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## GENERAL NOTICES ALGEMENE KENNISGEWINGS

### NOTICE 2013 OF 1998

#### DEPARTMENT OF TRADE AND INDUSTRY

#### HARMFUL BUSINESS PRACTICES ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10 (3) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), publish the report of the Business Practices Committee on the result of an investigation made by the Committee pursuant to General Notice No. 1009 of 1997 as published in *Government Gazette* No. 18116 dated 11 July 1997, as set out in the Schedule.

**A. ERWIN**

Minister of Trade and Industry

### KENNISGEWING 2013 VAN 1998

#### DEPARTEMENT VAN HANDEL EN NYWERHEID

#### WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, Alexander Erwin, Minister van Handel en Nywerheid, publiseer hiermee, kragtens artikel 10 (3) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), die verslag van die Sakepraktykekomitee oor die uitslag van die ondersoek deur die Komitee gedoen kragtens Algemene Kennisgewing No. 1009 van 1997 soos gepubliseer in *Staatskoerant* No. 18116, gedateer 11 Julie 1997, soos in die Bylae uiteengesit.

**A. ERWIN**

Minister van Handel en Nywerheid

**SCHEDULE • BYLAE****BUSINESS PRACTICES COMMITTEE****REPORT IN TERMS OF SECTION 10 (1) OF THE HARMFUL BUSINESS PRACTICES ACT, 1988 (ACT No. 71 OF 1988)****Report No. 61****GOLDEX CC AND JESS CAWOOD AND OTHERS****CONTENTS**

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**1. Introduction**

The Business Practices Committee (the Committee) was established in terms of section 2 of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988) ("the Act"). The purpose of the Act is to provide for the prohibition or control of harmful business practices. A "harmful business practice" is any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer or deceiving any consumer.

The Committee has wide investigative powers. It could undertake a preliminary investigation in terms of section 4 (1) (c) of the Act into the business practice as applied by any entity. A section 4 (1) (c) investigation enables the Committee to make such preliminary investigation as it may consider necessary into, or confer with any interested party concerning, any harmful business practice which allegedly exists or may come into existence. Notice of section 4 (1) (c) investigations are not published in the *Government Gazette* as opposed to section 8 (1) (a) investigations. The purpose of section 4 (1) (c) investigations is to enable the Committee to decide whether a section 8 (1) (a) investigation is called for. The Minister of Trade and Industry is not empowered to make any decisions to prohibit a practice on the strength of a section 4 (1) (c) investigation. He may do so in terms of a section 8 investigation.

**2. The complaint**

The business practices of Goldex CC, trading as Rampage, came to the attention of the Committee when it received complaints from consumers against Rampage. The members of Goldex as published in *Government Gazette* No. 18116 of 11 July 1997 are J. Rosen; J. Cawood, and J. de Lange. The spokesperson of Goldex CC was Cawood, who *inter alia* sold franchises. The complainants bought franchises from Cawood and complained about several claims made by Cawood that he could not prove.

The complainants said that they bought franchises involving a "heat press" system that could be used to print transfers on cloths, such as T-shirts. Cawood led them to believe that he was the sole distributor of the machines and transfers in South Africa. This was a reason why the consumers bought the franchise. One of the complainants stated that Cawood could not supply all the transfers that he promised and those that he did supply could also be obtained from other distributors in South Africa.

**3. Franchising**

Franchising is a business arrangement by which the franchisor grants to the franchisee the right to sell the franchisor's products or services according to the guidelines set down by the franchisor. The franchisee uses the franchisor's name, goodwill, products and services, marketing procedures, expertise, systems and support facilities. In exchange the franchisee usually pays the franchisor an initial fee and ongoing management services fees (or royalties) as stipulated in the franchise agreement. This fee pays for the ongoing support services provided by the franchisor and allows for a profit for the franchisor.

The interdependence between the franchisee's turnover and the support provided by the franchisor is what makes franchising such an attractive proposition, because each party wants the other to succeed. The franchisee is at the sharp end of the market and is concerned with maximising returns through consumer satisfaction. The franchisor concentrates on maintaining the competitive edge of the product or service and providing the support services necessary to help the franchisee concentrate his sales efforts effectively.

More than 5 000 franchise businesses, generating more than R12,5 billion in sales annually, are distributed over the South African landscape. Sales by franchised businesses account for approximately six per cent of retail turnover and more than 92 000 people draw their salaries or wages from a franchised business.

