

From: [REDACTED] Rampling [REDACTED]
Sent: Friday, 12 September 2008 2:50 PM
To: Committee, Corporations (SEN)
Subject: [REDACTED] Inquiry into Franchising Code of Conduct

Importance: High

Dear Sir/Madam

Below is our submission into the Commonwealth Government's inquiry into franchising.

SUBMISSION FOR COMMONWEALTH INQUIRY INTO FRANCHISING

WHERE DID BURGER KING DISAPPEAR TO ???

Background

[REDACTED] alias [REDACTED] trades in Australia, so-called successfully, plus has his fingers in many other franchised pies (this is against the [REDACTED] Franchise Agreement). [REDACTED] had expanded from Western Australia eastward. [REDACTED] Corporation then decided that they wanted a piece of the action in Australia and wanted all [REDACTED] restaurants to be re-branded to the world-wide recognised brand of [REDACTED]. [REDACTED] then started advertising for franchisees to come on board put forward sites and they put a stop on [REDACTED] expanding in Australia. Apparently in 1996 litigation started in the Sydney Supreme Court between [REDACTED] and [REDACTED]. Meanwhile, even as these actions were taking place, [REDACTED] were merrily signing up franchisees and if approved to be a [REDACTED] operator, were asking for \$100k per franchise fee. Many of the [REDACTED] franchisees were *totally unaware* that there were any court proceedings taking place between [REDACTED] and [REDACTED]. [REDACTED] still took their franchise money. Many [REDACTED] franchisees found sites throughout NSW, VIC and QLD and were now starting to invest many hundreds of thousands of dollars on securing their sites and developing them.

Enter [REDACTED] - Introduced to many of the [REDACTED] franchisees by the General

Manager and Franchise Development Manager at [REDACTED] as being the 'preferred lender'. (Let me point out that [REDACTED] was heavily involved with the [REDACTED] corporation. In other words, [REDACTED] was well aware of what was going on, on both sides of the fence and failed to mention this to us and others.)

This is how our story began

We owned a number of hotels in NSW and had decided to build a [REDACTED] restaurant on the front block of one of our hotels in Sydney. We had already been approved as a [REDACTED] franchisee but had still not been informed about the litigation between [REDACTED] & [REDACTED]. (***At no time*** was this litigation disclosed to us – not when we first approached [REDACTED] in July 2000, nor at the time of signing up as a [REDACTED] franchisee and paying our fees in 2001.) Rumours were around that these two companies were fighting, but of course this information was kept closely guarded by the [REDACTED] hierarchy. After our restaurant was approved to be constructed at a cost of close to \$2million we too, were introduced to [REDACTED] as being the 'preferred lender' for the franchisees. At this stage, our hotels were financed through [REDACTED] Superannuation Fund and we were seeking *only* the finance for the construction/fit-out of our [REDACTED] restaurant. On our first meeting with [REDACTED] representatives, they informed us that we would be far better off if we moved into 'mainstream banking' seeing as we were building the [REDACTED] restaurant and suggested, after lengthy discussions about our asset holdings, that they finance our whole group which consisted of close to \$29million worth of assets with a gearing of less than 50%. Sue and I were quite wary of placing all our eggs in one basket, but the [REDACTED] representatives assured us *emphatically* that this was the best direction for our group. They were furnished with our extremely multifaceted memorandum stamped "*Private & Confidential*", as you would expect, as we were borrowing around \$13.2million. After receiving our second approval letter from [REDACTED], we were visited by Ms [REDACTED], who headed the Franchise Division of [REDACTED] at Penrith, and she was overjoyed to have us on board and excited at the prospect of moving forward with our plans to expand and grow our businesses.

