

- 1 Personal Background and Franchising Experience
- 2 Our [REDACTED] Franchisee Experience

1 PERSONAL BACKGROUND and EXPERIENCE

My husband David and I have two children. Prior to purchasing a [REDACTED] franchise in 2004 David was successfully self employed for approximately 6 years, he has extensive mechanical knowledge. I have extensive management, sales, marketing and administrative experience, the Company I was employed by operate their business via a network of successful Franchisees, and distributors, Australiawide. David is currently employed on a casual basis by a labour hire agency, I was forced to give up work in 2003 due to ill health.

Central to this submission is the [REDACTED] franchise at Mansfield, Queensland, David and I purchased in May 2004.

2 OUR [REDACTED] FRANCHISEE EXPERIENCE

Our involvement in Franchising began in May 2004. As referenced above David was successfully self employed for approximately 6 years, first he owned and operated a heavy vehicle, truck & dog trailer working locally in the Brisbane area, and second owned and operated a heavy vehicle Western Star & trailer carrying freight interstate. Towards the third quarter of 2003 we decided, due to the increasing operating costs, i.e. fuel, that we would look for an alternative business to invest in, one that David could run and eventually bring his son in to operate together.

After researching the types of businesses on offer we decided we would apply to purchase the [REDACTED] Centre at Mansfield, Qld which was for sale at the time.

We specifically chose a franchise so we would have the strength of a Brand name and the support of the Brand by the Franchisor.

We specifically chose a [REDACTED] Franchise because of David's extensive mechanical knowledge and business experience.

We specifically employed the services of a Solicitor who was a member of the Franchise Council of Australia.

Submission to the Joint Standing Committee on Corporations

When we asked the Vendor about the Assignment Fee he informed us that it was \$6000 + GST, however when we were contacted in writing by [REDACTED] we were informed that they were utilizing a third party consultant, namely Franchise Point, to facilitate the recruitment process and that due to this fact the Assignment Fee was now \$15000 + GST. We would like to point out that [REDACTED] ceased using Franchise Point, however they still charge all new Franchisees a \$15000 + GST Assignment Fee which is still to be explained to Franchisees.

David travelled to Melbourne as part of the 'Training Support' and spent two days at the [REDACTED] head office. On his return to Brisbane he had 6 weeks further training to complete, the last week in the Mansfield store. There was no 'Training Schedule' to be adhered to and David received no 'real' training. No procedures were explained, no computer training was given, he basically was sat in a chair to watch what was happening. He spent a week each at 5 other sites a mixture of Franchisee owned (2), and Company owned (3). Not a turse word was spoken at any stage against the Franchisor, or the system it operated and we were now a part of.

The last week of David's training was spent with both the State Sales Manager and Representative, on alternate days, in the Mansfield store. Over this period there were an alarming percentage of customers with complaints who visited the store, David was told that the outgoing owner was 'hopeless and didn't follow the system'. He [REDACTED] also told by the [REDACTED] Representative that the store should be trading at \$80,000 per month based on the sales of the Tingalpa and Woodridge stores. This figure was double what the store had been trading.

Prior to the takeover date we did experience a few 'teething problems', e.g. the State Sales Manager and Representative both cancelled their appointments with us to assist with the stocktake prior to settlement, consequently we were left with old stock we would not have purchased from the outgoing owner had the [REDACTED] representatives been there to support us. We expressed our dissatisfaction to these representatives and decided we would 'put it down to experience' and move on.

We took over the site on 17 May, 2004. The first hint of unrest amongst the Franchisees was felt approximately two weeks after we had taken over, the event was a State Sales meeting. David had been looking forward to meeting the many other Franchisees who were, we were groomed to believe, happy. Instead he was overwhelmed by what he witnessed and described as 'an angry mob' with nothing but complaints about the lack of [REDACTED] Management and support of the Brand. When he arrived home after the meeting he was visibly shaken and expressed his concern at what we had gotten ourselves into. He could not understand why the Franchisees he had spent a week each with in their own stores had not said something. We found out much, much later that the reason

Submission to the Joint Standing Committee on Corporations

was fear, fear of [REDACTED], i.e. the State Representatives and in particular the owner, [REDACTED].

