

# BAKER & MCKENZIE

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## NORTH AND SOUTH AMERICA

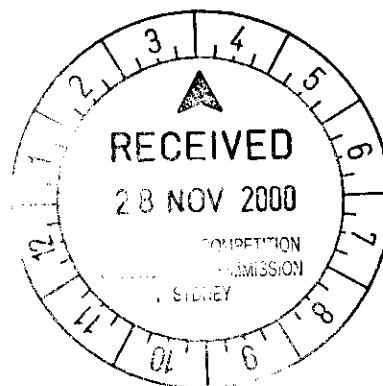
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Our ref: 348239-v01\W97\LAK\EVW

28 November 2000

Mr Tim Grimwade  
General Manager  
Adjudication Division  
Australian Competition & Consumer Commission  
c/- Level 5, Sky Gardens  
77 Castlereagh Street  
Sydney NSW 2000



Dear Mr Grimwade

## Exclusive Dealing Notification – Buell Distribution Corporation

We act for Buell Distribution Corporation.

We enclose an exclusive dealing notification by Buell Distribution Corporation pursuant to section 93(1) of the *Trade Practices Act* 1974. This notification is lodged in respect of proposed conduct which may constitute exclusive dealing under sections 47(6) or 47(7) of the Act. This notification is given in the prescribed form and should not be taken as an admission that the proposed conduct would contravene the statutory prohibition.

We also enclose a cheque made payable to the Commission in the sum of \$100.00, being the prescribed lodgement fee.

Please do not hesitate to contact me should you require any further information or if you have any queries about the notification.

Yours sincerely

**Lindsay Kyle**  
(02) 9225-0282  
Encl

**FORM G**

**COMMONWEALTH OF AUSTRALIA**

***Trade Practices Act 1974 - Sub-section 93(1)***

**EXCLUSIVE DEALING**

**NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(6) or (7) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) **Name of person giving notice**

Buell Distribution Corporation.

(b) **Short description of business carried on by that person**

Supply of motorcycles and associated parts, accessories and apparel.

(c) **Address in Australia for service of documents on that person**

Baker & McKenzie  
Solicitors & Attorneys  
AMP Centre  
50 Bridge Street  
SYDNEY NSW 1223

Telephone: (02) 9225-0200

Facsimile: (02) 9223-7711

Attention: Lindsay Kyle

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice refers**

- (i) Buell Motorcycles – Cyclone M2, Lighting X1, Thunderbolt S3, Thunderbolt S3T;
- (ii) Associated Parts – spark plugs, brake pads, clutch, oil filters, pistons, handgrips, etc;
- (iii) Accessories – decorative covers, seats, performance parts, luggage, etc;
- (iv) Apparel – T-shirts, jackets, gloves, hats, etc;
- (v) Brochures and training material.

(b) **Description of the conduct or proposed conduct**

See Attachment A.

3. (a) **Class or classes of persons to which the conduct relates**

Buell Dealers.

(b) **Number of those persons**

(i) **At present time**

There are currently 13 Buell Dealers authorised by Buell Distribution Corporation to sell Buell Products in Australia

(ii) **Estimated within the next year**

It is estimated that there will be 15 Buell Dealers in total authorised by Buell Distribution Corporation in the next year.

(c) **Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses**

Chardson's Harley-Davidson  
468 Bass Highway  
Launceston TAS 7250

Darwin Dynacycle  
18 Stuart Highway  
Darwin NT 0820

Fraser Motorcycles Homebush Pty Ltd  
17-19 Parramatta Road  
Homebush NSW 2140

Fraser Motorcycles Newcastle Pty Ltd  
137 Lambton Road  
Broadmeadow NSW 2292

Fraser Motorcycles Perth Pty Ltd  
47 Walter Road  
Dianella WA 6062

Fraser Motorcycles Wollongong Pty Ltd  
11-13 Princes Highway  
Fairy Meadow NSW 2519

Gold Coast Harley-Davidson  
Cnr Ferry Road & Minnie Street  
Southport QLD 4215

Harley City  
747 Sydney Road  
Brunswick VIC 3056

Harley-Davidson of Blacktown  
70 Sunnyholt Road  
Blacktown NSW 2148

Harley Heaven  
341 Elizabeth Street  
Melbourne VIC 3000

Harley Heaven  
62 Maroondah Highway  
Ringwood VIC 3134

Harley Heaven  
221 Franklin Street  
Adelaide SA 5000

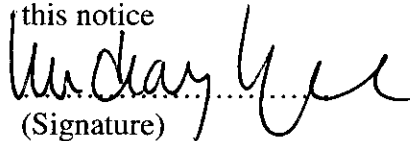
Morgan & Wacker Pty Ltd (Distributor)  
54 Ross Street  
Newstead QLD 4006

4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice**

Lindsay Kyle, Senior Associate, Baker & McKenzie, AMP Centre, 50 Bridge Street, Sydney, New South Wales 1223.

