

Edilia Ford

13 October 2008

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

Dear Secretary

Inquiry into the Franchising Code of Conduct-Public Submission from Ex-Franchisee

Attached is my submission to the Inquiry.

I would be pleased if the matters raised in my submission could be considered in relation to unconscionable conduct, misleading conduct, misleading representations and false representation about business activities.

In these changing times many families are risking their financial security relying on the information provided by franchisors. They should expect that franchisors should be required to act responsibly and in good faith. Prospective franchisees should be entitled to full and frank disclosure in making the decision to put their families' financial future on the line. The failure of the system to provide frank disclosure has long term and potentially disastrous consequences for working families surely it is better to improve the disclosure requirements rather than allow people to be deceived.

Sincerely

Edilia Ford.

Inquiry into the Franchising Code of Conduct
Submission by Edilia Ford, [REDACTED]

My purpose in making this submission is to update the submission I made to the "Finding a Balance Report-Towards Fair Trading Australia" in 1997 (Ref pg 208 Sub # 156). Eleven years on I am no longer a franchisee but my experience will reflect how the current system offered us no protection.

In 1996 my husband and I bought into a franchise known as [REDACTED] at a set up cost of more than \$100,000. We used our home as security for the business loan and sold a block of land to fund the enterprise. It was to be our sole income and we had 2 children under 6 years at the time.

At the outset we were misled into believing a territory we desired (the one we resided in) was available despite it having been sold months prior to us even meeting the franchisor. Despite asking direct questions about a person we had heard purchased the franchise we were continually reassured this person did not exist and our preferred territory was available. When we were committed to the business we were told it was a mix-up and it was now unavailable. At the time there were only 3 franchises in NSW insufficient numbers for mass confusion.

This Franchisor was proudly promoting their Franchisor of the Year Award from the Franchise Association of Australia and New Zealand. [REDACTED] is a computer education service operating in the child care sector it required a custom built specialist truck to operate at that time.

At the time of investigation none of the existing franchisees were forthright about their relationship with the franchisor. Most commonly their response was one of neutrality or non comment. Once in [REDACTED] it became clear that the franchise agreement prevented them from commenting openly about the level of support they received.

We did our investigations as best we could. We were not naïve people having worked as a business consultant myself and run another unrelated business previously we believed we were well equipped to undertake this new enterprise. We still run our business eleven years on which validates that belief.

Nothing prepared us for the fact that the franchisor referred us to his supplier that he knew to produce unsatisfactory vehicles. The result was we were left with a purpose built vehicle that was unfit for purpose (wrong size and substandard workmanship) and we had to start the construction process all over again losing 6 months in operation resulting in us opening for business 4 weeks prior to the seasonal Xmas downtime thus 6 months with minimal income became 7 months. Throughout this very traumatic time we were left to fend for ourselves and no assistance was given by the franchisor to resolve the matter with their supplier.

We took action in the Fair Trading Tribunal against the supplier and 3 hearings later won the case. We did not receive our refund on the vehicle until August 1997 more than a year later. These financial losses caused us huge cash flow problems in getting established.

Following that tough start we discovered the franchisor was less than responsive to all franchisees. We found out by accident when a real estate sign appeared on their house in Queensland that the franchisor having collected their franchise premiums of approximately \$0.5m from about 17 franchisees they were now leaving the country.

They had sold the Master Franchise to another Victorian franchisee who was not really committed to supporting the core service business rather more interested in selling franchises. He did this in Tasmania and Western Australia where the franchisees no longer exist. He planned to expand into New Zealand. He became involved in a completely different market sector that most of his existing franchisees were ill equipped to operate in and that venture also dried up. During his time as Master Franchisee they lost all other franchisees in NSW except for us. Two were abandoned one was taken over by the Master Franchisee which he closed. The focus was on short term gain to the detriment or complete disregard of the franchisees.

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With more partners (merchant bankers) involved he diversified and established [REDACTED] Ltd. The company's main purpose was to acquire child care centres. [REDACTED] Ltd (now delisted) subsequently sold out their business (including the [REDACTED] franchise) in July 2003 to [REDACTED]. The core business of the franchise was not even considered nor were the franchisees consulted we read of this in the Press.

The last official correspondence we received was in 2003 advising us the agreement had expired long ago and needed to be resigned to settle the sale. We never heard from [REDACTED] Ltd or [REDACTED] again.

The remnant "franchisees" were left to fend for ourselves with no organisation, product or support. Those that remained either developed their own business models or closed their businesses. I developed my own service product and operated my business in isolation.

We continued working with the business name we had built our reputation on, unaware that in 2004 the original franchisor managed to make it back to Australia to strike a deal with yet another Victorian franchisee ([REDACTED] Pty Ltd) and resold him the Master Franchise.

In 2007, years after being abandoned we were presented with an ultimatum that despite the agreement being mutually abandoned, having had no support or assistance for years during and after our franchise agreement expired we now needed to renew our agreement with the Master Franchisee, change our operations, pay him franchise fees, advertising levies and his legal costs for the privilege of using the name. An unconscionable act was receiving a strategically timed solicitor's letter on Xmas Eve 2007 threatening us with Supreme Court action to close our operation if we did not comply by 18 January 2008.

Xmas Eve is a poor time to seek legal advice as most offices are closed including the Master Franchisee's lawyer threatening us with legal action. We could not even phone him to discuss it. We spent the whole Xmas holiday period working out what action we should take.

I contacted my Federal Member's local office, the Minister for Small Business who referred me to Mr [REDACTED], the Co-ordinator of the Office of the Mediation Adviser which was to assist franchisees/franchisors find affordable dispute resolution. He advised me that as I no longer had a valid franchise agreement (expired 2001) this office was unable to assist me or offer mediation service. I was left with 2 choices prepare for a costly legal battle or surrender the business name and reputation I had spent over a decade building. I was given 4 weeks in the holiday season after 11 years to resolve this. [REDACTED] suggested 6 months would be a fair and reasonable timeframe.

I settled the matter by agreeing to surrender the name and sought release from the [REDACTED] system in January 2008. The Master Franchisee agreed to this release in writing and we renamed our business. After releasing us he sent his sales staff in to try to takeover our existing customer base. Following my request that he leave us alone he desisted.

I think the behaviour of the people involved in this franchise group is at best careless and at worst immoral. The intention of the existing Master Franchisee was to strike at a time when we were most vulnerable and ill prepared. He clearly did not want us in the system and sought only to eradicate us so that the new Franchise Disclosure Document would not include this organisation's tragic past and legally he can omit any reference to the litany of destroyed past franchisees.

I consider the existing system to be a flawed, as this happened in 2008 but these events can be omitted on a legal technicality. I believe the government should legislate to protect ordinary families from unscrupulous operators profiteering from churning franchise fees.