansen in any way that may be linked to his submission or any evidence that he may give, and that you also withdraw the letter.

However, you should also be aware that the committee has decided that it will report the facts and its conclusions on this matter to the Senate, which will then decide whether the matter should be referred to the Standing Committee on Privileges. As such, further investigation and action by that committee is possible.

Any further communication on this matter should be directed to:

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Phone: +61 2 6277 3583
Fax: +61 2 6277 5719
Email: corporations.joint@aph.gov.au

Yours sincerely



Peter Hallahan
for Secretary
Parliamentary Joint Committee on Corporations and Financial Services



Deacons

Grosvenor Place
225 George Street
SYDNEY NSW 2000
Australia
GPO Box 3872
Sydney NSW 2001
DX368 Sydney
Tel +61 (0)2 9330 8000
Fax +61 (0)2 9330 8111
www.deacons.com.au

16 October 2008

Email: corporations.joint@aph.gov.au

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Other Offices

Brisbane
Canberra
Melbourne
Perth

Independent Affiliated Firms

Hong Kong
Indonesia
Malaysia
People's Republic of
China
Singapore
Taiwan
Thailand
Vietnam

Attention: Peter Hallahan

Your Ref: Peter Hallahan
Our Ref: 2650971

Dear Sir

Poolwerx Corporation Pty Ltd, Damien Hansen and others

We refer to your letter of 15 October 2008 which refers to our letter to Mills Oakley Lawyers dated 13 October 2008 in relation to the above matter.

We have written to Mills Oakley on behalf of our client (copy enclosed) unconditionally withdrawing our letter of 13 October. You will note that our client has confirmed that it has no objection to Mr Hansen speaking fully and frankly to the Joint Parliamentary Committee and the Senate, and has waived all its rights to insist on confidentiality in relation to the mediation and Terms of Settlement signed by it and any related matters.

Our client and I are very supportive of the Joint Committee and its deliberations and apologise unreservedly to the Senate and the Committee.

If there are other measures the Committee or the Senate considers to be appropriate in the circumstances please let us know.

Yours faithfully

Stephen Giles
Partner
Deacons
Direct line: +61 (0)3 8686 6965
Email: stephen.giles@deacons.com.au



Deacons

RACV Tower
485 Bourke Street
MELBOURNE VIC 3000
AUSTRALIA
GPO Box 4592
Melbourne VIC 3001
DX445 Melbourne
Tel +61 (0)3 8686 6000
Fax +61 (0)3 8686 6505
www.deacons.com.au

16 October 2008

Mills Oakley Lawyers
St James Building, 4th Floor,
121 William St, Melbourne 3000

Attention: Warren Scott

Our Ref: 2650971

Dear Warren

Poolwerx Kew

We refer to our letter dated 13 October, 2008.

Our client unconditionally withdraws the letter. Further our client expressly confirms that our client has no objection to your client giving any evidence whatsoever to the Parliamentary Joint Committee on Corporations and Financial Services or the Senate. To the extent necessary our client waives all its rights to insist on confidentiality in relation to the mediation and Terms of Settlement signed by it and any related matters.

In relation to the dispute itself, if the Terms of Settlement no longer reflect your client's agreed position our client would be prepared to attend a further mediation or a meeting to endeavour to resolve the matter.

Yours faithfully

Stephen Giles
Partner
Deacons
Direct line: +61 (0)3 8686 6965
Email: stephen.giles@deacons.com.au

Other Offices

Brisbane
Canberra
Perth
Sydney

**Independent
Affiliated Firms**

Hong Kong
Indonesia
Malaysia
People's Republic of
China
Singapore
Taiwan
Thailand
Vietnam