

ACCC TAKES ACTION AGAINST FRANCHISORS UNDER FRANCHISING CODE

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Legal Briefings - By **Kristin Stammer** and **Annabel Garrard**

The ACCC has taken action under the Franchising Code of Conduct, signalling a clear warning to franchisors that protection of franchisees and small businesses is high on the regulator's agenda.

The Australian Competition and Consumer Commission (**ACCC**) has instituted two separate proceedings in the Federal Court for alleged breaches of the Franchising Code of Conduct (the **Code**) by franchisors in less than a month. The ACCC applied for leave to commence proceedings against Geowash Pty Ltd (**Geowash**) this week, less than two weeks after initiating proceedings against Ultra Tune Australia Pty Ltd (**Ultra Tune**), for alleged breaches of the Code. These proceedings signal a further warning to franchisors, and their directors that protection of franchisees is high on the ACCC's enforcement agenda.

GEOWASH PROCEEDINGS

The ACCC will allege that Geowash:

1. made false or misleading representations and engaged in unconscionable conduct under the Australian Consumer Law (**ACL**);
2. failed to comply with good faith obligations under the Code; and
3. failed to disclose commissions paid to directors from franchisee funds.

The conduct complained of includes representations of revenues and profits when Geowash did not have reasonable grounds for such representations and that Geowash had a commercial relationship with certain companies, when it did not. The ACCC was also concerned that the franchisor directed a substantial portion of franchisee funds for purposes not permitted under the franchise agreement.

The ACCC has also alleged that Geowash's Director and National Franchising Manager were knowingly involved in Geowash's conduct, and has indicated it will seek disqualification orders against those individuals.

ULTRA TUNE PROCEEDINGS

In an application filed on 18 May 2017, the ACCC alleges that Ultra Tune:

1. failed to act in good faith in its dealing with a prospective franchisee;
2. failed to provide a prospective franchisee with documents the Code specifies must be provided before accepting a non-refundable payment;
3. failed to provide marketing fund financial statements, audit reports and updated disclosure documents to its franchisees within the time periods specified by the Code; and
4. made false or misleading representations about the franchise site in breach of the ACL.

Amongst other things, the ACCC is seeking a payment of a refund to the prospective franchisee and adverse publicity orders. The first case management conference is scheduled for 16 June 2017.

A WARNING TO FRANCHISORS

The Federal Court proceedings come in the wake of the first financial penalties imposed recently under the Code when the ACCC issued two infringement notices against fast food franchisor Domino's Pizza Enterprises Ltd (**Domino's**) for conduct similar to that alleged of Ultra Tune and Geowash. The ACCC alleged that Domino's failed to comply with the Code requirements to provide an annual marketing fund financial statement and audit reports to franchisees within prescribed time periods. In response to the issued infringement notices, Domino's paid penalties of \$18,000.

The recent action of the ACCC is a reminder to franchisors to be particularly vigilant when it comes to disclosure requirements under the Code. Failure to do so could result in the ACCC issuing infringement notices (of up to \$9,000 per breach), or the initiation of court proceedings by the ACCC, including to seek civil penalties (currently up to \$54,000 per breach).

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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