

Damien Hansen

PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES PO BOX 6100,  
PARLIAMENT HOUSE, CANBERRA, A.C.T., 2600

## Inquiry into Franchising Code of Conduct

*The matters of mediation are possibly subject to confidentiality.*

Dear Sirs,

**The Chief Franchisor of Australia continues to operate in a misleading, and  
unconscionable way with impunity.**

Thank you for making an enquiry into this matter. The works done in the past to improve the code I see as very progressive.

I have run business's for 20 years. I have been interested in studying law, and was trained in some law with the Victoria Police force.

I made enquiries with a franchise called [REDACTED]

In my discussions with the representative I was given the impression that things were going well for the Victorian Franchisee's, and that it was very exciting 'down there.' I also read articles that the Franchisor sent me including addresses from [REDACTED] (whom now hold the seat as the chairperson of the [REDACTED], and co chair of the [REDACTED]).

It talks of comfortably profitable business's, and gives the impression of success. Photos are included that show franchisees dressed in dinner suits, smiling etc. It is a carefully orchestrated impression of success.

I asked for information for a business plan. I was advised that I would do a plan in 'Pool School.' I then asked if they suggested that I continue with the process of induction without a plan, to which they said yes.

I was given disclosure documents and drafted agreements. The disclosure agreement I now find to be faulty for a number of reasons, including providing no warning on the front page, listing obligations of the Franchisor that don't in fact appear in the agreement, and including a general indemnity.

I was told that the agreement was fixed and that there was no opportunity to negotiate it. I see that this is in disagreement with good faith provisions of 'reasonableness.' In that it doesn't offer an adequate range of choices.<sup>1</sup>

I phoned a number of franchisees. They gave me positive information. I now find out that the Franchisor has previously phoned Franchisees that give the operation a 'bad wrap.' I also know that they are under agreements of confidentiality.

Every year the Franchise Master Franchisee's do business planning with Franchisees. The pro forma they fill out didn't include costs like depreciation, and they didn't really accept allowances for things like running a home office. They were clearly trying to make more positive financials than what they actually were. This impression was relayed onto prospective franchisees. They are effectively misleading and deceptive by proxy.

But clearly the franchisees were impressed with their Gross Profit, without any comment about net profit.

The representative also gave a short list of who to call for my due diligence. This would seem to be misleading.

I couldn't find out good financial information so I instead sent an email telling them what I required as an income after 2 years, or that the business would fail.

They never responded to the email.

During Pool School, I was shown a copy of the pro forma of the financial business plan, but we did not put any figures into it. We were told that we would do it later on with our masters. It was not till some weeks later that we did it. By this time the agreements were well in place.

During the course of the running of my business, the franchisor made some bad decisions.

It turns out that business's are not profitable. It is generally like just buying a job. All the profit is taken by the Franchisor.

The franchisor is not doing a reasonable job of providing good services for its huge fees. 15% of sales (without decreasing value).

I had the following issue with the franchisor;

<b>Nature of dispute</b>
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<sup>1</sup> Renard constructions NSWLR 234

<b>Nature of dispute</b>
Code part 6, 6A, 6B, 10, 11 (1), breached, as no <u>disclosure document</u> supplied. (note a disclosure document is defined as a current disclosure document).
This makes the agreement illegal and unenforceable.
<u>New disclosure document</u> not provided following request, as per code 19.
Was received on 6 Feb 2008. I requested it and needed it in October 2007.
It is my belief that the Franchise could fail as a result of its failure to abide by the code (particularly in requirements for disclosure).
Non <u>current disclosure document</u> handed out to new Franchisees prior to induction, which could cause major litigation and collapse of system that I have invested in.
National Advisory Committee (NAC) not involved with <u>administering the marketing fund</u> . Refer Disclosure Document (DD) 11.1.5. Given that marketing was the main reason that I entered [REDACTED], and that NAC involvement was advertised, and disclosed, and given that its involvement would have produced better marketing and given me more revenue.
Proper use and accounting for <u>marketing fund</u> not done.
Franchisor not complying with obligations under code in respect to the <u>marketing fund</u> . DD14.1.6. FA 10. Code 17.
Failing to <u>audit</u> marketing fund, and failing to audit marketing fund following many requests and formal notification from Regional Advisory Committee (RAC), that the Franchisor actions are in breach.
Fund has now been audited, given that it was done well over a year late.
<u>Financials</u> not provided for inspection following request. DD 11.1.7
<u>General Indemnity</u> provided against Code. FA 18
Franchisor requiring <u>100%</u> of products and services to be approved. FA 14.4.1 only requires 95%.
Franchisor <u>failed to inform</u> of contraventions of code 18 (1) (2) (b) (ii)
Annexure 1 11. <u>False reason</u> given for previous franchisee selling.
Not wanted to operate in a business that is operating <u>against the law</u> .
Representation re 100,000 income

