



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID612/2019

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Prospective Applicant

JUMP LOOPS PTY LTD ACN 611 066 589 (IN LIQUIDATION) and another/others
named in the schedule

Respondent

ORDER

JUDGE: JUSTICE O'BRYAN

DATE OF ORDER: 19 May 2021

WHERE MADE: Melbourne

THE COURT DECLARES THAT:

1. The First Respondent contravened:

- (a) s 18(1) of the Australian Consumer Law (**Australian Consumer Law**), being Schedule 2 of the *Competition and Consumer Act 2010* (Cth), by engaging in conduct, in trade or commerce, which was misleading or deceptive, or likely to mislead or deceive; and
- (b) s 29(1)(g) of the Australian Consumer Law, by making, in connection with the supply or possible supply of services, and the promotion by any means of the supply or use of services, in trade or commerce, a false or misleading representation that the franchises offered by the First Respondent had certain uses, benefits or performance characteristics,

in representing, in the period from March 2016 to February 2019, to each of the persons listed in column B of Annexure A to the Reasons for Judgment of the Court in this proceeding dated today (**Judgment**), prior to the date listed at column C or D of Annexure A, that an operational swim school franchise would be provided to that person within 12 months of signing a franchise agreement when there were not reasonable grounds for making that representation.



2. The First Respondent contravened s 36(3) of the Australian Consumer Law in the period from April 2017 to March 2019 by accepting payments for a franchise from each of the persons listed in column B of Annexure B to the Judgment on or about each of the dates listed in column E of Annexure B, when at the time such payments were accepted:
 - (a) there were reasonable grounds for believing that it would not be able to supply the franchise to each person within 12 months from the date of signing a franchise agreement (which was the period specified at or before the time of accepting payment for the franchise), or within a reasonable time; and
 - (b) it ought reasonably have been aware of those grounds.
3. The First Respondent contravened s 36(4) of the Australian Consumer Law in the period from April 2016 by, having accepted payments for a franchise from each of the persons listed in column B of Annexure C to the Judgment, failing to provide those persons with a franchise within 12 months from the date of signing a franchise agreement (which was the period specified at or before the time of accepting payment for the franchise) or within a reasonable time.
4. The Third Respondent was knowingly concerned in, and party to, the contraventions by the First Respondent of ss 18(1), 29(1)(g), 36(3) and 36(4) of the Australian Consumer Law.
5. The Third Respondent was knowingly concerned in, and party to, the Second Respondent's contraventions of ss 18(1) and 29(1)(g) of the Australian Consumer Law on each occasion that the Second Respondent represented to prospective franchisees that an operational swim school franchise would be provided within 12 months of signing a franchise agreement when there were not reasonable grounds for making that representation.

AND THE COURT ORDERS THAT:

Penalty

6. Pursuant to s 224 of the Australian Consumer Law, the First Respondent pay to the Commonwealth of Australia an aggregate pecuniary penalty in the sum of \$23 million.



7. Pursuant to s 224 of the Australian Consumer Law, the Third Respondent pay to the Commonwealth of Australia an aggregate pecuniary penalty in the sum of \$400,000.
8. The penalty in order 7 is due and payable:
 - (a) if the payment in order 9 below is paid within the time required by that order, by 30 June 2022; or
 - (b) otherwise, by the date which is 50 days after the date of these orders.

Orders to redress loss

9. Pursuant to s 239 of the Australian Consumer Law, the Third Respondent must pay to the trust account of HWL Ebsworth Lawyers by the date which is 21 days after the date of these orders, the amount of \$500,000 (**Funds**) and must direct HWL Ebsworth Lawyers to apply the Funds solely in accordance with the requirements set out in the Appendix to these orders (**Redress Scheme**).
10. The Third Respondent must notify the Applicant within 24 hours of payment of the Funds pursuant to order 9.
11. Subject to, and from the date on which the Third Respondent makes, payment of the Funds pursuant to order 9 (**Scheme Commencement Date**), the Applicant and the Third Respondent must comply with the requirements set out in the Redress Scheme as applicable to each of them.
12. The Applicant and the Third Respondent have liberty to apply to the Court to vary the requirements of the Redress Scheme if they become impracticable to comply with.

Injunctions

13. Pursuant to s 232 of the Australian Consumer Law, the Third Respondent be restrained for a period of 5 years from the date of this order from being knowingly concerned in, or party to, the making of representations to a prospective franchisee concerning the timeframe for establishing an operational franchise in circumstances where there are not reasonable grounds for such representations.
14. Pursuant to s 232 of the Australian Consumer Law, the Third Respondent be restrained for a period of 5 years from being knowingly concerned in, or party to, the acceptance of payment or other consideration for the supply of goods or services for, or relating to, the business of a franchisor in circumstances where, at the time of acceptance, the person accepting the payment or other consideration is aware, or



ought reasonably to be aware, that there are reasonable grounds for believing the goods or services would not be supplied within the period specified at or before the time the payment or other consideration is accepted or, if no period is specified, within a reasonable time.

15. For a period of 3 years from the date of these orders, the Third Respondent be restrained in Australia from being in any way, directly or indirectly, involved in carrying on business as or of a franchisor, including as an individual franchisor or as an employee, director, manager, servant, agent or representative of another person (including a corporation).
16. For the purposes of these orders, the term "franchisor" has the same meaning as those terms are defined in clause 4 of Schedule 1 of the *Competition and Consumer (Industry Codes - Franchising) Regulation 2014* (Cth) as in force on 31 March 2020.