A prerequisite for successful franchising is that the franchisor must have in place the following: an existing good name, goodwill, a successful product or service, marketing procedures, expertise, systems and support facilities. Should a "franchise" on offer lack these prerequisites it is not a true franchise.

The Committee receives many complaints from franchisees against franchisors. Often these "franchisors" do not sell franchises as set out above. Often the goodwill, products and services, marketing procedures, expertise, systems and support facilities do not even exist. Many consumers believe that when they buy any "franchise" they are on the road to success and financial freedom. Often these purchases pave the way for failure and financial hardship.

It should not be overlooked that consumers also have a part to play. They must become fully conversant with their rights and obligations as they are set out in any relevant contract and should obtain legal advice before entering into franchise contracts.

#### 4. Events leading to the investigation

In a newsletter dated **11 April 1996** sent by Cawood to franchisees, it was stated *inter alia* that the former Transvaal Education Department (TED) approved two "Spellchecker" models, namely the Franklin DMQ 440 Bookman and the Franklin SMQ 100 Spellmaster. It was also stated in the newsletter that a "Rapid Aids Test" would soon be available to franchisees. These products were an extension of the product range offered by Cawood to franchisees. No approval to the spell checkers from the TED existed. It merely approved that the spell checkers could be listed in its Media Guide. Consumers were misled into believing that the TED approved the spell checkers.

An advertisement was placed by Cawood in the Daily News of **23 and 24 April 1996**. This advertisement stated:

"**BUSINESS OPPORTUNITY OF THE YEAR NOW FINALLY IN KWAZULU-NATAL.** Become part of a Multi-Million Rand Industry! The latest trends in sportswear, T-shirts and more from the USA and Europe is now available. Including famous American trend-setters in the clothing industry. Exciting Revolutionary Pharmaceutical ranges (First in the world) Spellmasters (Awaiting approval by relevant Government Departments) Telephone associated systems (With generous corporate savings) a part of the package. Become part of this dynamic undertaking, valued at more than R100 000.00 at a one-time cost of only R27 000.00 (Stock included). *Agencies available:* Kwa-Zulu Natal. Transvaal and Free State totally sold out. **BE FIRST AND CALL!** Rampage. 665 Moreletta Str. Silverton 0184, Pretoria. Senior Partner—Jess Cawood. **HEADOFFICE:** (012) 86-2113/2114/9556. **FAX:** 082 414 2742. **CEL:** 082 892 3590."

The exaggerated claims in this advertisement speak for itself. The use of the word "headoffice" implied that there were at least regional offices. The head office was in a residential area in Silverton.

In a letter dated **15 May 1996** the Committee brought the complaints to the attention of Cawood and he was asked to respond to the allegations. Cawood responded on **29 May 1996** and stated:

"We are unable to understand what is meant by the exclusive right to manufacture. Our product is not manufactured and we have never represented in any way that "manufacture" is involved. Our agreement gives Franchisees the exclusivity to the process and for the **Heat Presses** for operation in designated areas.

There are numerous manufacturers of transfers throughout the world. We claim only that we have the largest selection available in SA and have exclusivity to Impulse Wear, the newly introduced range. Certain of the other ranges are available.

The clothing, fashion and T-shirt industry is a Multi Million Rand Industry and we and our franchisees are part of that industry.

We enclose approval from the Department of Education.

We trust that the foregoing clarifies your concerns but would be willing to assist in any further queries which you may have

(Signed) Jess Cawood."

On **29 January 1997** two officials of the Committee visited Cawood at his office/home in Silverton. During the meeting Cawood undertook to furnish the Committee with a number of documents. An official later called Cawood on several occasions to enquire when the documents would be put at the disposal of the Committee, but he was never available. Eventually the official arranged to collect the required information at the Rampage offices on **25 February 1997**. On 24 February 1997 the official received a call from Mr J. Rosen (Rosen), the financial manager of Rampage. Rosen asked the official which documents the Committee required. This was somewhat strange because three days previously Cawood indicated that the documentation would be available.

