

KAHNS LAWYERS

AUST. COMPETITION &
CONSUMER COMMISSION
MELBOURNE
31 AUG 2005

Partner Contact: *Mark Worsnop*

Our Ref: *MW:05/6621*

Your Ref:

FILE No:
DOC:
MARS/PRISM:

30 August, 2005

Regional Director
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Dear Sir/Madam

RE: **Bob Jane T-Marts - Notification of Third Line Forcing**

We act for Bob Jane Corporation Pty Ltd which is the franchisor of the Bob Jane T-Mart's franchise system in respect of a notification of exclusive dealing under section 47(6) and (7) of the Trade Practices Act. Please find **enclosed** the following:-

1. Form G - Exclusive Dealing Notification
2. Annexure A to Form G
3. Extracts to Standard Franchise Agreement (4 pages)
4. Cheque for lodgement fees of \$100

Please do not hesitate to contact our office should you require any further information. Thank you for your assistance in this matter.

Yours faithfully
KAHNS LAWYERS

Per: 

Encl.

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NDS:U\MW\500.DOC

Form G

N40915

Commonwealth of Australia
Trade Practices Act 1974 --- Sub-section 93(1)
**EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition and Consumer Commission:

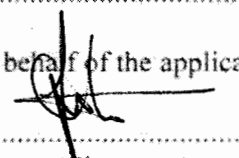
Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d) of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice..... Bob Jane Corporation Pty Ltd
.....
(See Direction 2 on the back of this form)
(b) Short description of business carried on by that person
Franchisor of Bob Jane T-Mart's, retailing tyres, wheels and accessories.
.....
(c) Address in Australia for service of documents on that person
C/- Kahns Lawyers, Level 9, 341 Queen Street, Melbourne Vic 3000
.....
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
Tyres, wheels and accessories.
.....
(b) Description of the conduct or proposed conduct
Requirement for franchisees to purchase goods from franchisor or approved suppliers, other than in specific exceptional circumstances.
.....
(See Direction 4 on the back of this Form)
3. (a) Class or classes of persons to which the conduct relates
Franchisees.
.....
(b) Number of those persons--
(i) At present time 107
(ii) Estimated within the next year 115
(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses
Not Applicable.
.....
4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice..... Alex Chung, 155 Roden Street, West Melbourne Vic
company director Bob Jane Corporation Pty Ltd.
.....

Dated 10 AUGUST 2005

Signed by/on behalf of the applicant giving notice

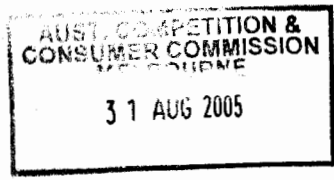


(Signature)
ALEX CHUNG

(Full Name)

DIRECTOR

(Description)



ANNEXURE A TO FORM G

Exclusive Dealing Notification – Third Line Forcing

Bob Jane Corporation Pty Ltd ('BJC') has developed the franchising system for the sale and supply of tires, wheels and other related vehicle accessories and services. Products are sold through a network of Bob Jane T-Marts, most of which are operated by independent franchisees pursuant to a standard franchise agreement between BJC and its corporate franchisees.

The standard franchise agreement restricts the supply of goods and services to authorised products only, specifically under clauses 10.1, 10.2 & 10.14 of its franchise agreement (copies attached).

Under clause 10.14, the franchisee is permitted to source authorised products only from the franchisor or authorised suppliers. The franchisee is prohibited from sourcing any products or suppliers from any supplier other than the franchisor or the authorised suppliers. However, under clauses 10.1 and 10.2 of the franchise agreement (copies attached), franchisees are permitted to purchase an unauthorised product to meet a customer's immediate requirements in the specific circumstances set out under clause 10.2.

For reasons of quality and consistency of image, it is important to BJC that its franchisees market and sell the same range of products. In practice, BJC enters into supply arrangements with manufacturers through which it is able to obtain a discount for bulk or volume orders, which would not normally be available to franchisees were they purchasing products individually. Franchisees order and are supplied product directly from third party suppliers authorised by BJC, which is invoiced by the supplier. BJC then invoices the franchisees. The supply to franchisees of products in this manner also provides a source of income to BJC.

BJC considers that the public benefit to be derived from its conduct outweighs any public detriment as a result of the following:

1. Bulk or volume discount for the supply of products made available by manufacturers means that products are normally able to be sold at lower prices to franchisees, which in turn are able to supply products at cheaper prices to consumers.
2. Through the uniformity produced by supplying a set range of products to franchisees, BJC can promote and advertise the products as a franchise group in national advertising campaigns, thereby avoiding running single and independent promotions, and to be consistent with recommended pricings.
3. Control over the source of supply helps BJC to ensure that appropriate levels of public safety are met by dealing only with reputable brands and products which meet international standards. This also means the franchisees maintain adequate levels of inventory and are able to respond to service and warranty enquiries promptly.
4. Where products are acquired directly from BJC, the market share of BJC's T-Marts group is not sufficient to lessen competition in the marketplace.

