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23 APR 2001

12 April 2001

Australian Competition & Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

Attention: Ms Francine Adams

Our Ref: 1070080
Your Ref: Francine Adams



DIBBS BARKER GOSLING | LAWYERS

FILE No:

DOC:

Dear Madam

**Submission - Form G Exclusive Dealing (Third Line Forcing): Notification
Goodnet Pty Limited ABN: 88 003 884 526 ("Goodnet")**

We act on behalf of Goodnet, trading as "Holy Sheet!" which operates as a retailer of manchester, homewares and gifts (the "business"). The business has been trading since 1990 and currently has seven (7) Holy Sheet! Company stores – five (5) in New South Wales; and two (2) in Victoria – and one recently franchised outlet in North Sydney.

Goodnet intends to operate the group of outlets as a franchise system. It is proposed that most of the company stores will eventually become franchised stores with the possibility of further franchised stores operating at other sites in the future.

Goodnet intends to have as a requirement under its franchise agreement that all franchisees must purchase certain core items identified in the franchisor's stocklist from nominated suppliers ("proposed conduct"). The core items will be the items listed in the Appendix marked "A" in the Form G Exclusive Dealing Notification enclosed with this letter (the "Notification") which will account for approximately 80% of the volume of all stock purchased by each franchisee. Although the franchisor will, on behalf of all franchisees, negotiate with the suppliers in respect of the price for the core items, the franchisees will deal with the suppliers directly.

As the franchisor will require each franchisee to purchase certain core items from the nominated suppliers as one of the conditions upon which Goodnet will grant a franchise, the proposed conduct may constitute third line forcing and if so, will contravene section 47(6) of the *Trade Practices Act*.

Enclosed with this letter is a cheque for \$100.00 in favour of the ACCC by way of notification fee.

In addition to the Notification, this submission provides the ACCC with details of the public benefits, and addresses the possibility of any anti-competitive detriment, arising from Goodnet's proposed conduct.

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Public Benefit:

1. Provision of cost savings for Holy Sheet! franchisees

Goodnet will, on behalf of all franchisees, negotiate with the nominated suppliers in respect of the price for the supply of the core items. Goodnet will be in a position to negotiate prices for items with the strength of the Holy Sheet! group's buying power and using its own extensive experience in this industry. This means that competitive prices will be obtained for core items, which will then result in a reduction in price for each core item purchased, and a cost saving for franchisees.

2. Enhancement of quality of goods

The proposed conduct is also intended to maintain the high standards and consistency in the core items purchased which has been achieved after Goodnet's 10 years of dealing with a variety of suppliers, and identifying the most reliable and cost-effective. At present about 30% of the products sold in the Holy Sheet! network are sold under the "Holy Sheet!" brand, so it is particularly important that the goods be of consistent quality.

3. Protection of the franchised product purchased

The choice to enter into a Holy Sheet! franchise agreement is largely driven by the image of the stores and the group's buying power - both of which will be *protected* by the proposed conduct.

The purpose of Goodnet's proposed conduct is not to restrict the franchisees' choice of suppliers of stock, rather, the purpose of the proposed conduct is to protect and uphold the reputation of the franchise system, thus benefiting all franchisees in the network.

4. Assistance to efficient small business

Goodnet has been operating as a successful and expanding small business since 1990. During that time Goodnet has:

- Developed a successful line of core items which all company stores stock. Consumers therefore know that they can enter any Holy Sheet! store and expect to find particular core items of a consistent quality;
- Gained a thorough knowledge of the homewares market overall and the segment within which it has positioned itself; and
- Developed marketing strategies and initiatives for the Holy Sheet! franchise system.

Goodnet will pass on the benefits of its knowledge to franchisees so as to enable franchisees to benefit from suppliers, which have proven to be reliable and competitive in pricing, and which have met previous supply requirements of company-owned stores. This guidance provided in relation to the above will promote business efficiency and the competitiveness of the Holy Sheet! franchise system as a small, but expanding, business:

- Franchisees will benefit from group buying power;
- Franchisees will be able to concentrate on other aspects of their business besides product sourcing

As Goodnet will retain some company-owned stores they will continue to monitor the reliability of suppliers for themselves. They will also encourage franchisees to provide feedback as to the satisfactoriness or otherwise of suppliers so that alternatives can be located if a particular supplier's performance diminishes.

Anti-Competitive Detriment:

1. Abuse of Market Power

Broadly speaking, the homewares market ranges from small, stand alone specialty homewares retailers, to large format homewares retailers where homewares is a value-added component to that retailer's core business.

