

Committee Secretary,
Parliamentary Joint Committee on Corporations and Financial Services.
PO Box 6100 Parliament House
Canberra ACT 2000

Dear Committee Secretary, Parliamentary Joint Committee on Corporations and Financial Services.

We wish to submit our experiences in purchasing and running 2 Jamaica Blue franchise's in [REDACTED] QLD. In making this submission it is not our intention to criticise the operations of the franchise industry, generally it works well, however we find that it is very one sided and needs reform to better balance the risks between franchisor and franchisee and remove the unfairness and greed that has crept into the industry.

We paid \$520,000 for the first business with stock on top of that in December 2011. Then had to do a refurb in March 2012 which cost an extra \$35,000.00 above what was quoted to us upon purchase of the first store, the total price of the refurb was \$155,000+gst and while the refurb was going on we were approached to open a second store which we did and it opened in Oct 2012 even though we had verbally told a Foodco representative that we had decided not to open the second store because the costs and stress level had become too much but we were told we had to open it or there would be ramifications. When we opened the second store we had some experience dealing with Foodco and we asked for a fixed price contract as they had been going to franchisee's opening new stores telling them that the store was going to cost extra. So we fixed our contract price for the store and then they came back and changed designs and items within the store to fit the price they had quoted.

When we opened the second site we were not told about the extremely high rate for electricity which has then costed us between \$3000 and up to \$5000 per month just for electricity which Foodco representatives constantly said was too high but still 5 years on and nothing done except by us.

Unfortunately, a lot of statements by Foodco staff are verbal and not written so that they can deny saying said statements and nothing is put in writing, although even if it were, there is apparently no legal liabilities in any case and we are always told that the franchisee is wrong.

Operating the business: We commenced trading in December 2011 after our training and taking over of the store we were supposed to have at least 2 weeks support by at least 1 Foodco staff member we received only 3 days as the staff

member had to go home for personal reasons. To be fair there's a big difference between the training environment and the real thing. Our problems started with a slack changeover process that I naïvely signed off on without knowing that a lot of the equipment was dated and in disrepair as everything was supposed to be serviced and in good repair before handover. Repairs to any equipment was to be covered by a retention fund left by the ex-franchisee (\$10,000), unfortunately in our case Foodco acquired most of that money for its own use and to pay off suppliers that we thought had already been paid. We had to fund the repair's ourselves.

The figures quoted by Foodco were widely overstated and after 3 months a Foodco staff member admitted verbally that they knew the figures that we were given were false. Staff members had not been on the payroll and had not received group certificates for several years on our takeover of the first store.

Comment: Revenues and profitability were overstated by Foodco. Promises of in store support for the first 2 weeks did not happen. It was "sink or swim" In short it was always the franchisees fault, and if you didn't maintain your franchisee fees, you were in trouble threatened with Default Notices, or stop shipment instructions from principle suppliers that Foodco had arrangements with. Failure to attend a conference or meeting was a major sin, often leading to threats or censure. About this time, I started to question Foodco about the cost of goods from their suppliers. It was obvious that products supplied from our major suppliers were costed at retail, whereas we could buy the same product from our local Coles and Woolworths considerably cheaper. Major suppliers were; Bidfood Pty Ltd, Coke Cola Amatil, Lion Dairy, Lombards and Jahnus coffee (majority owned by Foodco) The suppliers loaded their prices to franchisees under agreement with Foodco. Terms were arranged through Foodco, but payment was strictly enforced by a stop ship policy under direction by Foodco.

Foodco have been repeatedly questioned over the payment of these commission or kickbacks to them at the franchisees expense in many different settings e.g.(State and national conferences and meetings). Their answer, always verbally was that these margins were used to cover the cost of national conferences. We believe that this is untrue as franchisees get charged for these conferences at a rate of \$3000 per couple. Apart from the above franchisees are required to pay for their own travel cost to attend Foodco conferences every 24 months. Major suppliers also attend to promote their products. It is really an upmarket convention that the participants pay for. Further participants only received discounts and specials if they were "supplier compliant". Foodco have always been very secretive about this system.

This arrangement was never mentioned to us when we signed up. Why a franchisor would allow a distributor to charge retail price is not right. Foodco's explanation has never been good enough in our opinion.

Why should I be forced to purchase a product under a national agreement to benefit the pocket of a franchisor when I can pay less from an alternative supplier of my choosing. Surely this is non-ethical, and places additional financial pressure on the franchisee. It is contrary to one of the major reasons you would join a franchise operation.