On **27 February 1997** the Committee again wrote to Cawood. The following is an excerpt from this letter:

"On page 2 of the agreements entered into between Rampage and franchisees, it is stated *inter alia*:

**Whereas the Franchisor has a Business System of Heat Pressed and Pre-Printed Transfer Designs as well as a Unique Range of Clothes branded and Labelled as "Coed Naked" and other similar ranges of clothes—**

**And Whereas the franchiser is the owner of certain intellectual property rights used in conjunction with the Business System— . . . ."**

The Committee would appreciate written evidence as to:

- (i) the unique range of clothes branded and labelled as "Coed Naked"; and
- (ii) the ownership of the "certain intellectual Property Rights".



In a letter dated 29 May 1996 to the Committee you stated:

"Our agreement gives Franchisees the exclusivity to the process and for the **Heat Presses** for operation in designated areas . . . There are numerous manufacturers of transfers throughout the world. We claim only that we have the largest selection available in SA and have exclusivity to Impulse Wear, the newly introduced range . . . We enclose approval from the Department of Education".

The Committee would appreciate written evidence to—

- (iii) the exclusivity to the process;
- (iv) the exclusivity for the Heat Presses;
- (v) the claim that Rampage has the largest selection available in SA;
- (vi) approval from the Department of Education. Please note that there is a difference between approval of the product and approval to have an item listed in the "media guide."

By **12 March 1997** Cawood had not yet furnished the required information and he was reminded by fax about the consequences of a section 8 (1) (a) investigation in terms of the Act. On the same date Rosen faxed a letter to the Committee and apologised for not responding to the letter of the Committee dated 27 February 1997. He said that the "... files have been misplaced and I need to replace certain of the documentation required". He begged the Committee's indulgence for at least two weeks because he was leaving for the United States of America on the same day.

On **1 April 1997** Rosen was again asked to supply the required information. This request was ignored. On **21 April 1997** an attorney of Rampage visited the offices of the Committee. He said that the required information would be available by **28 April 1997**. On **5 May 1997** an official again called the attorney. He then said that he "... will come back to the Committee within two days". On **7 May 1997** the attorney again visited the offices of the Committee and promised to "... get back to us next week". He responded on **16 May 1997** but failed to supply the required information. During the discussions with the attorney, the officials were led to believe that the complainants would be refunded. This never materialised.

On **2 June 1997** the Committee wrote the following letter to Cawood:

"I refer to previous correspondence and discussions about this matter. On 29 January 1997 two officials of the Committee held discussions with you at 665 Moreletta Street, Silverton. During this meeting you undertook to furnish the Committee with a number of documents and written answers to questions put to you during the meeting.

In a letter dated 27 February 1997 to you, the Committee expressed its concern with your apparent reluctance to furnish it with the required information. On 12 March 1997 the Committee again reminded you that the information was still outstanding. On the same date the Committee received a letter from Mr Rosen, your financial manager. He stated that he would be away for two weeks and that he would respond to the letter of the Committee on his return. He did not do so.

On 1 April 1997 the Committee again faxed a letter to Mr Rosen. This letter was ignored. On 21 April 1997 your attorney, Mr Opperman, visited the offices of the Committee. He said that he would come back to the Committee with an answer on 28 April 1997. On 5 May 1997 an official again spoke to Mr Opperman who then said that he, "... will get back to the Committee within two days". Mr Opperman again visited the offices of the Committee on 7 May 1997 with the promise to "... get back to us next week."

You would agree that the Committee have given you ample time and opportunity to furnish the required information. The Committee resolved at its meeting held on 29 May 1997 to conduct a formal investigation into the business practices of yourself and Goldex CC trading as Rampage.

The following notice will appear in the *Government Gazette* to be published on 13 June 1997:

"In terms of the provisions of section 8 (4) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Business Practices Committee intends undertaking an investigation in terms of section 8 (1) (a) of the said Act into the business practices of J. Cawood and Goldex CC trading as Rampage, and any promoter or member (as applicable), of the named Goldex and any employee, agent and/or representative of any of the aforementioned.

Any person may within a period of 14 (fourteen) days from the date of this notice make written representations regarding the above-mentioned investigation to the Secretary, Business Practices Committee, Private Bag X84, Pretoria, 0001. Tel. (012) 310-9570. Fax (012) 322-8489. Ref. H101/20/10/18(96)".

The Chairman of the Committee would also issue a press statement about the impending investigation.

There was no response from Cawood before or after publication of the notice of the section 8 (1) (a) investigation. J. de Lange's involvement with the marketing of the franchises could not be proven during the investigation.