Dated: 10 AUGUST 2005


.....
Alex Chung, Director
Bob Jane Corporation Pty Ltd

10 FRANCHISEE'S OBLIGATIONS

10.1 Sale of Authorised Products and Services

- (a) Subject to **Clauses 10.2 and 10.14**, the Franchisee and the Franchisee's Representative agree to sell Authorised Products and Authorised Services only or such other products and services as the Franchisor may consent to in writing from time to time on the terms and conditions of this Agreement.
- (b) Subject to **Clauses 10.2 and 10.14** or unless agreed in writing to the contrary, the Franchisee will source all of its Authorised Products from the Franchisor or an Authorised Supplier, and will not use any third party suppliers.
- (c) Subject to **Clauses 10.2 and 10.14**, the Franchisee and the Franchisee's Representative agree to sell only Authorised Products and Authorised Services at the Specified Location and from no other location.

10.2 Unauthorised Products and Unauthorised Suppliers

- (a) The Franchisee may purchase an unauthorised product to meet a customer's immediate requirements provided:
 - (i) the Franchisee has first used its best endeavours to supply the customer with an Authorised Product;
 - (ii) the customer requires the unauthorised product to be supplied by the Franchisee immediately and the customer is not merely inquiring about the availability of such product;
 - (iii) the Franchisee purchases the quantity of unauthorised product sufficient to meet the customer's immediate requirements only;
 - (iv) the Franchisee retains and stores the information about the sale specified in the **Schedule** in such form as specified by the Franchisor, provided that the Franchisor may inspect, audit and take copies of such information at any time during business hours for the purpose of ensuring the Franchisee is acting in accordance with this Agreement; and
 - (v) the unauthorised product complies with all State and Federal laws that relate to product safety, the rules applying under the Australian Design Rules (A.D.R.) and any other motor vehicle safety standard.
- (b) The Franchisee may order an Authorised Product from an unauthorised supplier to meet a customer's immediate requirements provided:

- (i) the Franchisee has first used its best endeavours to order the Authorised Product from the Franchisor or an Authorised Supplier;
- (ii) the Franchisee has used its best endeavours to meet a customer's immediate requirements through an equivalent Authorised Product (which could involve another brand);
- (iii) the Franchisee has used its best endeavours to obtain the Authorised Product from another franchisee;
- (iv) the customer requires the Authorised Product to be supplied by the Franchisee immediately and the customer is not merely inquiring about the availability of such products;
- (v) the Franchisee orders the quantity of Authorised Product sufficient to meet the customer's immediate requirements only;
- (vi) the Franchisee retains and stores the information about the sale specified in the **Schedule** in such form as specified by the Franchisor, provided that the Franchisor may inspect, audit and take copies of such information at any time during business hours for the purpose of ensuring the Franchisee is acting in accordance with this Agreement; and
- (vii) the Authorised Product complies with all State and Federal laws that relate to product safety, the rules applying under the Australian Design Rules (A.D.R.) and any other motor vehicle safety standard.

10.14 Sale of Products and Services

(a) Authorised Products Only

- (i) Subject to **Clause 10.2** or with the Franchisor's prior written consent, the Franchisee will sell from the Specified Location only Authorised Products and Authorised Services and may not supply products or services from any other location or premises.
- (ii) Subject to **Clause 10.2** or with the Franchisor's prior written consent, which consent must not be unreasonably withheld, the Franchisee will source Authorised Products only from the Franchisor or Authorised Suppliers utilising the approved procedures for ordering, dispatch and delivery of such Authorised Products. The Franchisee shall not source any products or services from any supplier other than the Franchisor or the Authorised Suppliers.
- (iii) Subject to **Clause Error! Reference source not found.**, the Franchisee acknowledges that the Franchisor may, in its absolute discretion, change the Authorised Products, Authorised Services, Authorised Suppliers or approved procedures for ordering, dispatch and delivery of Authorised Products referred to in **Clause 10.14(a)(ii)**, provided always that the Franchisee is notified at the time in writing of all such changes.

(b) Product Range

- (i) Subject to **Clauses 10.2 and 10.14** and the Franchisor's policies set out in the Manuals from time to time, the Franchisee acknowledges that sale of products or services which are not Authorised Products and Authorised Services may impact upon the goodwill and reputation of the System and therefore the Franchisee agrees it will not sell such products or services unless prior written approval from the Franchisor is obtained.
- (ii) If the Franchisee wishes to sell products and services other than Authorised Products and Authorised Services, the Franchisee will submit samples of the product or details of the service to the Franchisor together with such fees as are reasonably anticipated to be incurred by the Franchisor in testing and evaluating the product or service.
- (iii) If the Franchisor, in its absolute discretion, approves the product or service, it will notify the Franchisee by notice in writing whereupon that product or service may be offered for sale by the Franchisee to customers at the retail level.

(c) **Prohibited Services/Product Sales**

The Franchisee and the Franchisee's Representative agree not to:

- (i) directly or indirectly be engaged in the repair or maintenance of brakes or front end repairs, except to the extent of adjusting or the replacement of camber or castor alignments;
- (ii) repair or modify or arrange for the repair or modification of any tyre or tube, other than normal puncture repairs carried out in a manner approved in writing by the Franchisor;
- (iii) sell secondhand tyres other than tyres received in stock resulting from normal business transactions carried out at the Franchise and under no circumstances to purchase secondhand tyres from sources other than another franchisee or as a trade-in, subject to the obtaining of prior written approval from the Franchisor;
- (iv) sell recaps or remoulds of any description unless specified as an Authorised Product;
- (v) sell products and services other than Authorised Products and Authorised Services; or
- (vi) sell any products or services including Authorised Products and Authorised Services from any location or premises other than the Specified Location.