In principle, we believe that if a franchisor has exclusive power and requires us to procure from a supplier which refunds part of our purchases directly to the franchisor. This should be part of the disclosure document at a due diligence point in the sale of any franchise in Australia, If you consider the benefit to the franchisor if the following was true, If the franchisor is given a 10% rebate on \$120,000pa of purchases per store; 100+ Jamaica Blue stores, plus 300 Muffin Break stores adds up to a considerable amount of money.

Comment; We were charged retail price for supplies via national agreement for wholesale stock. It was impossible to keep "cost of goods under 30%".

The idea was to invest capital and have the store managed while only physically working for 20 hours a week in the store as this is the information we were given when purchasing the store. We weren't even able to do that, from day one. In fact, the costings for the running of the shop were that far removed from reality. Robert worked in the business averaging 60 hours a week for most of 7 years we were in there and after 3 years Emma came into the business part-time and then eventually full time, during this time we also had our family working in the business for a minor amount to try and reduce wages. As a result, our health deteriorated considerably and in 2016 Robert [REDACTED]. We notified our Franchisor and they offered nothing of substance in the way of help, but the shop was run professionally and to a high standard, and our staff were well trained which was proven in the fact that we won several national awards for coffee chains as part of the Jamaica Blue Brand.

During our time with Foodco we have seen many franchisee's come and go and all we are ever told by Foodco is that it was always the Franchisee's fault as to why their business did not work, If we are even told that much. They were not interested in our bottom line, simply our sales and therefor their commission.

When asking for help with our financials we were repeatedly told "Send me your P&L and we will look at it for you" or "your sales are really strong" was the repeated response. As a result, nothing happened, other Jamaica Blue stores

thought our stores were doing well, the truth is that we were struggling, but wouldn't give in. Our pride, stubbornness and sense of fair play kept us going, we were not going to rollover. We had the welfare of our family and our staff to look after. Foodco always quoted individual costings as a % of revenue. It was almost like the holy grail of their operation. What they couldn't comprehend was a simple formula could not cover all outlets. Every site is different.... Examples of Foodco's and Jamaica Blues costing show considerable difference. Foodco Costings when we signed up were as follows

30% Cost of Goods

30% Wages

12% Rent

2% Electricity

9% Franchise and advertising

5% Misc eg Telephone and other items and repairs

We were told not to put our wages in as it would not be a profitable business.

Our problem was obvious, Foodco was on a growth track, it was more profitable to develop and open new sites than spend precious time supporting older stores that had problems. Whatever support we were promised never happened because they were either too involved in store changeovers or new store openings, We required assistance from Foodco, and that's what they could not provide. Their common response was to have a giveaway, "pay for one get the second free", "free coffee with every meal". Hardly earth-shattering but always at the cost of the franchisee, with little marketing support.

When we purchased the second business we relied on figures and percentages that could not be sustained. The franchisor always talked up the business, as you expect, but glossed over the downside. That downside was the business was generally not viable, and default was only a matter of time. Under the franchise agreement the franchisee has little rights. We invest all our money, take most of the risk, and generally most of the losses. The risk to the franchisor is minimal. Franchisees unfortunately rely on the Franchisors expertise to keep occupation costs down. The attraction for us was that we would have a franchisor helping and assisting and working for us.

The last Leg:

We continued to trade and ask Foodco for understanding and help, but again it was the same old story, sent us your P&Ls, your display is not right, keep your food costs down. Try our new attendance roster. "Look at your specials, lift your service" etc. During the last four months our revenues dropped by at least 17% simply caused by increased competition and general slowdown in the

economy and a lack of helpful marketing all we got was bad marketing and when asked about this marketing at state meetings every store was shut down and told they were not going to answer questions about this marketing in a group environment. We again asked for help, but nothing was forthcoming. We continued to support the business, from our own pocket. We have even gone and asked the franchisor to speak with the landlord about rental abatements and the landlord was willing to if the franchisor took a reduction in franchise fees but they then refused to do this as well. We also discussed the Financial viability with the franchisor as early as May 2017 and was told that we just had to make it work, The business became insolvent sometime between 2017 and 2018 but we were advised to just sell our personal assets to keep the business running and the franchisor getting their fees. We have been forced into liquidation by the courts just before we were about to enter voluntary liquidation last month.

Comment This is a disaster, and it's common. It's disappointing that this occurred, most of it provided by an organisation focused on greed. Everything Foodco does attracts a fee. Excessive markups are common, you pay to get in, you pay to remain and you still pay when you sell or leave. And when you leave, they will chase you for anything owed.

Summary:

Financial information supplied by Foodco not correct. Threats by senior Foodco staff, Demands that Franchisees attend functions. Monetary penalties for non-compliance, Demands to acquire goods from Foodco nominated suppliers, Unfair franchise agreement, Overactive legal department, Lack of support,

Thank you for reviewing my case.

Sincerely,

Robert Whittet & Emma Forsyth