## 5. Conclusion

The Committee bend backwards as far as it could to enable Cawood to substantiate the claims made by him. No evidence was led that these claims were true and the Committee believes that no "Business System" or "Unique Range of Clothes" branded and Labelled as "Coed Naked" existed. Cawood could not prove that he had any exclusive rights to any process or any Heat Presses or that Rampage had the largest selection of transfers available in South Africa. The approval from the Department of Education was restricted to a recommendation in a media guide, it was not the approval of a specific product.

Whether, by design or accident, the business practices of Cawood through Rampage constitute harmful business practices. There are no grounds justifying the practices in the public interest.

**6. Recommendations**

It is accordingly recommended that the Minister under section 12 (1) (b) of the Act declares unlawful the business practice whereby J. Rosen and J. Cawood, in any way whatsoever, and any employee, agent or representative of a business in which the above mentioned parties have an interest, in the course of business sell or offer for sale any type of franchise business to the public or receive funds from potential franchisees.

This prohibition by the Minister will not apply should J. Rosen, J. Cawood or any employee, agent or representative of a business in which the mentioned parties have an interest, in the course of business sell or offer for sale any type of franchise business while complying with the conditions of full membership or associate membership of the Franchising Association of South Africa.

**L. A. TAGER**

**Chairman: Business Practices Committee**

14 July 1998

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**NOTICE 2014 OF 1998**

**DEPARTMENT OF TRADE AND INDUSTRY**

**HARMFUL BUSINESS PRACTICES ACT, 1988**

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in Notice No. 1009 of 1997 published in *Government Gazette* No. 18116 of 11 July 1997, which report was published in Notice 2013 in *Government Gazette* No. 19243 of 18 September 1998, and being of the opinion that a harmful business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12 (1) (b) and (c) of the Harmful Business Practices Act (Act No. 71 of 1988), as set out in the Schedule.

**A. ERWIN**

**Minister of Trade and Industry**

**SCHEDULE**

In this notice, unless the context indicates otherwise—

“harmful business practice” means—

- (a) directly or indirectly inviting the public to buy franchises; or
- (b) receiving funds from franchisees,

unless the parties comply with the conditions of full membership or associate membership of the Franchising Association of South Africa.

“the parties” means Goldex CC (CK94/35049/23) trading as Rampage, J. Rosen and J. Cawood, and any employee, agent or representative of any of the above-mentioned.

1. The harmful business practice is hereby declared unlawful in respect of the parties.
2. The parties are hereby directed to—
  - (a) refrain from applying the harmful business practice;
  - (b) cease to have any interest in a business or type of business which applies the harmful business practice or to derive any income therefrom;
  - (c) refrain from at any time applying the harmful business practice; and
  - (d) refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the harmful business practice.
3. This notice shall come into operation upon the date of publication hereof.

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**KENNISGEWING 2014 VAN 1998**

**DEPARTEMENT VAN HANDEL EN NYWERYHEID**

**WET OP SKADELIKE SAKEPRAKTYKE, 1988**

Ek, Alexander Erwin, Minister van Handel en Nywerheid, na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan in Kennisgewing No. 1009 in *Staatskoerant* No. 18116 van 11 Julie 1997 kennis gegee is, welke verslag gepubliseer is by Kennisgewing 2013 in *Staatskoerant* No. 19243 van 18 September 1998, is van oordeel dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, en oefen hiermee my bevoegdheid uit kragtens artikel 12 (1) (b) en (c) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), soos in die Bylae uiteengesit.

**A. ERWIN**

**Minister van Handel en Nywerheid**

**BYLAE**

In hierdie kennisgewing, tensy uit die samehang anders blyk, beteken—

**“die partye”** Goldex CC (CK94/35049/23) handeldrywend as Rampage, J. Rosen en J. Cawood, en enige werknemer, agent of verteenwoordiger van enige van die bogenoemde.

