

12th August, 2008

To: **Parliamentary Joint Committee on Corporations and Financial Services**

From: Christopher James May

Further Submission to the Inquiry into the Franchising Code of Conduct

In my original submission I referred to a Termination Notice. Rather than expecting the Inquiry to rely on unsubstantiated assertions, I thought it might be instructive to supply some corroborative detail, to which end I attach a copy of that Notice. The document is only two pieces of paper, but bear in mind that when it was received I had been a franchisee for only three months, from very shortly after I took over I had serious doubts about the viability of the business, and the implication of the Notice was that we would lose everything we had invested thus far, some \$250,000 and the stress of that alone caused my wife to be hospitalised. As it turned out we have lost probably four times that amount.

Having read it, you might like to consider:

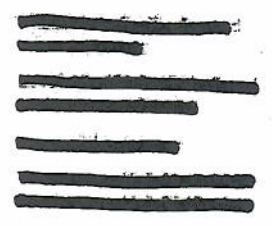
- Nowhere does it mention the cause of its issue, other than a glib, non-specific mention of complaints and a Pythonesque reference to having transgressed the Franchise Agreement (FA).
- Since, as far as I knew, I was innocent of any breach of the FA, it was impossible to defend myself.
- All attempts to clear up what was, and trying to be unbiased against my better judgement, a misunderstanding were met with obfuscation and stonewalling, plus a continued insistence that I travel to Melbourne (from Sydney) to meet them without knowing the reason.
- I was unable to find out the ostensible cause of the Termination Notice's being brought into existence until quite a few of months later, at Mediation – and even then I had to guess, whereupon it was confirmed that I had surmised correctly.

- The complaint, for it was in reality only the one, that it related to was that ██████ claimed I had taken money for which no invoice was provided (which would thus have defrauded ██████ of Royalties; and, more seriously, the ATO of GST). However, not only was this untrue, as my computer records showed, and as would ██████ have shown, but I later established that the customer (I presume the private investigator) had been **deliberately sent to entrap me**, and otherwise cause trouble. And although he failed in the former they carried on as if he had not.
- The implied suggestion that I would deliberately act in a way to harm my own business is ludicrous. Any assertion in the Termination Notice of wrongdoing by me is a complete fabrication, and it is itself an out and out unconscionable abuse of power.
- Because the threat was delivered through a lawyer makes it, to my mind, no less of an attempt at extortion - in fact it compounds the crime.

C. J. May



FILED
4/1/13



NOTICE OF BREACH

3 September, 2003



and at



WHEREAS

- A. By a Franchise Agreement ("the Franchise Agreement") dated 18 June 2003 [redacted] Australia Pty Ltd [redacted] as Franchisor granted to [redacted] as Franchisee the right franchise and licence to establish and operate a [redacted] & [redacted] Shop at [redacted], Mona Vale, New South Wales ("the Premises") for a term and upon the terms and conditions set forth in the Franchise Agreement.
- B. Following complaints made by customers of the Franchisee not providing invoices, [redacted] engaged the services of a private investigator to investigate the nature of such complaints. The investigations conducted by [redacted] indicate that the franchisee has understated the Gross Revenue in the Gross Revenue (Sales) Declaration Forms, and is therefore in breach of Clause 12.2 of the Franchise Agreement.
- C. Clause 19.3.6(c) of the Franchise Agreement allows [redacted] to immediately terminate the Franchise Agreement without notice in the event the Franchisee fails to perform any obligation referred to in clause 12.2 of the Franchise Agreement referred to in "B" above.
- D. Clause 23(f) of the Franchising Code of Conduct allows [redacted] to terminate the Franchise Agreement without giving reasonable notice to Franchisee in the event Franchisee is fraudulent in connection with operation of the franchised business.

EX-100

E. [REDACTED] has taken into account all the circumstances surrounding the breach, including the Franchisee's relatively short time in the [REDACTED] network.

NOW TAKE NOTICE as follows:

1. Pursuant to Clause 23(f) of the Franchising Code of Conduct, [REDACTED] is not required to give the Franchisee the opportunity to remedy the breach mentioned in item "B" of this notice. However as stated above to remedy the breaches, the Franchisee must:
pay [REDACTED] all underpaid royalties pursuant to Clause 12.4.4 of the Franchise Agreement within fifteen (15) days of this notice;
pay [REDACTED] the private investigators' fees pursuant to Clause 12.4.5 of the Franchise Agreement also within 15 days of this notice.
2. Attend the meeting scheduled to be held at the [REDACTED] head office on Friday, 19 September 2003 at 11.00 am. Due to the seriousness of this notice we request that the Franchisee be present at this meeting.
3. If you do not remedy the breach mentioned in item "1" within the time period stated in item "1", and also attend the meeting mentioned in item "2" [REDACTED] may terminate the Franchise Agreement without further notice.

DATED the³..... day ofSeptember..... 2003

[REDACTED] PTY LTD
by its authorised officer.

[REDACTED]

[REDACTED]
DIRECTOR