In terms of its positioning in the homewares market, Holy Sheet! is positioned as offering the latest in high quality homewares, as well as core items to a young affluent audience. Most company stores are currently situated in shopping strips.

The position of Holy Sheet! in the market place is not a dominant position as there are many similar businesses, selling a similar range of stock.

As Holy Sheet! does not hold a dominant position in the market, Goodnet's proposed conduct could not be seen as a misuse of market power, nor is it likely to result in a distortion of the demand for certain products in the market

2. Franchisee is not required to purchase all stock from nominated suppliers

Goodnet will direct its franchisees in the manner in which each franchisee is to stock its store with core items. Each franchisee will be obliged to stock core items but will have a discretion as to which non-core items it will stock. Goodnet estimates that core items will make up 80% of a franchisee's stock. The use of core items allows a consistent image across the network, but the ability to pick and choose between non-core items allows a franchisee to tailor their product range to the particular customer mix that they become familiar with in their particular location.

3. Franchisee can choose which nominated supplier it purchases from

The franchisees will be able to purchase a very wide range of core items from scores of suppliers. Clause 14.5(b) of the franchise agreement will allow franchisees to suggest additional suppliers for the franchisor to approve.

4. Goodnet intends to increase the amount of products sold under the Holy Sheet! Brand

Currently 30% of all products are sold under the Holy Sheet! brand. Goodnet intends over a period of time to become the manufacturer and supplier of more of the core and non-core products and the network will therefore become less reliant on the nominated suppliers.

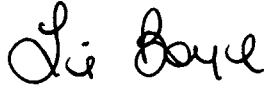
5. Potential Franchisees can choose not to become a Holy Sheet! Franchisee

In regards to the Holy Sheet! franchise system, potential franchisees have the freedom to choose to either contract with Goodnet or contract with another franchisor. Alternatively, they may decide to establish and operate their own business. Buying a franchised business allows the franchisee to benefit from the franchisor's business and marketing experience. In exchange for this, they are expected to act in such a manner as upholds the reputation of the network as a whole.

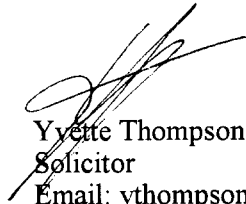
We trust that this submission sets out the issues clearly. We note that, if Goodnet has not received any communication from the ACCC within 14 days of this notification, they can assume that the ACCC has no objection to the proposed conduct, but that the ACCC may still raise concerns at a later time.

If you have any queries, please do not hesitate to contact us.

Yours faithfully
DIBBS BARKER GOSLING LAWYERS



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FORM G

Commonwealth of Australia

Trade Practices Act 1974 – Subsection 93(1)

EXCLUSIVE DEALING

NOTIFICATION

GOODNET PTY LTD ACN 003 884 526 TRADING AS “HOLY SHEET!”


.....
Edmund James Stewart George - Director

Date: 10/4/01

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

Goodnet Pty Ltd A.B.N 88 003 884 526 trading as "Holy Sheet!".

1.(b) Short description of business carried on by that person:

Goodnet Pty Ltd ("Goodnet") trading as Holy Sheet! operates as a retailer of manchester, homewares and gifts (the "business"). The business has been trading since 1990. Goodnet currently has eight (8) Holy Sheet! outlets – six (6) stores in New South Wales: Newtown, Paddington, Balmain, North Sydney Chatswood Westfield and the City (Westpac Plaza); and two (2) stores in Victoria: St Kilda and Fitzroy.

Goodnet now intends to operate the group of outlets as a franchise system. It is proposed that some of the company stores will eventually become franchised stores with the possibility of further franchised stores operating at other sites in the future. The North Sydney store has recently been franchised.



.....
Edmund James Stewart George - Director

Date:

10/4/01

Question 2:

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

Products currently sourced by Goodnet:

Goodnet currently sources the following products for its company stores and it intends that franchisees will also acquire these products:

- Manchester
- Sleepwear
- Bathroomware
- Decorative light furnishings
- Ready made curtains
- Napery
- Body products
- Throws/rugs
- Kids/Baby
- Giftware (vases, frames)
- Executive Gifts

.....
Edmund James Stewart George – Director

... continued

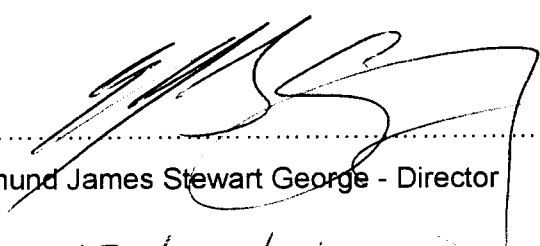
Date:

10/4/01

2.(a) (continued)

Goods and Services Relating to this Notification:

The goods and services to which this notification relates are the items listed in the Appendix marked "A" to this Form G which franchisees must acquire from suppliers nominated by the franchisor.


