



Our Ref: SAL:150623:_192

1 March 2018

URGENT

Mr Nigel Jones
Partner
Norton Rose Fulbright
GPO Box 4592
MELBOURNE VIC 3000

Also by email: nigel.jones@nortonrosefulbright.com

Dear Nigel

7-Eleven Class Action

We have received reports from several franchisees of discrimination against them if they do not disavow the Class Action.

A typical question, ascribed to a Senior 7-Eleven executive is: “*Are you encouraging franchisees to participate in the Class Action? Are you sending Whatsapp messages or meeting with franchisees individually to discuss joining the Class Action?*”

Franchisees who have sub-leases or licences in respect of which the initial term of the lease is less than their Franchise Term, are being told that 7-Eleven’s decision on whether or not to exercise an option to extend the Lease for at least the term of the Franchise, is dependent upon their disavowing any intention to participate in the Class Action.

It should be noted that we are not seeking any orders in the Class Action to terminate the Franchise Agreements or to dissolve the 7-Eleven franchise.

It is simply being alleged that a number of significant aspects of the 7-Eleven franchise system are unlawful or unconscionable (and hence *ipso facto* unlawful) and damages are being sought.

7-Eleven’s conduct may arguably constitute contempt of Court:

The law of contempt of court is grounded in the judicially recognised right of unimpeded access to the Courts. Absent some express disqualification, generally all citizens have a common law

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right of access to the Courts. As Lord Diplock stated in *Attorney General v Times Newspapers Ltd* [1974] AC 273 at 307-309:

“The due administration of justice requires first, that all citizens should have unhindered access to the constitutionally established Courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; secondly, that they should be able to rely upon obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence, adduced before it in accordance with the procedure adopted in Courts of Law; and thirdly, that once the dispute has been submitted to a Court of Law, they should be able to rely upon there being no usurpation by any other person of the function of that Court to decide it according to Law. Conduct which is calculated to prejudice any of these three requirements or to undermine the public confidence that they will be observed, is Contempt of Court”.

Further, Jordan CJ noted in an oft cited passage in *Ex parte Bread Manufacturers Ltd; Re Truth and Sportsman Ltd* (1937) 37 SR (NSW) 242 at 249-250:

“It is of extreme public interest that no conduct should be permitted which is likely to prevent a litigant in a Court of justice from having his case tried free from all manner of prejudice”.

Contempt of court operates to protect this “extreme public interest”. The principles of contempt of court by improper pressure on a party, were helpfully distilled by Mason P in *Harkianakis v Skalkos* (1997) 42 NSWLR 22 (*Harkianakis*) at 27-30.¹

We foreshadow that unless we receive an undertaking from the Franchisor that it will neither monitor franchisee websites for the purpose of ascertaining who among the franchisees supports the Class Action or follow or otherwise place surveillance on franchisees’ communications or discriminate against them (including upon the premise that they are or have been clients of Levitt Robinson and therefore, could be presumed to be sympathetic to the Class Action), then we will approach the Court for injunctive relief.

We require an undertaking from you in these or similar terms, by the close of business on **5 March 2018**.

Yours faithfully
LEVITT ROBINSON

Stewart A Levitt
Senior Partner



¹ *Live Group Pty Ltd and Anor v Rabbi Ulman and Ors* [2017] NSWSC 1759 at [88]-[90] (Sackar J).

2 March 2018

Email: slevitt@levittrobinson.com

Attention: Stewart Levitt

Levitt Robinson
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+61 3 8686 6077485

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Your reference: **Our reference:**
SAL:VS:160328:_013 4000719

Dear Colleagues

7-ELEVEN CLASS ACTION

We refer to your letter of 1 March 2018 and respond as follows:

1. 7-Eleven denies any:
 - a. involvement in alleged discrimination against franchisees if they do not disavow the Class Action; and
 - b. improper conduct in relation to franchisees.
2. If there is any specific complaint which has been made to you, we invite you to identify the complaint specifically including by reference to the relevant franchisee and 7-Eleven employee so that the matter can be considered.
3. 7-Eleven has no intention of unfairly discriminating against franchisees or behaving improperly towards them.
4. In all the circumstances, your request for undertakings is unwarranted and unnecessary.

Yours faithfully



Nigel Jones
Partner
Norton Rose Fulbright Australia
Contact: Lee Pascoe

APAC-#64297704-v1

From: Stewart Levitt
Sent: Friday, 2 March 2018 4:39 PM
To: Jones, Nigel; Jem Punthakey
Cc: Pascoe, Lee; 711
Subject: RE: VID180/182-2018 - 7-Eleven Class Action - Undertaking (4000719)[NRF-APAC.FID2073115] (LR 150623)

Importance: High

Matter: 150623
Saved: -1

Gentlemen,

Your response is inadequate and circular. Several clients have instructed me with chapter and verse but I am not instructed to put the specific allegations- outside of the context of a Court application- because the franchisees involved fear intimidation and victimisation if they are sufficiently identified by reference to what occurred, without Court protection.

We reserve our rights. Be assured that we are kept informed by our clients of offending conduct by 7-Eleven executives and managers .

Regards,
Stewart

From: Jones, Nigel [<mailto:nigel.jones@nortonrosefulbright.com>]
Sent: Friday, 2 March 2018 4:28 PM
To: Jem Punthakey <jpunthakey@levittrobinson.com>
Cc: Pascoe, Lee <lee.pascoe@nortonrosefulbright.com>; 711 <711@levittrobinson.com>
Subject: RE: VID180/182-2018 - 7-Eleven Class Action - Undertaking (4000719)[NRF-APAC.FID2073115] (LR 150623)

Jem

Please see letter attached.

Regards

Nigel Jones

From: Jem Punthakey [<mailto:jpunthakey@levittrobinson.com>]
Sent: Thursday, 1 March 2018 5:17 PM
To: Jones, Nigel <nigel.jones@nortonrosefulbright.com>
Cc: Harvey, Cameron <cameron.harvey@nortonrosefulbright.com>; Pascoe, Lee <lee.pascoe@nortonrosefulbright.com>; Simonds, Laura <laura.simonds@nortonrosefulbright.com>; Addison, Bonnie <bonnie.addison@nortonrosefulbright.com>; 711 <711@levittrobinson.com>
Subject: VID180/182-2018 - 7-Eleven Class Action - Undertaking (4000719)[NRF-APAC.FID2073115] (LR 150623)

Dear Nigel

I **attach** a letter for your attention.

Regards

Jem

Jem Punthakey | Solicitor

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