News Flash. During our construction we found out that [REDACTED] wins law suit against [REDACTED]. He informs [REDACTED] that he wants all the restaurants rebranded to his [REDACTED] plus the total amount awarded to him by the Supreme Court – in excess of \$70million. To say this news sent shock waves through the [REDACTED] franchisee community was an understatement! We were totally disgusted in [REDACTED] [REDACTED] for the repetitive lies and for the misleading and deceptive conduct that they had entered into by 'sucking in' innocent franchisees to fund their expansion in Australia. At this stage [REDACTED] and [REDACTED] were at loggerheads with each other and I immediately called for a meeting with Mr [REDACTED] and the hierarchy of [REDACTED] in Sydney along with another [REDACTED] franchisee who was also in the process of investing close to \$2million for his store. I said to Mr [REDACTED] and the [REDACTED] hierarchy that both of these companies had operated in a misleading and deceptive manner and that many of the stores would become unviable (unprofitable) if this form of merger was to take place. I was basically told to get lost, they were not interested in anything I had to say, and I continued to be extremely outspoken about it. (How can any company cause so much damage to so many innocent people offering them no compensation, no support or back up while they manoeuvred themselves for their own greed???) First problem – our store was under construction; financing had been approved by [REDACTED]; they opened bank accounts for all our companies; we had used most of our liquid cash to initiate the construction of our [REDACTED] restaurant based on the written and verbal loan approvals given by [REDACTED]. Our original funders, [REDACTED], had been told that we were moving to [REDACTED], hence they had started to wind up all our financial connections with themselves and were organizing payouts on our loans.

Second problem – phone call arrives from representative of [REDACTED] informing us that they had decided **not** to finance our group – no reason explaining their decision was verbally given. Nor was any written letter explaining their decision received. When we wrote to Ms [REDACTED] asking for an explanation and for the return of our documentation, we received a letter from her informing us that if we were to continue inferring that 'things weren't right' the bank would sue

us for defamation – still with no reason given as to why they actually stopped the funding and our documents have **never** been returned. (██████████ also listed on our CRAA report that they had declined our loan application which we didn't discover until 2 years later in 2003.) To say that this action caused problems within our companies would be an understatement and one that our companies would never recover from. Not only had we 'lost' our funding, but on signing our franchise agreement with ██████████ we were given a certain period of time to construct and open our restaurant or we would be sued for breach of contract. Through this construction period our relationship with ██████████ was icy cold and of course we had Mr ██████████ from ██████████ causing havoc within the industry. Our restaurant eventually opened in January 2002. Whilst ██████████ & ██████████ were continuing with their fight or negotiations, mostly all the ██████████ franchisees were left to their own devices with **no** backup, **no** support, **certainly no** direction from ██████████ ██████████ and most franchisees were experiencing major problems with erratic supplies, suppliers and financial difficulties occurred because internal information was being passed between ██████████, ██████████ & ██████████ ██████████ which destabilized the financial future of the franchisee and their investment. The \$100,000.00 franchise fee was supposed to give us support through all the issues of setting the business up (not to mention our royalty fees as well) but I can assure you that we had very little, if any, help or support of any kind. In 2002 we had only 2 franchisee meetings – one in March and the other in November. ██████████ themselves were in damage control and we believe that when they entered this country they were insolvent. (At that stage they were owned by ██████████ in England who later sold out to ██████████.) The hierarchy and people employed by the ██████████ brand were like rats abandoning a sinking ship – thus leaving us to deal with new people who had no background of our particular situation. ██████████/██████████ stood by and saw the damage done to the innocent franchisees and did nothing to rectify the situation, hoping that he could pick up restaurants for next to nothing (which in fact he did). To this day Mr ██████████ has never offered any kind of compensation to any of the families who were greatly affected through no fault of their own. In fact, he stood by and watched most of them go to the wall.

