

29 October 2002

RIALTO TOWERS 525 COLLINS STREET MELBOURNE
GPO BOX 769G MELBOURNE VIC 3001 AUSTRALIA
DX 204 MELBOURNE WWW.MINTERELLISON.COM
TELEPHONE +61 3 8608 2000 FACSIMILE +61 3 8608 1000

Mr Tim Grimwade
Adjudication
Australian Competition and Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

Dear Sir

BioLab Australia Pty Ltd

We act for BioLab Australia Pty Ltd (**BioLab**) and enclose:

- notification under section 93(1) of the *Trade Practices Act* 1974 (Cth) (**TPA**); and
- a cheque for \$100 as payment of the required lodgment fee. NOT ENCLOSED 1/11

1. Background

- 1.1 BioLab is the manufacturer and wholesaler of pool and spa chemicals sold under the BioGuard brand. These products are currently supplied by BioLab to retailers of pools, spas and associated items.
- 1.2 BioLab has determined to establish a franchise network of retailers of backyard and leisure products (pools, spas, barbeques, outdoor furniture etc) to operate under the 'Backyard Pleasures' banner. For this purpose, BioLab proposes entering into licensing agreements with franchisees wishing to join the franchise network.
- 1.3 BioLab intends the franchising network to be supported by a joint marketing fund. Under the proposed licensing agreements each franchisee will contribute \$10,000 annually to this fund (**Joint Marketing Fund Contribution**). The licensing agreement also provides that the franchisees' contribution may be reduced by the amount contributed to the joint marketing fund by nominated suppliers (**Preferred Suppliers**) on behalf of that franchisee. While there is an obvious pecuniary benefit to franchisees in dealing with Preferred Suppliers, franchisees may choose to deal with any suppliers.
- 1.4 To secure the contribution of Preferred Suppliers to the joint marketing fund, BioLab intends to enter into supply agreements with each of the Preferred Suppliers. It is intended that the terms of the supply agreements will include an obligation on Preferred Suppliers to contribute to the joint marketing fund a percentage of the value of products supplied to franchisees operating under the Backyard Pleasures banner.

2. Notified conduct

2.1 The notified conduct is BioLab Australia Pty Ltd:

- (a) giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit to a franchisee, in the form of a reduction in the franchisees' joint marketing fund contribution on the basis of the value of products purchased by that franchisee from certain suppliers; or
- (b) refusing to give or allow a discount, allowance, rebate or credit on the basis that the franchisee has not purchased products from certain suppliers.

2.2 As discussed above, franchisees operating under the Backyard Pleasures banner are not obligated to buy products from Preferred Suppliers. Nevertheless, there is a direct pecuniary benefit in them doing so. In order to minimise the risk of contravening section 47(6) of the TPA, BioLab wishes to notify the conduct described above under section 93(1) of the TPA.

3. Competition issues

3.1 We submit on behalf of our client that the Commission should not serve a notice under section 93(3A) of the TPA because:

- (a) the conduct in question will not adversely affect competition in any relevant market; and
- (b) the conduct in question will result in public benefits and no public detriment.

3.2 We do not believe that the notified conduct can have any adverse affect on competition in any of the relevant markets. We consider that the relevant markets for assessing this notification are the Australian market or markets for the provision of a wide variety of backyard and leisure products by wholesalers/suppliers to retailers and the retail market or markets for these products.

3.3 We believe these markets are highly competitive and that BioLab and each of the prospective franchisees do not have market power in any of them. Accordingly, the conduct will not create barriers to entry or otherwise harm competition in any relevant market. Further information in relation to these markets can be provided to the Commission if requested.

3.4 We believe the notified conduct will generate a number of public benefits:

- the establishment of the franchise network, supported by the joint marketing fund, will enable the franchisees to enter and compete in the backyard and leisure products retail market;
- the entry of the participating franchisees into the relevant markets will promote competition within these markets;
- the franchise network, supported by the joint marketing fund, will enable the franchisees to achieve business efficiencies and economies of scale leading to a reduction in prices for consumers.

3.5 We believe the notified conduct will have little, if any, public detriment. BioLab is not restricting:

- (a) the choice of the franchisees who may at any time buy products from non-Preferred Suppliers; or
- (b) suppliers who may choose to deal with the participating franchisees outside of the terms proposed by BioLab.

4. Conclusion

For the reasons set out above, we do not believe the Commission should serve a notice under section 93(3A) of the TPA in respect of this notification. This is because the notified conduct will outweigh any possible detriment considered to arise from the conduct.

If you have any queries in relation to this notification or require any further information, please do not hesitate to contact Carolyn Hillman of our office.

Yours faithfully

MINTER ELLISON



Contact: Carolyn Hillman Direct phone: +61 3 8608 2753 Direct fax: +61 3 8608 1337
E.mail: carolyn.hillman@minterellison.com
Our reference: CJXH 30-3879256

enclosures

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(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or 9(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) Name of person giving notice:

*BioLab Australia Pty Ltd
ACN 005 878 017*

(b) Short description of business carried on by those persons:

Supply of pool and spa chemicals.

(c) Address in Australia for service of documents on those persons:

*C/- Carolyn Hillman
Minter Ellison Lawyers
525 Collins Street
MELBOURNE VIC 3000*

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

Supply of franchising services to franchisees.

(b) Description of the conduct or proposed conduct:

The notified conduct is BioLab Australia Pty Ltd:

- (a) giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit to a franchisee, in the form of a reduction in the franchisees' joint marketing fund contribution on the basis of the value of products purchased by that franchisee from certain suppliers; or*
- (b) refusing to give or allow a discount, allowance, rebate or credit on the basis that the franchisee has not purchased products from certain suppliers.*

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

BioLab franchisees.

(b) **Number of those persons:**

(i) At present time:

Nil

(ii) Estimated within the next year:

70

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

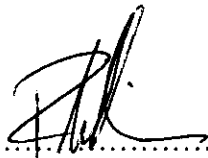
Not Applicable

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

*C/- Carolyn Hillman
Minter Ellison Lawyers
Level 23
525 Collins Street
MELBOURNE VIC 3000*

DATED this 28th day of October 2002

SIGNED by/on behalf of
BioLab Australia Pty Ltd


.....
(Signature)

ROBERT NORMAN WILSON
.....
(Full Name)

RETAIL DEVELOPMENT MANAGER
.....
(Description)