

Deacons

FILE No:
DOC: D04/44433
MARS/PRISM:

14 September 2004

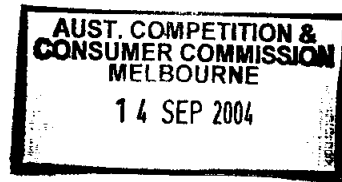
By Hand

Australian Competition and Consumer Commission
Level 35, 360 Elizabeth Street
MELBOURNE VIC 3000

Attention: Mr Tim Grimwade
General Manager, Adjudications Branch

Private & Confidential

Our Ref: 185179



Dear Sir

HONDA AUSTRALIA MOTORCYCLE AND POWER EQUIPMENT PTY LTD NOTIFICATION – EXCLUSIVE DEALING

We act for Honda Australia MPE Pty Ltd (**Honda MPE**) and enclose a notification of exclusive dealing (section 47(2) and (3)) on behalf of our client for lodgement, together with the fee of \$2,500.

The conduct in question relates to:

- supply of genuine Honda-branded products; and
- provision of a rebate in relation to the supply of such products

on condition that the person supplied and its associates and related bodies corporate do not acquire engines that are copies of genuine Honda-branded products.

We note that the Commission permitted two related notifications (N40557 and N40595) to stand in 2003. The present notification applies to all Honda-branded products (not merely Honda engines), all persons supplied with genuine Honda-branded engines products (not merely original equipment manufacturers or those who have entered into dealer agreements with Honda MPE), and also covers the provision of rebates. All of these notifications support Honda MPE's on-going policy of protecting the Honda brand against products that are deceptively similar to Honda-branded products, but which are of significantly lower quality. The conduct protected by the notification would tend to reduce the negative

Level 24
385 Bourke Street
Melbourne Vic 3000
Australia
GPO Box 4592
Melbourne Vic 3001
DX445 Melbourne
Tel +61 (0)3 8686 6000
Fax +61 (0)3 8686 6505
www.deacons.com.au

Other Offices
Brisbane
Canberra
Perth
Sydney

**Independent
Affiliated Firms**
Hong Kong
Indonesia
Malaysia
People's Republic of China
Singapore
Taiwan
Thailand
Vietnam

reputational impact of copy products on the Honda brand. Honda MPE also considers that such copy products contravene the copyright held by its parent, Honda Motor Company Ltd and its associates, with the likely effect of misleading consumers.

In summary, our client submits that the conduct which is the subject of the present notification would:

- protect the interests of members of the public who might otherwise be misled into thinking that the copy products are of similar quality to genuine Honda-branded products (this is discussed further below);
- would occasion no public detriment; and
- in particular, would have no anti-competitive effect. Persons supplied and their associates and related bodies corporate are under no obligation to acquire genuine Honda-branded products. Ultimate consumers are also free to acquire copy products (if they so desire) from other persons; such copies are widely and increasingly available.

Public benefit

There is significant public benefit in ensuring that members of the public are not misled as to the characteristics of copy products identified below, which is very likely if copy products are displayed for sale in proximity to genuine Honda products. Visual inspection may not be sufficient to detect the significant differences between the genuine Honda products and the copy products.

Origin – copy products do not generally clearly identify place of manufacture or the name of the manufacturer. As Honda manufactures in a number of countries, this could lead to a belief that the copy products are manufactured by Honda Motor Co Ltd or a company associated with Honda Motor Co Ltd.

Quality – anecdotal evidence and feedback from our client's dealer network suggests that the copy products are not as reliable or serviceable as the genuine Honda products of which they are copies. Detailed testing and an independent study of these copy products is ongoing.

Performance – our client has anecdotal evidence and feedback from its dealer network suggesting that the performance of many copy products is significantly less than claimed.

Price/Value – the copy products may be overpriced having regard to their inferior quality, the over-pricing being possible if the purchaser is encouraged to assume that the copy product is basically an unlabelled genuine Honda product or of similar quality.

Emissions – the copy products do not generally have the emission control equipment of the genuine Honda products. Therefore they are less environmentally responsible, and yet this is not apparent from visual inspection.