After [REDACTED] lost their appeal, they were making arrangements to exit the country as quickly as possible; the [REDACTED] franchisees had no idea as to what was going on. In July 2002, [REDACTED] brought in [REDACTED] from New Zealand to take over as the master franchisee. At the November 2002 meeting when franchisees were informed about [REDACTED] and all met for the first time, we learned that sales were down considerably and things were looking bleak. [REDACTED] told us that "they were going to lead us into the future". All the while, [REDACTED] constantly informed us that [REDACTED] would be 'out of the picture' and [REDACTED] would keep expanding. (In 2004 or 2005 [REDACTED] sued [REDACTED] [REDACTED] for misleading and deceptive conduct.) We also met the new General Manager of [REDACTED] who, we later found out, was a *director of both [REDACTED] and [REDACTED]* - how can this be when the two separate companies are competitors?? Another problem for [REDACTED] - their branded restaurants had to be handed over to [REDACTED] as part of the 'deal' between them. [REDACTED] then decided to do so-called 'operational audits', unannounced, on the franchisees' stores with the hierarchy walking in and automatically shutting them, in full view of customers, **(no breach notices issued allowing time given to rectify breach)** for minor/bogus breaches or, on some occasions for no reason at all, with the specific aim to disrupt the franchisees' cash flows which would have a flow on affect to hurt them financially. (Isn't this type of bullying behaviour [*unconscionable conduct*] from the franchisor detrimental for the brand you are trying to promote and what was the purpose of doing it???) Many of the franchisees, before they opened, were told by the [REDACTED] hierarchy of projected sales they should achieve. As it turned out, these figures were physically unattainable once their restaurants opened. So, many of them, including ourselves, were having difficulties in meeting financial obligations. The [REDACTED] hierarchy further involved themselves in the franchisees' businesses by telling various suppliers that the franchisee was in financial difficulty which 'spooked' suppliers who took the view that they would not be paid if they provided stock. In our case, the [REDACTED] hierarchy also phoned our hotel suppliers telling them that we were not 'financially sound' after we refused to pay royalty fees due to lack of advertising, support and

backup. (We were not the only ones who refused to pay royalty fees at that time.) Again, what was [REDACTED] reasoning behind all this – they were killing the brand not promoting it!??

NOW LET ME DROP A BOMBSHELL AND I HOPE THAT YOU, AS AN AUSTRALIAN, ARE AS DISGUSTED AS US TO LEARN HOW WE WERE TREATED BY [REDACTED] AND [REDACTED] AND [REDACTED]. Whilst we were building our restaurant in Sydney, and of course being told constantly by [REDACTED] that there would be no more [REDACTED] restaurants built in Australia, out of the blue, 6 kilometres down the road from us, a [REDACTED] restaurant begins construction. This restaurant was owned by a Mr [REDACTED] who worked extremely closely with [REDACTED] in the expansion of the [REDACTED] empire in NSW. Even before opening our restaurant, we had asked to be bought out by either [REDACTED] or [REDACTED], as we no longer wanted to deal with people that had problems telling the truth.

Approximately 6 months after opening our restaurant, again, out of the blue, I was contacted by Mr [REDACTED], a prominent [REDACTED] franchisee, who asked for a private meeting with me. Mr [REDACTED] said he had been sent by [REDACTED] to see me and asked whether I would like to sell my restaurant. I said that I could be interested providing I got back the \$2million that I had invested in it. We chatted for a while, never reaching a decision, and I then escorted Mr [REDACTED] to his car. It is here that he informed me that my personal files, banking information and loan application which was stamped "*Private & Confidential*" and which contained extremely multifaceted and sensitive information about ourselves, our companies and our future plans, were handed over to him in a meeting in the [REDACTED] Offices in Sydney and that the suggestion at this meeting was that my funding 'be pulled'. I believe this was done to make it as difficult as possible for me as a [REDACTED] franchisee to make my business succeed. So now we have a major Australian Bank involving themselves in corrupt activities with my competitor. To give you an update on this, we are in the middle of negotiations with [REDACTED] for compensation. They have asked us not to talk to any authorities, media or police until they conduct their own internal investigations. Our latest email from them

(09/01/08) said that they were "interviewing people who appear to be involved in the matter" and will get back to us shortly. This has dragged on now for almost 6 months. We believe that [REDACTED] 'internal investigation' is a sham as they have shut down communication and not responded to recent phone calls or emails. We have also asked for help from the ACCC, ASIC and the Privacy Commission for their immediate assistance in our case. We have since come across an internal [REDACTED] document which we will quote directly from:

