

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 17/06/2019 10:22:18 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Concise Statement  
File Number: VID612/2019  
File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v IAN  
MICHAEL CAMPBELL & ORS  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 17/06/2019 3:33:29 PM AEST

Registrar

A handwritten signature in blue ink, appearing to read 'Warwick Soden'.

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



## CONCISE STATEMENT

Federal Court of Australia  
District Registry: Melbourne  
Commercial and Corporations NPA  
Regulator and Consumer Protection sub-area

No VID / 2019

### AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

**JUMP LOOPS PTY LTD (ACN 611 066 589)**  
**(AND OTHERS LISTED IN THE SCHEDULE)**

Respondents

#### A. OVERVIEW

1. The Applicant (**ACCC**) alleges that the First Respondent (**Jump Loops**) and its holding company, the Second Respondent (**Swim Loops Holdings**), made false or misleading representations about the time it would take to set up an operating swim school business franchise, in contravention of ss 18 and 29 of the *Australian Consumer Law (ACL)*, and that Jump Loops accepted payment from franchisees without providing operational franchises within the time specified or within a reasonable time, and in circumstances where it did not have reasonable grounds to believe it could do so, in contravention of s 36 of the ACL. The ACCC also alleges that Swim Loops Holdings was involved in Jump Loops' contraventions, and the director of the companies, the Third Respondent (**Mr Campbell**) was involved in both companies' contraventions.

#### B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

2. Since March 2016 Jump Loops has conducted business as the franchisor of JUMP! Swim Schools (**Jump Swim Schools**), and has promoted those franchises for sale to prospective franchisees. The rights and services to be provided under Jump Loops' franchise agreements are 'services' within the meaning of s 2 of the ACL. These included the supply of premises, fit out, training and associated rights to operate a Jump Swim Schools franchise, capable of providing learn-to swim services to the public.
3. The franchises were promoted, relevantly, by Jump Loops and Swim Loops Holdings sending an email to potential franchisees, who had responded to advertisements, attaching a brochure entitled 'Come on board with a Jump! Swim Schools franchise'. There were 3 versions of the brochure in the period since March 2016. Mr Campbell, who was described in the brochure as 'Founder and Managing Director', provided final authorisation and participated in preparing and distributing the brochures.

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Filed on behalf of the Applicant, the Australian Competition  
and Consumer Commission

File ref: 19002988

Prepared by: Matthew Crowley  
AGS lawyer within the meaning of s 551 of the *Judiciary Act*  
1903

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4. Each franchise was sold on a 'turn-key' basis, with a swim school business to be handed over to the franchisee ready to operate. The brochure conveyed prominently, under the heading 'Why Jump', that an operational franchise would be provided within 12 months of a franchisee signing up to a franchise deed (**Representation**).
5. The Representation was false, misleading or deceptive, and/or likely to mislead or deceive, because most franchisees were not provided with an operational franchise within 12 months of signing-on to a franchise deed. In some cases no operational franchise was provided at all, and in other cases operational franchises were provided within a much longer timeframe than 12 months. As at 12 March 2019, at least 88 franchisees were still waiting in excess of 12 months for an operational franchise. The average wait time among these franchisees was 540 days (and in some cases, franchisees were waiting longer than 3 years).
6. To the extent the Representation was with respect to future matters, the ACCC relies on s 4 of the ACL and contends that Jump Loops and Swim Loops Holdings did not have reasonable grounds at all relevant times for making the Representation.
7. At all relevant times, Jump Loops and Swim Loops Holdings knew, or reasonably ought to have known, that the timing for Jump Loops' delivery of operational franchises was dependent on events which were outside of Jump Loops' control and that there was no reasonable grounds for representing that operational franchises would be delivered within 12 months of signing the franchise deeds.
8. From at least April 2017, Jump Loops and Swim Loops Holdings knew that Jump Loops had failed to supply operational franchises within 12 months of having entered into franchise deeds. Jump Loops failed to supply operational franchises within 12 months of signing a franchise deed to:
  - 8.1. at least 9 franchisees by mid-2017;
  - 8.2. at least 49 franchisees by mid-2018; and
  - 8.3. at least 94 franchisees by March 2019.
9. Jump Loops accepted from franchisees payment of various fees for setting up a Jump Swim School. The initial costs of setting up a Jump Swim School generally ranged from \$150,000 to \$175,000 per franchisee. Mr Campbell participated in accepting payment from franchisees, and Swim Loops Holdings treated monies received from franchisees as revenue of its group of companies.
10. At the time Jump Loops accepted the payments, there were reasonable grounds for believing that Jump Loops would not be able to provide the operational franchises to the relevant franchisees within 12 months of signing a franchise deed (which Jump Loops had specified by the conduct described in paragraph 4 above) or within a reasonable time. At all relevant times, Jump Loops was aware, or ought reasonably to have been aware of the absence of those grounds.
11. Further or alternatively, Jump Loops did not supply the operational franchises within the specified period or within a reasonable time of accepting payment.