Freezing orders

17. The freezing orders made on 7 June 2019, as varied on 12 June 2019, 19 June 2019 and 28 June 2019 (the **Freezing Orders**), be:
 - (a) further varied to allow the Third Respondent to make the payment under paragraphs 7 and 9 above; and
 - (b) discharged from the date on which the Third Respondent makes the payment under paragraphs 7 and 9 above.

Confidentiality

18. Pursuant to s 37AF(1) of the *Federal Court of Australia Act 1976* (Cth), in order to prevent prejudice to the proper administration of justice, the personal and company names contained in:
 - (a) the First and Second Annexures to the Statement of Agreed Facts and Admissions dated 6 November 2020;
 - (b) the Annexure to the Supplementary Statement of Agreed Facts dated 14 December 2020;
 - (c) the First and Second Annexures to the Statement of Agreed Facts and Admissions dated 17 December 2020; and
 - (d) Annexures A to D to the Judgment,be kept confidential and:



- (i) are not to be accessed by any person other than by the Court and the parties to this proceeding and their legal advisors, including HWL Ebsworth Lawyers; and
- (ii) their contents are prohibited from being disclosed (save as between the parties) by publication or otherwise.

Other

19. The Applicant's claims against the Respondents are otherwise dismissed.
20. There be no order as to costs.
21. A copy of the Judgment in this proceeding, with the seal of the Court thereon, be retained in the Court for the purposes of s 137H of the *Competition and Consumer Act 2010* (Cth).

Date that entry is stamped: 19 May 2021


Registrar



APPENDIX Redress Scheme

1. Subject to further order of the Court, the Funds must only be paid in accordance with the terms of the Redress Scheme set out in this Appendix.
2. The persons eligible to be paid compensation from the Funds pursuant to the Redress Scheme (**eligible persons**) are those persons listed in Annexure D to the Judgment.
3. Within 14 days of the Scheme Commencement Date, the Third Respondent must provide the Applicant with all contact details (including mail and email addresses) known to the Third Respondent for each of the eligible persons.
4. The Applicant must:
 - a. within 28 days of the Scheme Commencement Date, send a notice to each of the eligible persons for which the Applicant has a last known mail address and/or email address; or
 - b. where the Applicant has no last known mail address and/or email address for any eligible person, within 45 days of the Scheme Commencement Date use its best endeavours to locate and contact them so as to provide them with a notice, stating that:
 - c. the Court has found that the Third Respondent was knowingly concerned in, and party to, contraventions of s 29(1)(g) of the Australian Consumer Law by the First and Second Respondents and ss 36(3) and 36(4) of the Australian Consumer Law by the First Respondent;
 - d. the Court has ordered the Third Respondent to pay to the trust account of HWL Ebsworth Lawyers the amount of \$500,000 (**Funds**) which is to be paid by way of partial redress to persons who have incurred loss and damage caused by the contravening conduct in the form of fees paid to the First and Second Respondents in relation to purchasing a franchise (**Redress Scheme**);
 - e. the Redress Scheme has been approved by the Court;
 - f. the recipient of the notice has been identified as one of the persons who incurred loss or damage caused by the contravening conduct;
 - g. the Funds will be insufficient to compensate fully all persons who suffered loss or damage caused by the contravening conduct and, accordingly, each person who accepts the redress will be entitled to receive a proportionate share of the



- Funds based on the amount of fees which each person paid for the franchise (to a maximum of the total amount of fees paid by each person);
- h. the recipient of the notice may choose whether:
 - (i) to accept the redress, in which case they will be bound by the order, and will not be able to bring any claim, action or demand against the Third Respondent in relation to that amount of their loss or damage that has been redressed; or
 - (ii) not to accept the redress, in which case they will not be bound by the order and will be able to bring any claim, action or demand against the Third Respondent in relation to their loss or damage;
 - i. for the avoidance of doubt, accepting the redress will not prevent the recipient of the notice from proving in the liquidation of the First and Second Respondents in relation to any loss or damage beyond the amount of redress;
 - j. in order to accept the redress, the recipient of the notice must send to the Applicant, within 28 days of receipt of the notice, a written response which includes sufficient proof of the person's identity and banking details; and
 - k. redress will be paid from the Funds paid by the Third Respondent to the trust account of HWL Ebsworth Lawyers as soon as practicable and is expected to be paid to persons accepting the redress in 30 to 60 days.
5. The notice referred to in paragraph 4 will be deemed to have been received by the person to whom it was sent:
- a. if the notice was sent by email, one day after the email was sent unless a message is received by the Applicant in that time that the email was undeliverable; and
 - b. if the notice was sent by mail, 14 days after the mail was sent by ordinary prepaid mail.
6. If the Applicant receives a message that an email sent to an eligible person was undeliverable, the Applicant will use its best endeavours to obtain a mail address for the eligible person and send a copy of the notice by mail.
7. Upon the expiry of the period within which recipients of the notice may accept the redress, the Applicant must prepare a document that:
- a. lists the eligible persons who have accepted the redress (the **participating persons**) together with their contact and bank account details; and
 - b. calculates for each participating person their proportionate share of the Funds based on the amount of fees which that person paid for a franchise (to a maximum of the total amount of fees paid by that person),



- and provide a copy of the document to HWL Ebsworth Lawyers.
8. Within 14 days of receiving the document referred to in paragraph 7, HWL Ebsworth Lawyers must disburse the Funds in accordance with the details contained in the document and notify the Applicant:
 - a. when the disbursement is complete; and
 - b. if any disbursement was unable to be made.
 9. Within 14 days of receiving notification under paragraph 8, the Applicant must provide a notice to each participating person confirming the payment of redress and the amount of the payment.



Schedule

No: VID612/2019

Federal Court of Australia
District Registry: Victoria
Division: General

Third Respondent IAN MICHAEL CAMPBELL