It was only a short time after this that every [REDACTED] Franchisee started receiving anonymous correspondence alerting them to the facts of what was happening behind the scenes of [REDACTED]. Misappropriation of Marketing Funds, failing stores, legal actions against the Franchisor, Breaches of the Franchise Agreement by the Franchisor. When I phoned the State Representative about these emails and letters we were receiving, he told me that there was a 'disgruntled Franchisee' trying to cause trouble and I should not be concerned about it.

David and I were both realistic in our goals for the business. We knew he would be working hard, we were both used to working hard. We also knew the business was run down and inadequately equipped. Based on the fact that we were told by [REDACTED] how much support we would receive to help grow the business we were prepared to invest most of our profit back into the business for the first 12 months, which we did. David did not take a wage out of the business for the first 15 months.

The first 12 months saw David increase the sales by 19%, but more importantly reduced the cost of goods by 6%, an overall increase of approximately \$60K. We invested money in our own local advertising to increase our customer base and purchased equipment that would continue to add value.

Our store appeared to be tracking well, we thought our strategies were working but it was still early days.

Then [REDACTED] stopped advertising and supporting the Brand.

Each month [REDACTED] supplied all stores with the sales data and other reports for all stores in Australia. We checked our sales versus the remaining Queensland stores, approximately 27, I was concerned by the number of stores that were going backwards, including ours. The collective Queensland picture was positive but there were only about 6 stores trading positively and the remainder were all losing substantially, most in excess of 25% vs the previous year.

Our store lost \$60,000 vs the first year.

Franchisees were desperate, but they were too afraid to talk to other Franchisees about [REDACTED] for fear of being bullied by [REDACTED] Management. We phoned a couple of other Franchisees to find out what they were doing about their declining sales and the next day we were visited by a State Representative to quiz us on the discussions we had.

Submission to the Joint Standing Committee on Corporations

Franchisees were forced to use their home email addresses to communicate with other Franchisees because [REDACTED] was stopping emails to and from Franchisees from going through.

Because [REDACTED] were not supporting it's Franchisees we were forced to do our own advertising. When I asked the State Representative for assistance with the cost I was told that they had no obligation to assist. We had no choice but to advertising, we were losing money. We spent in excess of \$20,000 on advertising just to break even, [REDACTED] reluctantly reimbursed us \$4,000.

Desperate [REDACTED] Franchisees collectively wrote a letter to [REDACTED] asking him to support the Brand and also address their concerns relating to declining sales and profitability, they wanted to know where their contributions to the Marketing Fund were being spent. [REDACTED] responded with empty promises of plans to increase sales by 30%, their correspondence fell on deaf ears.

Franchisees were dropping like flies, walking away from their businesses, their livelihood, losing everything they owned.

Franchisees were committing suicide.

Then at a State meeting a Franchisee asked if any other Franchisee had been in touch with their Landlord because they discovered that their rent had not been paid for more than 3 months even though [REDACTED] had deducted the funds from their bank account. The landlord had locked the Franchisee out and [REDACTED] had not paid the rent.

Franchisees all over Australia were discovering that their rents and outgoing expenses, i.e. rates, water and council fees, were not being paid even after the funds were deducted from their bank accounts by [REDACTED]

We also learnt that some Franchisees were receiving rebates on their Royalty payments to [REDACTED]. When asked to explain the anomalies their response was to amend the Disclosure Document.

Franchisees also discovered that [REDACTED] was receiving rebates from suppliers, e.g. Repco, for purchases made by Franchisees however the Franchisees received no benefit of these rebates from [REDACTED]

We submitted a complaint to the ACCC as part of the collective group of [REDACTED] Franchisees with no satisfactory outcome to date.

