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**GENERAL NOTICE**

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**NOTICE 1505 OF 2005****DEPARTMENT OF TRADE AND INDUSTRY****CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Mandisi Mphahla, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the arrangement dated 20 June 2005 entered into between the Consumer Affairs Committee and Shoprite Checkers and its members.



**MANDISI MPAHLWA, MP**

**MINISTER OF TRADE AND INDUSTRY**

Date: 24 November 2005

**SCHEDULE**

**UNDERTAKING BY MR GERHARD KRIEL, CHEF EXECUTIVE OFFICER OF OK FRANCHISE DIVISION OF SHOPRITE CHECKERS (PTY) LTD IN TERMS OF SECTION 8 OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 71 OF 1988**

I, Gerhard Kriel, am aware that the Consumer Affairs Committee (the Committee) on grounds of an investigation in terms of section 4(1)(c) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (the Act), is of the opinion that the business practice as applied by Shoprite Checkers (Pty) Ltd in terms of its 8 Till Late Business Model is an unfair business practice as defined in the Ad.

I am also aware that, in terms of section 9 of the Act, the Committee may at any time negotiate with any person, with a view to making an arrangement which in the opinion of the Committee will ensure the discontinuance of an unfair business practice which exists or may come into existence and which is the subject of an investigation.

Although we take issue with the opinion that the Franchise Division of Shoprite Checkers (Pty) Ltd allegedly conducted a practice as found by the Consumer Affairs Committee to have existed with regard to the 8 Till Late Business Model, this undertaking is provided without admission of liability or prejudice to our rights and on the basis that this undertaking finds application to the wording and the spirit of FASA's code of conduct which we, as a member, subscribe to.

In view of the above I, Gerhard Kriel, undertake to ensure that the Franchise Division of Shoprite Checkers (Pty) Ltd, in future, with regard to the 8 Till Late Business Model:

- (a) shall not offer, sell or promote the sale of any franchise by means of any explicit or implied representation which is likely to mislead prospective purchasers of such franchise;
- (b) shall provide full and accurate written disclosure of sufficient information, including an assessment of apparent trade risks involved, of the business to be franchised to prospective franchisees to enable them to make informed decisions as to whether or not to acquire the franchise;

- (c) shall provide a disclosure document, together with a copy of the franchise agreement, which agreement shall be clear and detailed with regard to, *inter alia*, both the franchisor's and the franchisee's rights and obligations, at least seven (7) working days before any binding documents are to be signed between the franchisee and Franchise Division or any payments or any irrevocable financial commitments are to be made by the prospective franchisees to the Franchise Division;
- (d) shall select and accept only those franchisees who, upon reasonable investigation, appear to possess the basic skills, education, personal qualities and financial resources adequate to perform and fulfil the needs and requirements of the franchise, or show potential to acquire the foregoing through guidance and support;
- (e) shall provide reasonable guidance and support over the business activities of franchisees for the purpose of safeguarding the public interest and of maintaining the integrity of the entire franchise system for the benefit of all parties having an interest in it;
- (f) shall ensure that fairness shall characterize all dealings with its franchisees, including to the extent reasonably appropriate, a franchisee shall be given notice of any contractual breach and shall be granted reasonable time to remedy defaults, failing which the Franchise Division shall be entitled to institute appropriate proceedings in order to protect its own interests;
- (g) shall make every effort to resolve complaints, grievances and disputes with its franchisees in good faith and with good will through fair and reasonable direct communication and negotiation, failing this, consideration shall be given to mediation or arbitration;
- (h) shall, upon request from franchisees, make full disclosure of any form of incentive he or she might enjoy by virtue of the franchisee being bound to deal with certain nominated firms;
- (i) that any feasibility study presented to a potential purchaser/franchisee will relate to the specific business/premises in the specific area where the potential franchisee's business will be operated from.

The Franchise Division hereby undertakes not to pursue any claims which Shoprite Checkers may have against any of those previous franchisees who operated under the 8 Till Late brand only:

- the particulars of whom have been conveyed by the Department: Trade and Industry, Consumer Investigations Directorate in a letter dated 18 February 2005; or
- who have lodged formal written complaints with the Franchise Division prior to 18 August 2004, regarding the operation of the 8 Till Late brand by the Franchise Division,

unless it becomes necessary to institute action (by way of counter claim) and to prove the merits of any claim which Shoprite Checkers (Pty) Ltd may have against any of the franchisees concerned electing to proceed with litigation in whatsoever form.

I furthermore understand that any contravention of this undertaking shall immediately and without further notification or discussion lead to an investigation in terms of section 8(1)(a) of the Act,



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G Kriel  
(signed)

Date: 11 July 2005

(1) Witness:



.....  
D. M. Orren  
(Initials and surname in block letters)

Date: 11 July 2005

(2) Witness:



.....  
R. Serfontein  
(Initials and surname in block letters)

Date: 11 July 2005