

WHITEWASH WIN FOR THE ACCC

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Legal Briefings - By **Peter Holloway, Aoife Xuereb and Chantal Katerelos.**

The Geowash decision is yet another recent reminder of the ACCC's intention to closely regulate and scrutinise franchisor conduct. It also provides the ACCC with a valuable precedent in supporting a relationship between a breach of the ACL and good faith obligations under the Code.

In a recent decision of the Federal Court, former hand car wash and detailing franchisor, Geowash Pty Ltd (**Geowash**), was found to have:

- engaged in misleading or deceptive conduct in contravention of s 18 of the Australian Consumer Law (the **ACL**);
- engaged in unconscionable conduct in contravention of s 21 of the ACL; and
- breached clause 6 of the Franchising Code of Conduct (the **Code**) for failing to act in good faith.

MISLEADING OR DECEPTIVE CONDUCT

The Court found that Geowash made the following misleading representations on its website:

- suggesting, without any reasonable basis, that prospective franchisees could make a monthly average revenue of \$70,216 and a gross average profit of \$30,439;
- representing that it had a commercial relationship or affiliation with major corporate entities including Nissan, Kia, Renault, Audi, Emirates, Shell, Hertz, Holden, Ikea and

Thrifty, when it did not; and

- representing that the amounts charged to individual franchisees would go towards the quality of their Geowash outlet when this was not the case.

UNCONSCIONABLE CONDUCT

The Court found that Geowash acted unconscionably by charging franchisees an amount that did not reflect the likely cost of establishing a franchise, but rather an amount that the franchisee was willing to pay.

Geowash was also found to have acted unconscionably in creating the false impression that the money paid to Geowash would go towards the costs of the fit-out of their outlet when in fact it was largely used to pay commissions and meet general operating costs and expenses of Geowash.

FRANCHISING CODE OF CONDUCT

The ACCC submitted to the Court that the same conduct that was unconscionable was also a breach of the good faith obligation in clause 6 of the Code.

The Court found that the manner in which Geowash said it would charge its franchisees in a disclosure document and the manner in which it did charge its franchisees (being respectively matters arising under the Code and the agreement) involved a failure to act in good faith.

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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