14/09/2004


Warranty – our client gives an express warranty greater than the warranties implied by the Trade Practices Act. For example, its standard warranty on a representative genuine Honda engine is 24 months for domestic and commercial use. It is not apparent that any express warranty applies to copy products. There is a risk that the prospective purchaser of a copy product will assume that the Honda warranty, or a warranty similar to the Honda warranty, applies to the copy product.

Parts supplied – the copy products are generally imported without accompanying supplies of parts. There are no parts supplies for copy products maintained in Australia by the manufacturers, distributors or sellers. There is a risk that the prospective purchaser of the copy products will assume that the Honda will be providing supplies of parts as it does for genuine Honda products.

Service availability – there is no network of authorised dealers with obligations to provide warranty service and other service to all users of the copy products (as there is for genuine Honda products). There is a risk that the prospective purchasers of the copy products will assume that the persons authorised to service Honda products, including the Honda dealer network, will be obliged to service the copy products.

Public safety – genuine Honda products are often used in situations which require high performance and a high level of reliability, and the consequence of failure involves public safety – e.g. water pumps used in fire fighting equipment. This safety aspect makes it highly important that users of such equipment are not misled as to the qualities of the product which is powering the equipment.

Please do not hesitate to contact us if you have any questions, or if you require further information.

Yours faithfully


Michael Wilton/ Yi Foong Ng

Partner/ Lawyer

Contact: Michael Wilton/ Yi Foong Ng

Direct line: (03) 8686 6548/ 8686 6947

Email: michael.wilton@deacons.com.au/ yifoong.ng@deacons.com.au

Regulation 9

FORM G

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(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.

(PLEASE READ DIRECTIONS AND NOTICE AT END OF FORM)

1. (a) Name of person giving notice

Honda Australia Motorcycle and Power Equipment Pty Ltd ACN 006 662
862 (Honda MPE)

(See Direction 2 below)

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

Importer of genuine Honda-branded products manufactured or distributed
by Honda Motor Company Limited or its associates (Honda Products)

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

1954-1956 Hume Highway, Campbellfield VIC 3061

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

- Honda Products
- Copies of Honda Products (Copy Products)

- (b) Description of the conduct or proposed conduct

- Supplying or offering to supply Honda Products, whether or not at a particular price, on the condition that:
 - the person to whom Honda supplies or offers or proposes to supply Honda Products (Person Supplied); and/or
 - related bodies corporate of the Person Supplied, and persons controlled by or associated with (within the meaning of the *Corporations Act 2001*) the Person Supplied (Affiliates)

will not acquire Copy Products and will not re-supply Copy Products.

- Giving, allowing, or offering to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of Honda Products on condition that the Person Supplied and its Affiliates will not acquire Copy Products and will not re-supply Copy Products.
- Refusing to supply Honda Products, whether or not at a particular price, for the reason that the Person Supplied and/or its Affiliates have acquired or have not agreed not to acquire Copy Products.
- Refusing to give, allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of Honda Products for the reason that the Person Supplied and/or its Affiliates have acquired or have not agreed not to acquire Copy Products.

(See Direction 4 below)

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

Persons supplied with any Honda Product by Honda MPE.

- (b) Number of those persons -

(i) At present time: approximately 750

(ii) Estimated within the next year: approximately 750

- (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and address: Not applicable

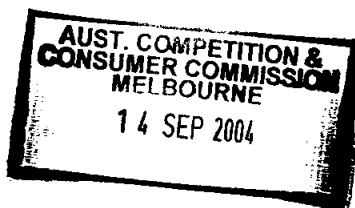
4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice

Mr Michael Wilton, Partner, Deacons

Level 24 385 Bourke Street, Melbourne VIC 3000

Dated 14 September 2004

Signed by/on behalf of the applicant



.....
Michael Wilton
Deacons
Solicitors for the applicant

(Description)

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. Where particulars of a condition or of a reason of the type referred to in sub-section 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 furnished 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 sub-section 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 of the period prescribed for the purposes of sub-section 93(7A) of the Act (the "prescribed period") unless the Commission gives a notice under sub-section 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 sub-section 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 sub-section 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 sub-section 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.