

CLAYTON UTZ

Sydney

Melbourne

Brisbane

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Canberra

Darwin

Clayton Utz
Lawyers
Levels 18-19, 23-27
215 Adelaide Street
Brisbane QLD 4000
Australia

GPO Box 55
Brisbane QLD 4001
DX 128 Brisbane

T +61 7 3292 7000
F +61 7 3003 1366
www.claytonutz.com

12 January 2004

Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Our reference: 12342/41510067

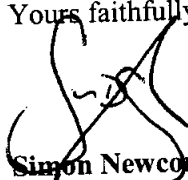
Dear Sir/Madam

Beds 'R' Us Pty Ltd - Notification of Exclusive Dealing

We enclose a Form G Notification, together with an accompanying Explanatory Memorandum and a cheque for lodgement fees of \$100, on behalf of Beds 'R' Us Pty Ltd.

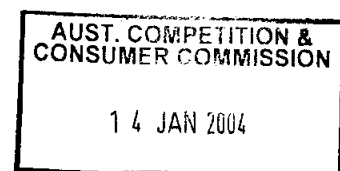
Please contact us if you have any queries.

Yours faithfully


Simon Newcomb, Partner
+61 7 3292 7243
snewcomb@claytonutz.com

Enclosure

FILE No:
DOC:
MARS/PRISM:



COMMONWEALTH OF AUSTRALIA

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

EXCLUSIVE DEALING:

NOTIFICATION

To: The Australian Competition & 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) and 47(7) of that Act in which the person giving notice engages or proposes to engage.

1. (a) **Name of person giving notice:** Beds 'R' Us Pty Ltd (ABN 69 059 469 546) ("Beds 'R' Us").
- (b) **Short description of business carried on by that person:** Beds 'R' Us will provide a franchise system for retailing of beds, mattresses, bases, bedroom furniture and related products.
- (c) **Address in Australia for service of documents on that person:** Messrs Clayton Utz, Level 26, 215 Adelaide Street, Brisbane, QLD, 4000, Attention: Mr Simon Newcomb.
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:** Supply of beds, mattresses and bases ("Bedding Products").
- (b) **Description of the conduct or proposed conduct:** The proposed conduct comprises:
 - an offer by Beds 'R' Us, and the supply by Beds 'R' Us pursuant to such offer, of a Beds 'R' Us franchise on the condition that the person to whom the franchise is offered will acquire Bedding Products for that franchise from Beds 'R' Us' preferred suppliers; and
 - a refusal to offer the franchise for the reason that the person has not acquired, or agreed to acquire, Bedding Products from Beds 'R' Us' preferred suppliers.

See attached explanatory memo for details.
3. (a) **Class or classes of persons to which the conduct relates:** All franchisees of Beds 'R' Us.
- (b) **Number of those persons:**
 - (i) **At present time:**

Zero - Beds 'R' Us has yet to enter into any franchise agreements, but proposes to do so over the next year.

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

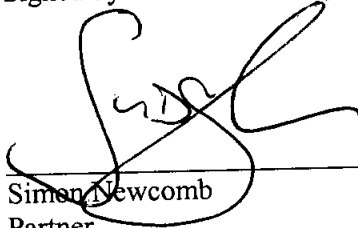
The estimated number of franchisees over the next year is unknown but is likely to exceed 50.

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

4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:** Mr Simon Newcomb, Clayton Utz, Level 26, 215 Adelaide Street, Brisbane, QLD, 4000 (Telephone: (07) 3292 7243; Facsimile: (07) 3003 1366).

Dated: 12 January 2004

Signed by/on behalf of the person giving this notice



Simon Newcomb
Partner

Clayton Utz
for and on behalf of Beds 'R' Us Pty Ltd

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in subsection 47(2),(3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47(6) or (7), or paragraph 47(8)(c) or (9)(d), of the *Trade Practices Act 1974* (the "Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7A) of the Act (the "**prescribed period**") unless the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996) starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

EXPLANATORY MEMORANDUM

Beds 'R' Us Pty Ltd ("Beds 'R' Us") - Section 93 Notification

The purpose of this explanatory memo is to provide background information relating to the proposed conduct.

Background

The proposed conduct relates to beds, mattresses and bases ("Bedding Products") in QLD and NSW.

1. Beds 'R' Us

Beds 'R' Us has acquired the rights to the "Beds 'R' Us" brand ("Brand") in Australia and New Zealand and plans to provide a franchise system for retailing of beds, mattresses, bases, bedroom furniture and related products under the Brand.

The previous owner of the Brand, Sleepyhead Manufacturing Company Limited, currently has approximately 53 independent distributors in Queensland and NSW. Beds 'R' Us plans to enter franchise agreements with these distributors.

A similar operation has been in place in New Zealand for over 10 years, comprising approximately 60 distributors.

2. Purchase of Bedding Products

Beds 'R' Us will require its franchisees to source all Bedding Products from its preferred suppliers. Beds 'R' Us is keen to ensure the continued quality of products supplied through the franchises and to avoid risks of faulty or defective products being supplied to consumers.

Beds 'R' Us' proposed conduct set out in the enclosed Notification is integral to this overall risk management and reduction initiative. The Brand is associated with quality products and the proposed conduct will enable Beds 'R' Us to ensure that quality is maintained in the future.

3. No anti-competitive effect

If sub-section 47(6) or (7) apply to the proposed conduct, Beds 'R' Us believes that the conduct does not have any anti-competitive effect and is not against the public interest for the following reasons:

- (a) this arrangement has already been in place for a significant period, but until now the Brand licensor has also been the supplier of the Bedding Products. Accordingly, sections 47(6) and (7) have only become relevant by Beds 'R' Us acquiring exclusive rights to the Brand in Australia. There will be no practical change in the market, only a change of ownership of the Brand and the appointment of Beds 'R' Us as a new franchisor;
- (b) the proposed conduct ensures the quality of the products offered by Beds 'R' Us franchisees;
- (c) the proposed conduct will have no adverse effect on competition for Bedding Products, as consumers have a broad variety of choices available from which to purchase

Bedding Products and there are many other outlets selling Bedding Products;

- (d) the products purchased from the preferred suppliers are generally available to consumers through other outlets that sell Bedding Products;
- (e) the proposed conduct is to be clearly disclosed to franchisees through the disclosure document required under the Franchising Code of Conduct; and
- (f) the proposed conduct will enable Beds 'R' Us to source advertising fund contributions from the preferred suppliers for the benefit of the franchisees.

Beds 'R' Us is of the opinion that the proposed conduct may have pro-competitive effects due to its potential to stimulate competitive activity in the Bedding Products market through competitors wishing to retain or grow their market share.

4. **Public benefit**

By ensuring that all Bedding Products offered by Beds 'R' Us' franchisees are of the requisite quality, Beds 'R' Us will be able to provide quality management and ensure that lower quality and potentially unsafe products are not offered for sale to the public through Beds 'R' Us franchises.

Beds 'R' Us' franchisees will also be able to secure wholesale Bedding Products for a lower price than they would otherwise be able to, and this will benefit consumers through the franchisees being able to offer lower prices to the retail Bedding Product market.