"[REDACTED] is a [REDACTED] man (as opposed to a [REDACTED] man), has regular dialogue with [REDACTED] and often mixes with other

[REDACTED] franchisees (eg those we've funded at [REDACTED] are regularly mentioned) and he obviously knows the fast food game

very well. We've talked about where the industry is going. Yes, it is a mature industry and we know the Bank has some concerns (your

email this week re the Victoria experiences refers) about the future. [REDACTED] believes that, following the recent court ruling

against [REDACTED] appeal in the [REDACTED] case (refer attached 11/99 Age News item for background) a shakeout will result.

[REDACTED] and [REDACTED] view is that **the ruling may see [REDACTED] consider quitting Australia resulting in closure of poorly located/performing [REDACTED] stores** with those left to be re-badged [REDACTED] and offered (firstly) to existing [REDACTED]

franchisees such as [REDACTED]. All very much conjecture but **indicative that a shakeup in the industry may be imminent.**"

Signed by [REDACTED] employee of [REDACTED]
dated 10/08/01.

This [REDACTED] is the same [REDACTED] employee who handed over my personal banking documentation to Mr [REDACTED]. (As per Mr [REDACTED] Statutory Declaration which is also supported by another Statutory Declaration from an ex-[REDACTED] executive.) Mr [REDACTED] informed us that all the information that he attained at this meeting was passed onto Mr [REDACTED] at [REDACTED]. (*Acceptable business practice – we think not!!*) For Mr [REDACTED] to come to us with this information would have taken a lot of guts on his part seeing as he was our competitor. Also, [REDACTED] was going to most of the other [REDACTED] franchisees asking for reductions in their LVR's (Loan to Value Ratios) even before some of them had started trading. Of course many franchisees were not able to do this and consequently their restaurants were put into receivership; their restaurants never went to public auction and were basically bought back by the then master franchisee – [REDACTED] – for minimal cost while the banks took all the franchisees' personal assets and if they didn't have enough personal assets, bankrupted them – the best method used to silence a franchisee. [REDACTED] were told that [REDACTED] restaurants would be surplus to the needs of [REDACTED] therefore making [REDACTED] quick to move on all [REDACTED] restaurants that fitted the scenario outlined above. It is also interesting to note newspaper articles published on April 11, 2002 where [REDACTED] states he is going to buy all the [REDACTED] restaurants and then changes his mind later on, on April 25, 2002. (As per copies from the Sydney Morning Herald) Then on June 05, 2002 it is announced that [REDACTED] has set up the [REDACTED] Property Trust – he has sold a group of his restaurants to [REDACTED] for \$47.5million of which \$20.16million is raised as equity (to purchase the [REDACTED] restaurants at bargain basement prices when all the franchisees have gone bust) – very innovative says [REDACTED]. (As per copy of Archive Media Release)

A lot of these statements, articles and documentation can be provided. The setting up of the [REDACTED] Property Trust needs to be thoroughly investigated and other issues into the [REDACTED] takeover also need to be thoroughly

investigated by the relevant authorities. To any layman it would appear that not only did collusion between [REDACTED], [REDACTED] & [REDACTED] takes place, it was rife.

We have contacted [REDACTED] and asked him if he has ever seen our personal banking files and if he has, we would appreciate them to be returned. He continues to have bouts of amnesia; says that he never discussed anything with [REDACTED] about the [REDACTED]/[REDACTED] [REDACTED]/[REDACTED] debacle, but here we have it quoted in an internal [REDACTED] document that he believes many stores will become unviable after the merger. We have also asked him whether he is prepared to offer compensation to all the franchisees that went 'bust' through this whole debacle and of course, he denies any wrongdoing – I mean, what a joke! We believe that it should be compulsory for the companies involved, as well as the bank, to attend a Federal inquiry so that we can get to the bottom of what really happened. We believe that all participants in this debacle have a case to answer to and it never ceases to amaze us that this particular fiasco has been able to avoid any investigations or inquiries from any of our so-called 'watchdogs'. These government bodies that are put in place to protect the innocent appear to be laughed at by the all-powerful franchisors as they never seem to be made accountable for their deceptive conduct, thus going on their merry way – burning and churning. The cost to innocent franchisees in this debacle – anywhere from \$50million plus – and this is a conservative estimate. Also I think that this proves that churning took place, and at this stage many of the restaurants that went into receivership from [REDACTED] are now being operated by [REDACTED] while the poor franchisees that owned these stores have been thrown out into the street.

