

From: [Franchising Review](#)
To: [REDACTED]
Subject: FW: Submission: Review of the Franchising Code of Conduct [SEC=OFFICIAL]
Date: Tuesday, 21 November 2023 12:45:17 PM

OFFICIAL

To the Treasury,

I am writing to give you a comprehensive submission about the Franchising Code of Conduct. This submission is informed by my experience as a franchisee of UFC GYM Australia, substantiated by a recent Federal Court judgment in favour of the franchisees (**Girchow Enterprises Pty Ltd v Ultimate Franchising Group Pty Ltd (Final Hearing) [2023] FCA 420**). I also want to highlight certain actions of Ultimate Franchising Group (UFG) and their administrator, [REDACTED], which warrant attention.

Section A: General Questions

Emerging Legal Structures and Unethical Conduct: The franchisor's use of shell companies, trusts, and other complex legal structures to evade legal and financial liabilities could circumvent the spirit of the Franchising Code. This raises concerns about the potential for activities resembling illegal Phoenix activity by going into the Voluntary Administration and repurchasing the company for loose change, thereby undermining the integrity of the entire legal system. The current framework is inadequate in preventing these complex legal structures that facilitate improper conduct.

Section E: Enforcement and Dispute Resolution

Pervasive Misrepresentation and Breach of ACL: The franchisor engaged in pervasive misrepresentation, including the non-disclosure of the CEO's previous federal court ruling for misrepresentation in a separate franchising issue. This omission is a glaring violation of the disclosure requirements under the Code, as well as a breach of the Australian Consumer Law (ACL).

Manipulation of Establishment Costs: The franchisor's manipulation of establishment costs, inflated to nearly double the disclosed amounts, constitutes a calculated effort to mislead prospective franchisees. This violates the ACL and erodes the trust that is fundamental to the franchisor-franchisee relationship.

Operational Expenses and Supplier Relationships: The franchisor's non-disclosure and misrepresentation of operational expenses and relationships with suppliers, many of whom were family members of the CEO, further exacerbate the power imbalance. This raises questions about potential conflicts of interest and the balance of power in the franchisor-franchisee relationship.

Retaliatory Conduct and Abuse of Power: The franchisor's retaliatory conduct post-complaint, including the imposition of frivolous breach notices to deter franchisees and increase legal costs to defend, indicates bad faith and undermines the integrity of the dispute resolution process under the Code. The perceived exploitation of power imbalances between the franchisor and franchisees could be inconsistent with the Code and general contract law principles.

Legal and Financial Toll on Franchisees: The protracted legal battle, which cost franchisees \$850,000 in legal fees and took four years to reach judgment, demonstrates the severe imbalance of power and the franchisor's ability to act with impunity. This has a chilling effect on other potential litigants who may be dissuaded from seeking justice due to the high costs and risks involved.

Asset Protection and Evasion: The franchisor's anticipatory conduct in moving assets to protect personal assets and evade liability further illustrates the need for a comprehensive overhaul of the Code. This premeditated asset protection strategy indicates bad faith and a calculated effort to undermine the rule of law.

DOCA [REDACTED] a DOCA that would hand back the company to the directors and for the directors to avoid all liability for the orders and the creditors be paid 1c on each dollar indicates misapplication of the voluntary administration process. Such actions might be perceived as an attempt to avoid piercing the corporate veil and holding the directors personally liable in a liquidation event.

ACCC Complaints: Numerous complaints filed with the Australian Competition and Consumer Commission (ACCC) against the franchisor have exposed a systematic pattern of gross misrepresentation in relation to fit-out and operational costs. Furthermore, I believe the franchisor's dealings were oppressive and that there might be concerns about the use of marketing funds. Despite the number of complaints to the ACCC, there was limited response. Additionally, the franchisor enforced exclusive arrangements with third parties, resulting in undisclosed additional revenue for the franchisor and significant financial strain on franchisees.

Like many regulatory bodies, I recognise that the ACCC operates with finite resources and cannot oversee every complaint in exhaustive detail. However, this situation may inadvertently convey to some franchisors that they can operate with relative impunity, knowing that regulatory oversight might be stretched thin. I've also received feedback from the ACCC indicating that they typically prioritise actions that have broader implications for the community at large. While I understand this approach, it does raise concerns for small family businesses like mine, which may feel that their grievances, no matter how devastating, are overshadowed by more widespread albeit negligible consumer issues in comparison. The welfare of individual families and small businesses should also be of paramount importance in our regulatory landscape.

Impact on Franchisees and Call for Reform: Historically, the pronounced trajectory of franchisees adversely affected by the conduct of numerous Australian franchisors—many of which have unfortunately evaded the limelight—underscores the imperative for legislative and regulatory reform. The prevailing circumstances necessitate a meticulous re-evaluation of the Code. This includes the incorporation of robust enforcement mechanisms, such as mandatory arbitration or conciliation at subsidised rates, to ensure equitable access to justice for aggrieved parties. Additionally, the imposition of more severe penalties is paramount to deter potential contraventions. Furthermore, reforms should be introduced to preclude franchisors from obfuscating their liabilities and responsibilities by taking refuge behind intricate corporate and trust structures. It might also be prudent to contemplate the establishment of a specialised regulatory entity analogous to the AFCA in the financial sector. Such an institution should be vested with statutory powers to initiate and oversee corrective measures, always subject to the requisite judicial scrutiny to maintain the balance of power and ensure due process.

I respectfully request the Treasury to take into account these observations during its ongoing review of the Franchising Code of Conduct. While I stand ready to delve deeper into any of these issues, this submission primarily serves to highlight some of the challenges I have personally encountered.

I appreciate you taking the time to look at my submission.

P.S. During the course of the litigation, I began my studies for the Juris Doctor of Law at the University of Western Australia. As I approach the completion of my degree, I find myself frequently reflecting on the complexities of our legal landscape. It remains a challenge for me to reconcile how certain actions can seemingly navigate the peripheries of our esteemed judicial system.

Regards,
Karim Girgis

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