12. Swim Loops Holdings is the holding company for a group of companies, including Jump Loops, which conduct the business of Jump Swim Schools; and Swim Loop Holdings also owned the intellectual property for the business. At all relevant times, Mr Campbell was the managing director of the group, including Jump Loops and Swim Loops Holdings. Mr Campbell was responsible for and had knowledge of all aspects of the operation and management of Jump Loops and Swim Loops businesses, including marketing and selling franchises. The knowledge of Jump Loops was therefore shared by Mr Campbell and Swim Loops Holdings.

### **C. THE RELIEF SOUGHT FROM THE COURT**

13. The ACCC seeks the relief set out in the accompanying Originating Application.

### **D. THE PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT**

14. For the reasons set out in paragraphs 2 to 9 above, by making the Representation, Jump Loops and Swim Loops Holdings, in the period from March 2016 until at least May 2018, or alternatively, the date on which Jump Loops and Swim Loops Holdings ceased providing copies of the brochure to prospective franchisees (a date which is best known to the respondents), in trade or commerce:
  - (a) engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18(1) of the ACL; and
  - (b) made a false or misleading representation that the franchises provided by Jump Loops to franchisees had the uses, benefits or performance characteristics described in the brochures, in contravention of s 29(1)(g) of the ACL.
15. For the reasons set out in paragraphs 2 to 12 above, in the period from at least April 2017 until at least 21 January 2019, Jump Loops contravened s 36(3) of the ACL by accepting payment for the franchises where there were reasonable grounds for believing that Jump Loops would not be able to supply the operational franchise to each relevant franchisee within the specified period of 12 months of signing a franchise deed or a reasonable time, and in circumstances where Jump Loops was aware or ought reasonably to have been aware of the absence of those grounds.
16. For the reasons set out in paragraphs 2 to 12 above, in the period from March 2016 at least 21 January 2019, Jump Loops contravened s 36(4) of the ACL by not supplying the operational franchises to each franchisee within the specified period of 12 months of signing a franchise deed or a reasonable time of accepting payment.
17. For the reasons set out in paragraphs 2 to 13 above, Swim Loops Holdings had actual knowledge of the essential facts constituting the contraventions by Jump Loops, and participated in the contraventions, and was thereby involved (within the meaning of s 2 of the ACL) in its contraventions.
18. For the reasons set out in paragraphs 2 to 13 above, Mr Campbell had actual knowledge of the essential facts constituting the contraventions by Jump Loops and

Swim Loops Holdings, and participated in the contraventions, and was thereby involved (within the meaning of s 2 of the ACL) in their contraventions.

**E. THE ALLEGED HARM**

19. The contravening conduct caused loss or damage to franchisees, both in respect of the fees that were paid without receiving operational franchises, and in the time, effort and money expended, and consequential losses incurred such as ongoing costs associated with commencing a business including rental payments, in anticipation of receiving operational franchises when this did not eventuate within the 12 month timeframe or at all.

Date: 17 June 2019



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Signed by Matthew Crowley  
Australian Government Solicitor  
Lawyers for the Applicant

This Concise Statement was prepared by Matthew Crowley and James Docherty of Australian Government Solicitor, and Oren Bigos of Counsel.

## Schedule

No. VID of 2019

Federal Court of Australia  
District Registry: Victoria  
Commercial and Corporations NPA  
Regulator and Consumer Protection Sub-area

### Respondents

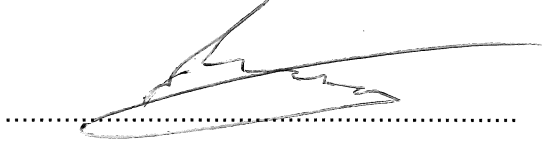
Second Respondent: **SWIM LOOPS HOLDINGS PTY LTD (ACN 607 815 636)**

Third Respondent: **IAN MICHAEL CAMPBELL**

**CERTIFICATE OF LAWYER**

I Matthew Crowley certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the concise statement.

Date: 17 June 2019

A handwritten signature in black ink, appearing to read 'Matthew Crowley', is written over a horizontal dotted line.

Matthew Crowley  
AGS lawyer  
for and on behalf of the Australian Government Solicitor  
Solicitor for the Applicant