We find it amusing that Mr [REDACTED] sought the help of the West Australian Government to help in his [REDACTED] issue with [REDACTED] especially when he finds it difficult to answer pertinent questions into the [REDACTED] collapse and [REDACTED] involvement in the whole debacle. I think that you would now have an idea as to how fraudulent, unconscionable, misleading and deceptive this whole industry can be. We have not been silenced by any 'confidentiality agreement' like most other

franchisees who leave the system and are happy to attend the inquiry to furnish signed statements and documents that will corroborate and verify our allegations.

We have tried to keep this as simple as possible. Our [REDACTED] restaurant was only open and trading for a period of 13 months and the devastation it caused us has been horrendous, to say the least. We have ended up with nothing but the clothes on our backs and even some of those we have sold to live on. We're certain it confirms that churning definitely occurs; it also confirms that collusion exists between [REDACTED] and the franchisors; we believe that we are the only ex-franchisees who actually have written documents proving our case. As for franchising, we believe that it should be stopped until appropriate measures can be put in place to ensure the safety and the financial security of these poor families who have been abused by this system.

PS. A further update. [REDACTED]

Limited invited us to enter into mediation with them in February 2008. We met firstly in Southport Courthouse and had a second meeting by teleconference. Attempts failed for a third meeting in which we requested face-to-face and they wanted another teleconference. We believe that the sole purpose of this attempt at mediation was to stop us from lodging our submissions to the SA & WA inquiries. [REDACTED] told us that if we attempted to lodge any of our submissions with these state inquiries that the mediation would cease immediately. *(If this is not blackmail, I don't know what is.)* And that they were purely on a fact finding mission to see what information we actually had.

[REDACTED] were asked by [REDACTED] to attend this mediation and they declined.

We were constantly told that [REDACTED] would like to attend this mediation as well, but of course, they didn't.

The Privacy Commission is currently investigating our complaint into our breach of privacy by [REDACTED] where they handed over our Confidential Memorandum to our competitor. This began in December 2007 and is still ongoing to date. [REDACTED] has asked repeatedly for

extensions to reply to the Commissioner's requests and this is the cause of the delay.

The ACCC has investigated our complaint against [REDACTED], [REDACTED] and [REDACTED]. In our case, we were led to believe, by various legal professionals that we contacted over the years, that we needed 'hard evidence'. This took a long time to achieve - 5 years - especially as we have very limited resources. The ACCC are updated regularly as to our 'progress' with the Privacy Commissioner and with our latest meeting with the Queensland Deputy Director of the ACCC in late August, she is asking [REDACTED] for information about our allegations.

It is now time that actions should be taken against the companies involved in our debacle. We urge the Australian Government to instigate the help of the Federal Police in charging people for criminal activities which have occurred in our case. Millions and millions of dollars have been lost by innocent franchisees just trying to make a living and better their lives. At this stage we are yet to see any definitive actions taken by either any government agency or from the outcome of the previous State Inquiries, against these franchisors. **Surely it is time that an immediate investigation be held into the [REDACTED] / [REDACTED] [REDACTED] / [REDACTED] debacle.**

THINGS DON'T HAPPEN BY CHANCE, THEY HAPPEN THROUGH DELIBERATE INTENT

We hope this gives you an insight into our dilemma and again, we offer our assistance to the inquiry if needed.

Please advise receipt of this email.

Regards,

Rick & Sue Rampling

[REDACTED]

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