Dated 28 Nov 2000

Signed by/on behalf of the person giving  
this notice

  
(Signature)

Lindsay Anne Kyle  
(Full Name)

Senior Associate, Baker & McKenzie  
(Description)

## DESCRIPTION OF THE CONDUCT OF PUBLIC BENEFIT

### 1. Background

- 1.1 Buell Motorcycle Company ("Buell") manufactures and supplies motorcycles and associated parts, accessories and apparel under the "Buell" brand ("Buell Products").
- 1.2 In relation to Australia, Buell proposes to focus on the sale and marketing of Buell Products rather than on the manufacture of Buell Products. Buell has licensed various companies located throughout the world to import products under the Buell brand and on sell them to appointed dealers.
- 1.3 Buell has granted Buell Distribution Corporation ("BDC") the right to appoint distributors and dealers to sell Buell Products and to provide repair services for Buell Products to customers in Australia.
- 1.4 BDC has appointed Morgan & Wacker Pty Ltd as its independent importer and distributor in Australia (the "Distributor"). The Distributor is authorised to sell Buell Products to Buell dealers appointed by BDC ("Buell Dealers").
- 1.5 The Buell Dealers are responsible for handling, processing and fulfilling all orders received from customers.

### 2. Relevant conduct

- 2.1 As a condition of appointment as a dealer of Buell Products in Australia, BDC proposes to require Buell Dealers to purchase the Buell Products from the Distributor.
- 2.2 The relevant clause of the proposed agreement with between BDC and Buell Dealers is:

#### "3. Supply of Buell Products

The Dealer must purchase all Buell Products from BDC's authorised independent importer and distributor for Australia, Morgan & Wacker Pty Ltd, or such other entity that BDC may designate (the "Distributor"), under the Distributor's terms of trade in effect from time to time."

- 2.3 BDC proposes to outsource the task of supplying Buell Products to the Buell Dealers to the Distributor. This will enable Buell Dealers' orders to be processed more efficiently and shorten the delivery time for the Buell Products.
- 2.4 The requirement that Buell Dealers purchase the Buell Products from the Distributor may constitute third line forcing. Subject to the public benefits outlined below, clearly, the only difference between BDC supplying the Buell Products

itself and the arrangements described above, is the identity of the source of the Buell Products.

### **3. Public benefits**

The conduct specified in paragraph 2.1 is pro-competitive and to the overall benefit of Buell Dealers, and ultimately consumers. In particular, the conduct gives rise to the following public benefits:

#### **3.1 Product availability and business efficiency**

The conduct will enable Buell Dealers to place orders directly with the Distributor and achieve greater business efficiencies.

The time between the ordering and the delivery of the Buell Products to the Buell Dealers will be significantly shorter if the Buell Products are sourced from the Distributor, rather than directly from BDC (based in Wisconsin, USA). This in turn will ensure that the Distributor and Buell Dealers are able to process and deliver Buell Products to Australian end consumers more quickly.

As part of the outsourcing to the Distributor of the supply of Buell Products to Buell Dealers, the Distributor will be required to maintain sufficient inventory of Buell Products to ensure prompt and satisfactory service for Buell Dealers. The Distributor will also inform Buell Dealers of stock availability, and will track and inform Buell Dealers of the current status of orders and delivery to those dealers. The ability to deal directly with the Distributor will enable Buell Dealers to achieve greater business efficiencies.

#### **3.2 Price competition**

The proposed conduct will enable consumers to buy Buell Products at lower prices from Buell Dealers.

Under the arrangement, BDC will sell Buell Products to the Distributor at a discounted price. This discount will enable the Distributor to sell Buell Products to Buell Dealers at a lower price than if they purchased these products from BDC direct. The Buell Dealer is therefore able to pass these savings on to consumers in the form of lower prices.

#### **3.3 Product quality and consistency**

Under the proposed agreement between BDC and the Distributor, the Distributor will notify BDC of any modifications required to be made to the Buell Products in order that they conform with all applicable Australian standards and regulations, and the Distributor must itself comply with all local laws and regulations. The requirement that Buell Dealers purchase all Buell Products from the Distributor assists BDC to maintain consistently high standards of product quality and safety in Australia. Buell Dealers and customers can be confident that the Buell Products sold by the Distributor are genuine Buell Products and meet the quality and safety standards expected of Buell Products.

The Distributor is also required to inspect and repair Buell Products and ensure that the products are in satisfactory and safe operating condition prior to delivery to the Buell Dealer. Any warranty claims of Buell Dealers will be processed by the Distributor. In addition, the

Distributor will provide Buell Dealers with instruction and training regarding sales, services and customer satisfaction. These requirements will assist BDC to ensure that the quality of Buell Products supplied to consumers in Australia is consistently and efficiently maintained.

### **3.4 Effect on competition**

Rather than Buell Dealers being required to purchase the Buell Products direct from BDC, they are required to purchase those products from the Distributor. The "forced" Buell Products are simply supplied through the Distributor rather than from BDC itself.

This conduct does not distort the demand for or the supply of Buell Products by Buell Dealers. As a result, the conduct is not likely to have an anti-competitive effect on the relevant market.

## **4. Conclusion**

- 4.1 The impact of BDC's conduct is, in our submission, not such that the likely benefit to the public would be outweighed by the likely detriment to the public. It simply involves the substitution of BDC with the Distributor for the processing, tracking and fulfilling of orders for Buell Products placed by Buell Dealers.
- 4.2 Overall, the conduct is pro-competitive in that it enables more efficient delivery of Buell Products to Buell Dealers, while guaranteeing consistency and high product quality. Customers of Buell Dealers are also likely to benefit from the greater efficiencies associated with supply of Buell Products in terms of price and product quality and availability.