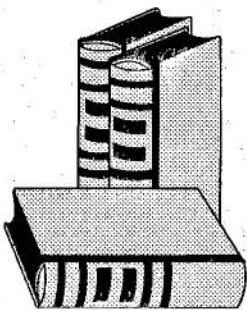
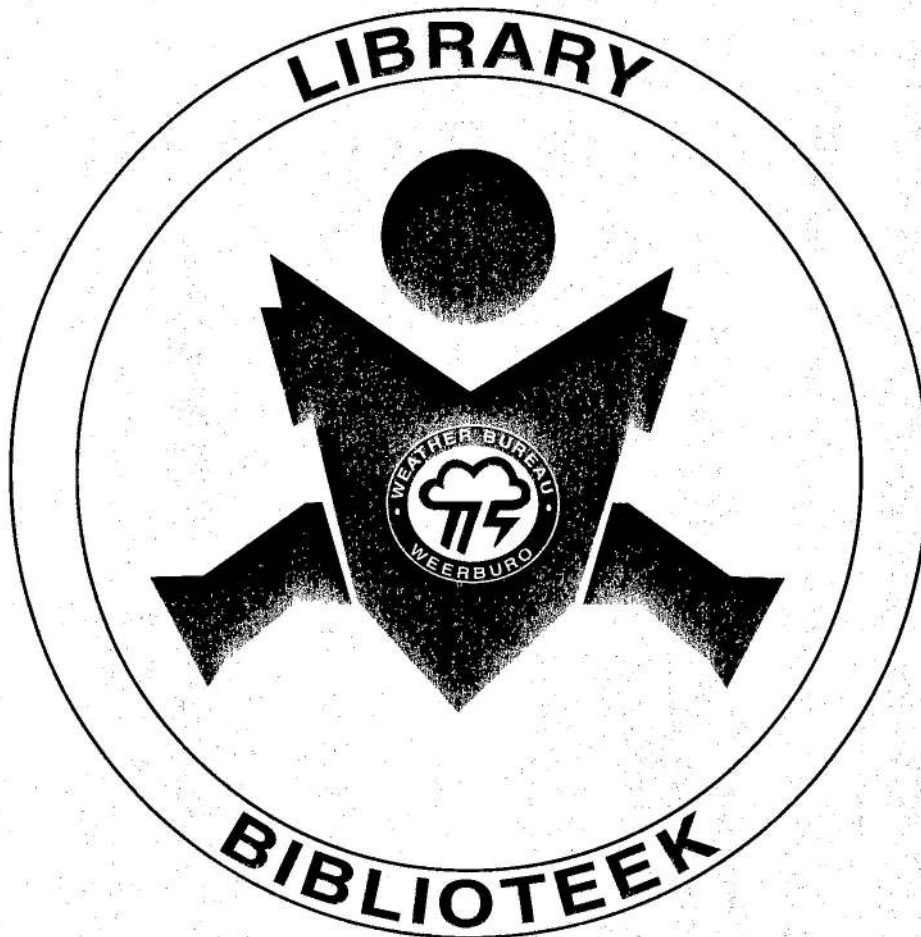
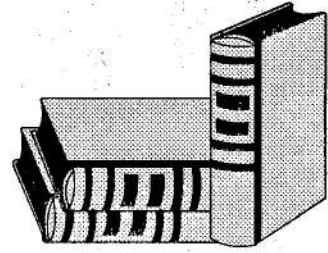
**“skadelike sakepraktyk”** die sakepraktyk waardeur die partye—

- (i) regstreeks of onregstreeks uitnodigings aan die publiek rig om konsessies te koop; of
- (b) fondse te ontvang van konsessiehouers,

tensy die partye voldoen aan die voorwaardes van volle lidmaatskap of meegaande lidmaatskap van die Franchising Association of South Africa.

1. Die skadelike sakepraktyk word hiermee ten opsigte van die partye onwettig verklaar.
  2. Die partye word hiermee gelas om—
    - (a) af te sien van die toepassing van die skadelike sakepraktyk;
    - (b) op te hou om enige belang in 'n besigheid of tipe besigheid te hê wat die skadelike sakepraktyk bedryf, of om enige inkomste daaruit te verkry;
    - (c) te gener tyd die skadelike sakepraktyk te bedryf nie; en
    - (d) te gener tyd enige belang in 'n besigheid of tipe besigheid wat die skadelike sakepraktyk bedryf te bekom nie, of om enige inkomste daaruit te verkry nie.
  3. Die kennisgewing tree in werking op die datum van publikasie hiervan.
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*Where is the largest amount of meteorological information in the whole of South Africa available?*



*Waar is die meeste weerkundige inligting in die hele Suid-Afrika beskikbaar?*

Department of Environmental Affairs and Tourism  
Departement van Omgewingsake en Toerisme



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