



MEDIA RELEASE

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ACCC alleges RFG engaged in unconscionable and misleading conduct

The ACCC has commenced proceedings in the Federal Court against Retail Food Group Limited (ASX: RFG) and five of its related entities (Retail Food Group), alleging the food and beverage franchise company engaged in unconscionable conduct and made false or misleading representations in its dealings with franchisees, in breach of the Australian Consumer Law.

Retail Food Group manages and operates a number of franchises, including Michel's Patisserie, Brumby's Bakery, Donut King and Gloria Jean's Coffee.

The ACCC alleges that Retail Food Group acted unconscionably and engaged in false, misleading and deceptive conduct when it sold or licensed 42 loss-making corporate stores to incoming franchisees between 2015 and 2019.

It is alleged that Retail Food Group withheld important financial information from the incoming franchisees who were purchasing or licensing the loss-making corporate stores, and made false or misleading representations to them about the viability or profitability of the stores.

"We allege that Retail Food Group withheld critical profit and loss information about these corporate stores from incoming franchisees, and falsely represented that these loss making stores were viable or profitable," ACCC Chair Rod Sims said.

In documents issued to incoming franchisees, Retail Food Group claimed it could not estimate earnings for a particular franchise. In fact, the ACCC alleges Retail Food Group knew the earnings of each loss making store, and was well aware that the stores being sold or licensed had been loss-making in the current or the previous financial year.

"The prospective franchisees simply had no way of knowing the true financial performance of the stores, and we allege that Retail Food Group took advantage of this when selling or licensing the stores," Mr Sims said.

The ACCC's case also involves allegations in relation to the franchise marketing funds.

All franchisees were required to pay marketing fees to Retail Food Group, to be held and administered by the franchisor, to pay for marketing and advertising activities.

The ACCC alleges that Retail Food Group used these marketing funds, to which franchisees had contributed, to pay for non-marketing expenses in breach of the Franchising Code. In some cases, this allegedly included personnel costs for executives and employees who were not in marketing roles.

In the case of the Michel's Patisserie marketing fund, it is also alleged that Retail Food Group paid around \$22 million from the marketing fund to cover a range of operational and other non-marketing expenses, which included the cost of implementing a business model changing from fresh cakes to frozen in franchise stores, and part of the losses from some corporate stores.

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“The Franchising Code makes it clear that marketing funds can only be used to cover legitimate marketing and advertising expenses, administration costs, expenses disclosed to franchisees or those agreed to by a majority of franchisees.”

“We allege that Retail Food Group acted in breach of the Code, and in some cases unconscionably, by making improper undisclosed payments from the marketing funds for its own benefit, to the detriment of franchisees,” Mr Sims said.

The ACCC is seeking declarations, injunctions, pecuniary penalties, disclosure and adverse publicity orders, a compliance program order, redress orders, and costs.

Background

Retail Food Group Limited is a publicly listed company, and the ultimate holding company for a group of companies that operate one of the largest multi-brand franchise operations in Australia.

The ACCC has commenced legal action against Retail Food Group Limited, Michel's Patisserie System Pty Ltd, Brumby's Bakeries System Pty Ltd, Donut King System Pty Ltd, Jireh International Pty Ltd (Gloria Jean's Coffees), and RFGA Management Pty Ltd.

RFGA Management Pty Ltd is the principal operating entity appointed to manage the franchise systems for, and on behalf of, the other five respondents.

Retail Food Group owns and operates a number of other national franchise brands, including Crust Pizza, Pizza Capers and The Coffee Guy. The legal action commenced by the ACCC does not make any allegations in respect of these brands.

Guidance on the rights of franchisees can be found on the ACCC's website: [Franchising code of conduct](#).

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