



**Australian
Competition &
Consumer
Commission**

Our Ref: C2002/599
Your Ref: JSF/CH/695
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24 August 2005

Mr Stuart Ariff
Insolvency Administrators
Level 7
50 Clarence Street
Sydney NSW 2000

Juice Station Franchising notifications N31192 and N31144 – Draft Notice

Dear Mr Ariff

I am writing to you in your role as administrator appointed for Juice Station Franchising Pty Limited.

Notification N31192 was lodged by Juice Station Franchising Pty Ltd (Juice Station) on 13 September 2002 in relation to third line forcing conduct. Juice Station requires franchisees to purchase fruit, bottles and labels from Fruit Station Pty Ltd and to purchase fruit juicing machines and certain store fit-out from nominated suppliers. Juice Station had previously lodged N31144 for similar conduct – the later notification incorporating changes to the supply arrangements for the purchase of fruit stock.

The ACCC has received complaints from franchisees regarding improperly formed bottles being supplied by Juice Station – with loose plastic pieces in bottles forming choking hazards and sharp spikes protruding from the rim of some bottles. One franchisee also complained that the bottles are now too thin and are no longer fit for purpose.

The ACCC understands that franchisees have been expressing concerns about bottles being supplied not being fit for purpose for some months now, but there are ongoing problems with the bottles.

Having raised these issues with you, the ACCC is not satisfied that the cause of the improperly formed bottles has been identified and rectified.

The ACCC considers the arrangements that force franchisees to use bottles supplied by Juice Station that may not be fit for purpose and may create a risk of injury to be a significant detriment. As a result, the ACCC has decided to issue the attached Draft Notice of intention to revoke these notifications. The process for considering revocation of notifications is described in the attached draft notice.



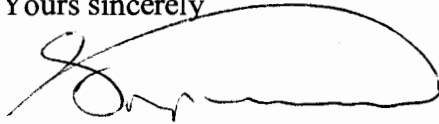
In accordance with section 93A(2), the ACCC invites Juice Station or any interested party to notify it within 14 days of Monday 29 August 2005 (ie by no later than 12 September 2005) whether they wish to hold a conference in relation to the draft notice.

The ACCC also invites Juice Station or any interested party to provide written submissions in response to the draft notice by 12 September 2005. The ACCC will take account of all submissions provided in writing or made at a conference (if one is held) in deciding whether to issue a final notice revoking the notifications.

Submissions will be placed on the Public Register kept by the ACCC. However, persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though it is not publicly available. Guidelines for seeking confidentiality are attached.

Should you wish to discuss any aspect of this matter, please contact David Hatfield on 02 6243 1266, or by email on david.hatfield@accc.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a large, sweeping flourish extending to the right.

Scott Gregson
A/g General Manager
Adjudication

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the ACCC assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the ACCC to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The ACCC is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the ACCC may still grant confidentiality where, in the ACCC's view, it is desirable to do so.

The ACCC also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The ACCC expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the ACCC:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the ACCC deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the ACCC denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the ACCC will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the ACCC will return the original material and destroy all associated copies. The ACCC will not consider this material when reaching its decision.

If the ACCC does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the ACCC pursuant to its powers generally under the Trade Practices Act.