.....
Edmund James Stewart George - Director
Date: 10/4/01

2.(b) Description of the conduct or proposed conduct:***Proposed conduct:***

Goodnet intends to have as a requirement under its franchise agreement that all franchisees must purchase certain core items identified in the franchisor's stocklist from nominated suppliers ("proposed conduct"). The core items will be the items listed in the Appendix marked "A" to this Form G which will account for approximately 80% of the volume of all stock purchased by each franchisee. Although the franchisor will, on behalf of all franchisees, negotiate with the suppliers in respect of the price for the core items, the franchisees will deal with the suppliers directly.

Chapter 14 of the proposed Holy Sheet! franchise agreement contains the requirement for franchisees to purchase core items from nominated suppliers. A copy of Chapter 14 is attached as the Appendix marked "B" to this Form G.

Proposed conduct may constitute third line forcing:

As Goodnet will require each franchisee to purchase certain core items from suppliers nominated by the franchisor as one of the conditions upon which Goodnet will grant a franchise, the proposed conduct may constitute third line forcing and if so will contravene section 47(6) of the *Trade Practices Act*.



.....
Edmund James Stewart George - Director

Date:

10/4/01

Question 3:

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

Holy Sheet! franchisees

3.(b) Number of those persons:

(i) At present time:

One franchisee has been granted a franchise effective 1 October 2000.

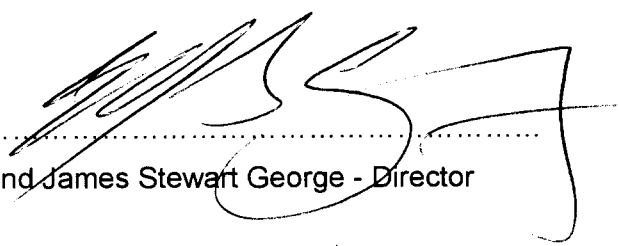
(ii) Estimated within the next year:

Three (3)

3.(c) Where the number of persons stated in Item 3(b)(i) is less than 50, their names and addresses:

Franchisee: Blue Sapphire Trading Pty Ltd A.C.N 094 134 442

Registered Office: C/- Charter Interlink, Level 5, 70-72 Bathurst Street, Sydney NSW 2000



.....
Edmund James Stewart George - Director

Date: 10/04/01

Question 4:

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

Elisabeth Boyce

Partner

Dibbs Barker Gosling Lawyers

Level 23, 264 George Street

SYDNEY NSW 2000

Date 10/04, 2001

Signed by / on behalf of the applicant giving notice

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

EDMUND JAMES STEWART GEORGE
DIRECTOR

"A"

Bathroom Accessories
Bathroom Accessories – shower curtains
Bedcoverings – Bedspread
Bedcoverings – Blankets
Bedcoverings – Mattress protectors/underlays
Bedcoverings – Quilts
Clothing – Pyjamas
Clothing – Robes
Clothing – Slippers
Gifts – Body Care products
Gifts – Candles/ Candlesticks
Gifts – Executive
Gifts – Frames
Gifts – Novelties (unclassified gifts)
Gifts - Stationery
Gifts – Kids (children's toys, manchester etc)
Gifts – Vases
Gifts – Xmas
Hard Furniture – Furniture
Hard Furniture – Lamps
Hard Furniture – Mirrors
Hard Furniture – Containers (Bins etc)
Bedlinen – Sheets
Bedlinen – Pillowcases
Bedlinen – Sheet Sets
Napery – Teatowels
Napery – Placemats, Napkins
Napery – Tablecloths
Pillows – Standard
Quiltcovers
Soft Furnishings – Cushion
Soft Furnishings – Floor Rugs
Soft Furnishings – Throws
Soft Furnishings – Curtains & Curtain Rods
Soft Furnishings – Accessories (other furnishings)
Towels – Beach
Towels – Promotional (other than Beach & Plain)
Towels – Plain (Canningvale)



.....
Edmund James Stewart George - Director

Date:

10/4/01