I sent numerous correspondence to the franchisor over a long period to try to rectify the faults. They failed to rectify the errors.

I ran out of money to run the business as predicted.

We went to mediation.

The matters of mediation are possibly subject to confidentiality.

The franchisor mentioned that they had someone who had made an offer to buy my business on 2 occasions. Although they now deny this.

At mediation the franchisor wasn't worried about our allegations. They thought that we wouldn't pursue the matter. I was advised by my solicitor and the mediator that it probably wouldn't be worthwhile pursuing the matter as it could involve a cost of around \$200,000. (which I didn't have – of course). I was advised the best course of action was to sell the business.

So I settled for the best they were prepared to offer, which only covered legal costs.

So basically the mediation and legal system was out of my reach.

My business is failing and I have no remedy open to me.

I have lost my house and all cash reserves to this system.

*Damien Hansen*

*Damien Hansen*

Home:

Work:

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Mr Petro Georgiou MP

695 Burke Road  
Hawthorn East Vic 3123

Tel: (03) 9882 3677  
Fax: (03) 9882 3773

My name is Damien Hansen and I live in, and my mother lives in.

I am asking for your support in reviewing the current legislation in regards to Franchise operations.

It has come to my attention that 300 Starbucks stores are closing over the USA. I explained to my mother that all the individual store operators will be put out of business, as the Franchisor owns the head leases and that they will be handed over with the liquidation of the Franchisor.

In Australia 60 Kleins jewellery stores have faced the same dilemma over the last month.

<http://smallbusiness.smh.com.au/growing/finance/kleins-chain-to-close-914265241.html>

It seems that the collapse of the Franchisor will lead to the dilemma of the small business family, in part.

It's time to review the needs for the Franchisor to among other things, to hold the head lease, and rights to occupy the premises.

Franchisors will argue that they must own the rights to protect the brand and retain the goodwill.

It is time to allow the franchisees to de-brand and go it alone if the support system is not providing value for money.

All too often the Franchise systems take far too much of the profits to run empires that do little more than consume the money in running the empires and profiting the shareholders.

The agreements are one sided and very often don't put any requirements onto the Franchisor to perform.

When relationships go belly up, the ability for a Franchisee to get good results is poor. Often resale is hampered by few people going into small business, or franchises, due to the high employment, the legal system is too expensive (\$200k+), and mediation is nothing more than a ".....ing match."

Franchisors are compelling prospective franchisees to take less than appropriate retail sites for operation. Support soon vanishes and they are left struggling. The shopping centres are having to try to help these people.

There have been new laws put into place in March this year, which are good progress towards a fairer system, but the Franchisor has ample experience, wealth, legal expertise etc to make things in their favour.

Common principles of taking reasonable care, and good faith, do not apply.

My personal situation is that I got into a [REDACTED] franchise. I am now facing termination, as I can't pay the fees due as the business would never have been profitable for me (nor at least many others).

I can't de brand, as the Franchisor has threatened to sue me. And they could sue for all the fees they could have collected under the agreement, had I gone full term. They are also using restraint of trade clauses, which although sometimes unenforceable, fool many franchisees.

(not to mention my loss of capital in buying in, and money put in to build up the goodwill).

It is very much a case of the strong taking advantage of the weak.

I often find my mother to be a good measure of what is right. she is very sad for my situation, and is selling her fathers house whom has recently died (which was going to be our kids education money).

Although she hasn't said it, I know that she thinks that good Aussie battlers shouldn't be put out of the Australian dream, for the wishes of the Franchisors.

Damien Hansen