

Franchisor pays for alleged misleading of franchisees.

The Australian Competition and Consumer Commission (ACCC) frequently deal with complaints against franchisors for allegedly engaging in misleading and deceptive conduct. Often such conduct is said to arise from misleading representations made to prospective franchisees on the benefits of a franchise system.

Case Study

An investigation by the ACCC followed complaints that the franchisor of GJ Gardner Homes made misleading representations about the benefits of the franchise to prospective franchisees between 2004 and 2006. GJ Gardner Homes is a residential building franchise with approximately 100 franchises operating in Australia and overseas. These complaints reportedly included its buying power and the specific capabilities of its building management software system. Such representations have not been substantiated and the ACCC considered such conduct was likely to breach section 52 of the Trade Practices Act 1974.

The Result

The franchisor and its directors have since taken steps to resolve the ACCC's concerns. Two former franchisees affected by alleged misleading representations were offered compensation totalling \$40,000. In addition to the compensation, the franchisor was to implement a number of corrective measures to its corporate materials, publish corrective notices on its website and in a franchising magazine, and establish a trade practices compliance program.

ACCC acting chairman, Peter Kell, said it was pleasing that the franchisor and its directors were cooperating with the ACCC to achieve this outcome. "This matter serves as a timely reminder to franchisors to ensure that promotional materials are accurate and truthful, and prospective franchisees are not misled," said Kell. "The consequences of misinformation and ill-informed people purchasing and entering any franchise are simply bad for business – for both the franchisor and the franchisee," he said.

Practical Tip for Franchisors

msl | michael sing lawyers recommends that all franchisors periodically review their franchise marketing materials and contracts on a regular basis to specifically ensure that any representations are accurate and do not, or are not capable of, offending the Trade Practices Act.

Michael Sing, Managing Partner of **msl**, has over 25 years of extensive experience in commercial and construction litigation, insurance matters, property and business transactions representing both plaintiff and defendant clients in all jurisdictions in Queensland. He has represented local government in public liability and contractual dispute resolution work for over 15 years.

Michael has also successfully conducted substantial superior court litigation involving contractual and property disputes for individual investors, developers and property owners. He has acted for many of the region's leading agents in a wide range of matters from commission claims and statutory compliance issues.

For assistance with all your franchising needs, email us at info@mslawyers.com.au or visit our website www.mslawyers.com.au. Alternatively, contact our professional team at our Gold Coast or Brisbane office.

Gold Coast Office

9 Ouyan Street
Bundall QLD 4217
PO Box 9073 GCMC QLD 9726
T +61 7 5597 8888
F +61 7 5597 8899

Brisbane Office

Level 10, 410 Queen Street
Brisbane QLD 4000
PO Box 3246 Brisbane QLD 4001
T +61 7 3229 6099
F +61 7 3226 9001