



Australian Competition & Consumer Commission

PO Box 1199  
Dickson ACT 2602  
470 Northbourne Ave  
Dickson ACT 2602  
Australia  
Ph (02) 6243 1111  
Fax (02) 6243 1199

Our Ref: C2004/742  
Your Ref: 2514132  
Contact Officer: Michael Green  
Contact Phone: 02 6243 1088

7 June 2004

Ms Fiona Wallwork  
Deacons  
1 Alfred Street  
Circular Quay  
Sydney NSW 2000

Dear Ms Wallwork

**Re: Third line forcing notification No. N31299,  
lodged by Prada Australia Pty Ltd**

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the Commission) on 27 May 2004.

You have described the conduct as Prada Australia Pty Ltd (Prada) proposing to require distributors to purchase Prada products and other products and services from Prada or its nominee. You state that typically, Prada's nominee will be Prada Asia Pacific Limited. The standard distribution agreement includes the following terms:

*"2.3 The Licensee shall obtain Licensed Products and Products bearing the Trademark only from the Licensor or its nominee and no other sources."*

*"4.1 The Licensee shall purchase Licensed Products only from the Licensor or its nominee."*

*"5. The Licensee agrees to carry out the following duties:*

*i. Uniforms*

*Purchase only from the Licensor or its nominee uniforms of a style decided from time to time by the Licensor or its nominee to be worn by the Licensee's staff working on the Boutique(s) at all times when they are on duty.*



k. *Attend and procure that its employees attend all sales and other training courses provided by the Licensor or its nominee to the Licensee, and follow the instructions given therein.*"

"5.4 e. *Packaging*

*Use, in relation to the sale and supply of the Licensed Products only the standard shopping bags, wrapping paper and wrapping ribbon printed with the Trademark, supplied by the Licensor or any other supplier approved by the Licensor, avoiding any other use of the same."*

Legal immunity provided by the notification will come into force on 10 June 2004.

On the basis of the information that you have provided, it is not intended that further action be taken in this matter at this stage. Please note that the notification you have lodged only provides immunity in relation to ss. 47(6) and 47(7) of the Act.

However, you should be aware that it is possible that the conduct you have described may involve exclusive dealing other than third line forcing. While I cannot provide you with legal advice, I note that the conduct you have described may also contravene ss. 47(2) and 47(3) of the *Trade Practices Act 1974* (the Act) in that Prada will only supply distribution licenses on condition that the distributor will not purchase Prada products and other specified goods and services from third party providers other than Prada's nominee.

I note this conduct would only constitute exclusive dealing if it has the purpose, or has or is likely to have the effect of substantially lessening competition. Whether or not the conduct would substantially lessen competition is for Prada to assess. For your information I have enclosed a copy of the Commission's publication 'Authorisations and Notifications' and I would direct your attention to pages 14-18.

As with any notification, please note that the Commission may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

This letter has been placed on the Commission's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Michael Green on 02 6243 1088.

Yours sincerely



Tim Grimwade  
General Manager  
Adjudication Branch

Approved for Public Register and  
to be published on the Internet

YES NO

10/6/04