We decided to advertise our business for sale in May 2006, we had a buyer secured, at a substantial loss, however we could not in good faith sell this business to another family knowing they would possibly lose everything. So, with no Brand support from [REDACTED] and after having exhausted our funds, and

Submission to the Joint Standing Committee on Corporations

the GST funds we were constantly behind with paying to the Australian Tax Office, in late 2006 after consistently losing money every month we secured an overdraft from our Bank to try and keep our business afloat. It was an impossible task.

In late January 2007, our Landlord visited our store and advised us that [REDACTED] had not paid the rent and outgoings that were due on 1st January, 2007. [REDACTED] had deducted the funds from our bank account on 31st December 2006. We cancelled our direct debit facility in favour of [REDACTED] and employed a Solicitor who wrote to them requesting an explanation and advising them of their Breach of our Franchise Agreement. We did not hear from them until we wrote to them in April 2007 requesting an answer to our previous correspondence. At this time they were trying to sell the business to another Company. The subsequent sale fell through.

Our Landlord's solicitor served [REDACTED] with a 'Notice of Breach' in July, 2007.

The only contact we had from [REDACTED] was bullying and threats via correspondence and finally in July 2007 after receiving no satisfactory response from our ongoing correspondence we, as a last resort, gave Notice of Termination of our Franchise Agreement to [REDACTED] effective 21st August 2007.

Initially we heard nothing from [REDACTED] but as it got closer to the date of Termination, their representative namely, [REDACTED] called us advising he would be in Brisbane on 20th August and would like the opportunity to discuss our concerns. We agreed to meet with [REDACTED] at the [REDACTED] Queensland office at Woodridge. We received a letter from [REDACTED] confirming the meeting and advising that our Termination date was therefore extended until Friday 24th August unless the matter could be resolved.

We went ahead with our original plans to stop trading on Friday 17th August and to remove all of our equipment and belongings from the store on the weekend. We then intended to spend the extra time [REDACTED] had given us on our Termination date to thoroughly clean the store and leave it in good condition. On Monday 24th we met with [REDACTED] at the Woodridge office and he asked us to reconsider our notice, we advised we were going ahead with the Termination. He then asked us if our 'stuff' was still there or had we moved it out. We advised him that we had moved the majority of our belongings but there were still a few items to move. He was visibly angry. We then advised him that we intended to spend the remainder of the week cleaning the store, we had done a great deal of it but wanted to leave it in good repair and he agreed. When we arrived at the store on the Tuesday morning we had been locked out. We were able to retrieve the remainder of our belongings but were unable to finish the cleaning.

Submission to the Joint Standing Committee on Corporations

██████████ have never attempted mediation with us and since the Termination of our Franchise Agreement, ██████████ have continued to attempt to deduct large sums of money from our Bank Account without success.

In July 2008 we received notice from ██████████ solicitors and we are now in a position where we have to defend ourselves against court action. It is not over yet.

We, like many many other victims of ██████████ are now forced to sell everything we own to satisfy Banks and other creditors. We will then own nothing.

David, like many many other victims of ██████████ suffers from depression, having lost everything we have worked hard for.

Throughout this whole process one thing stands out, ██████████ as Franchisor has breached many parts of the Franchise Agreement with its' Franchisees. There have been litigations that have been settled out of court because they do not want to go to court. They have never been held accountable for their Breaches of the Franchise Agreement.

When we commenced our Franchise with ██████████ in May 2004 there were approximately 29 stores in Queensland, we believe there are now 11 of which the majority are now owned by ██████████ the numbers are worse in other States. Some Franchisees left in the system are unable to sell their business.

Existing and future Franchisees of ██████████ need to be protected.

We, like many many other hard working Australian families now find themselves part of a community of victims of ██████████, the majority of them are still too scared to talk to anyone outside the community and have trouble trusting even those who have been through the same experience. Others have just tried to move on.

We are not against Franchises and we recognise that the majority of Franchises in Australia are reputable, however it must be acknowledged that there are rogue Franchisors from which the Australian prospective franchisee definitely needs protection. There have been other inquiries into the Franchising System in Australia that have neglected to see the necessary changes made, we hope that this Inquiry will fix the system.

Regards

Narelle Betts

10 September 2008