

# FRANCHISE SCAMS

Small businesses go by any number of labels, but some sellers of businesses will go to extraordinary lengths to call their operation anything other than a franchise.

Several cases have been reported to the ACCC where businesses attempted to avoid complying with the mandatory Franchising Code of Conduct by trying to mask their businesses as something else.

Regardless of whether it is being sold as an investment or licensing arrangement, if a business meets the broad definition of a franchise, then that is how it will be treated by the law. That law, contained in the Trade Practices Act, imposes a number of requirements on the seller, such as the need to provide a disclosure document and a seven-day cooling-off period.

If a franchise is being passed off as something it is not, it may prove to be little more than a scam.

Typical tactics used by scammers include pushing for a quick sale, pressuring victims into thinking they will miss a golden investment opportunity unless they respond quickly, and promoting the investment as an inside tip or one-off opportunity.

Tactics or claims that a business does not need to comply with the Franchising Code of Conduct should set alarm bells ringing for prospective investors.

A genuine franchisor will never put pressure on an investor to sign up quickly, as it is in their own interest to ensure the most suitable person buys into the system.

They will also provide documentation about the business at least a fortnight before a franchise agreement is signed and advise the investor to seek independent legal or financial advice and come back with signed evidence that they have done so, or have waived their right to do so.



Scammers looking to exploit prospective franchisees also target more vulnerable sectors of the community such as migrant communities or people tempted to invest heavily with their life savings to chase a better standard of living.

Scammers also target retirees who are often unsure of how best to invest their savings and may be lured into parting with their money.

Remember, you wouldn't buy a car without first doing some research, taking it for a test drive and comparing it to other cars. So why would you decide to part with a potentially much larger sum of money to invest in a franchise without at least the same level of caution?

**There are no short cuts to success, and all businesses depend on hard work, compliance with the law and dedication to long-term goals.**

While the ACCC can and does act against fraudsters, it is often difficult or impossible to retrieve money once it is gone.

Keeping the chequebook in your pocket until you have covered all bases is a much safer and far less painful option than trying to chase your life savings once they have disappeared.

## MISLEADING CLAIMS

During September this year the ACCC accepted court enforceable undertakings from the owners of a home-based résumé business for allegedly misleading potential business investors.

The Perth-based business, run by Burnan Pty Ltd, was accused of making misleading claims about the profitability of its résumé writing services, sold as business opportunities for \$22 000 each.

Investors were allegedly told that by signing up for the business they could expect to earn up to \$96 000 a year.

Burnan acknowledged the ACCC's concerns that some of its actions could place the company at risk of breaching the Trade Practices Act.

Burnan undertook to stop making representations that prospective buyers could expect to make a specific daily amount of money once training was completed.

It also agreed to implement a trade practices compliance program and review all advertising and selling practices, and to ensure claims about current or future earnings potential were not misleading or deceptive.

## SKIRTING THE LAW

In February this year the Federal Court found that a Melbourne-based employment and recruitment business was in fact a franchise, and had breached the Trade Practices Act by not complying with the mandatory Franchising Code of Conduct.

Contact Plus had promoted, marketed and sold licences nationally to investors, some paying a \$60 000 lump sum licensing fee.

Justice Weinberg found that although the businesses had been sold as licensing arrangements, they were in fact franchises, and Contact Plus had failed to comply with the law by not providing investors with proper disclosure documents, terminating franchise agreements without following the procedures provided under the code and providing other protection afforded by the code.

The court also found Contact Plus had misrepresented the liability for a lump sum licence payment to franchisees and that the lump licence fees disputed in the proceedings were not enforceable.

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