

H. DRAKOS & COMPANY
SOLICITORS

Partners:

H. S. DRAKOS
C.G. CASTRISOS

Your Ref:
Our Ref: CC:KE:21026
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31 August 2005

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

ATTENTION: ANTHONY PARKER

Dear Sir

RE: HEALTH MINDERS/ ELITE FITNESS

We wish to advise that we act for Elite Fitness Equipment Pty Limited.

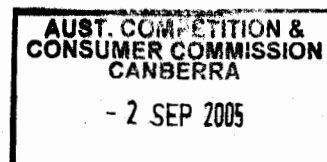
We **enclose** herewith a Form G (Exclusive Dealing Notification) for your consideration.

We await your response.

Yours faithfully



Mr Con Castrisos
Partner
H. DRAKOS & COMPANY



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 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 purposes to engage.

1. (a) Name of person giving notice: **ELITE FITNESS FRANCHISING PTY LTD (ACN 111 561 614)**
- (b) Short description of business carried on by that person: **THE PROMOTION AND SALE OF RETAIL FITNESS EQUIPMENT AND ASSOCIATED PRODUCTS IN SERVICES FROM RETAIL OUTLETS**
- (c) Address in Australia for service of documents on that person: **REGISTERED OFFICE - H DRAKOS & CO LEVEL 1, 170 BOUNDARY STREET, WEST END, QLD 4000**
Principal place of business in Australia: **136 MAGNESIUM DRIVE, CRESTMEAD, QLD 4132**
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates: **FITNESS EQUIPMENT AND ASSOCIATED PRODCUTS AND SERVICES FROM RETAIL OUTLETS**
- (b) Description of the conduct or proposed conduct: **REQUIREMENT FOR THE FRANCHISEES TO PURCHASE FITNESS EQUIPMENT AND ASSOCIATED PRODUCTS AND SERVICES FROM APPROVED SUPPLIERS**
3. (a) Class or classes of person to which the conduct relates: **FRANCHISEES**
- (b) Number of those persons:
 - (i) At present time: **Nil**
 - (ii) Estimated time within the next year: **3 to 6 MONTHS**
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses: **N/A**
4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice: **Steven Charles Goltman, C/- 136 Magnesium Drive, Crestmead, Qld 4132**

Date August 2005

Signed by/on behalf of the Applicant
Giving notice

.....
Steven Charles Goltman
For and on behalf of Elite Fitness
Franchising Pty Ltd
ACN 111 561 614

Annexure A to Form G

Exclusive Dealing Notification-Third Line Forcing

ELITE FITNESS FRANCHISING PTY LTD

ELITE FITNESS FRANCHISING PTY LTD has developed a franchise system for the marketing promotion, sale and supply of fitness equipment and associated products and services in conjunction with the **ELITE FITNESS FRANCHISING PTY LTD** Trademarks subject to certain standards being met.

There are currently 19 Elite Fitness outlets located in the following States, Queensland, Victoria and NSW. None of these are franchised although it is expected that there will be in the next 12 months up to 5-10 franchises.

Pursuant to the franchise agreement the Franchisee will be required to purchase products from approved supplier and we would refer you to the Disclosure Document (a copy of which is **attached** hereto) in particular paragraph 9.1 it is noted that ETC Trading Pty Ltd ACN 110 380 197 is an approved supplier from which Franchisee's must purchase stock. This is an associate company which has the following Company Directors: Steven Goltman, Leslie Goltman, Harry Goltman and a further director Jamie Gordon who is only a director of this Company. ETC Trading Pty Ltd imports and distributes fitness equipment to both Elite Fitness stores and generally.

Franchisees can only purchase products from other suppliers if Elite Fitness is unable to supply the stock. This is an exclusive supply based agreement. If the approved supplier is unable to supply any stock the Franchisee may purchase those items from an approved alternate supplier until the original approved supplier is again able to supply those goods. The fitness products market is a highly competitive market with a large number of participants. The equipment sold is being used for exercise purposes and as a result it is important that it adhere to Australian Standards and be safe and fit for such purposes. Elite Fitness has developed a good name in the industry as being a reliable and a quality product.

For reasons of safety and quality as well as consistency of image, product is recognised as important to Elite Fitness that the Franchisee's market and sell the same brands of products. Elite Fitness provides advertisements in newspapers offering certain products and special deals.

Elite Fitness considers that the requirement to purchase the above stock and ancillary products is essential to the successful operation of the franchise network for reasons which include the quality and consistency of the product and the ability to negotiate lower prices.

Elite Fitness considers that the public benefit to be derived from its conduct outweighs any public detriment as a result of the following.

1. Group deals for supplies means that quality products can be provided at lower prices to its Franchisees, who in turn provide these products to the public.
2. Control over the sources supply helps Elite Fitness to ensure the quality products, prompt and consistent delivery times.
3. Because of the uniformity the product line Elite Fitness can market and advertise through marketing programs.

It is also noted that certain Franchisees will be required to purchase health product from Health Minders Pty Ltd ACN 002 202 913. Elite Fitness has entered into an agreement with Health Minders for the supply of a range of health products.

Elite Fitness considers that having this add on to the Elite primary market which is Fitness Equipment the Franchisee's are offered a greater diversity. The supply of Health Goods is competitive and its important for Elite to ensure that certain standards are met in this regard. Elite has chosen Health Minders due to their reputation in the market place and their consistency. It is also important for the image of Elite Fitness that the Franchisee's market and sell the same brands and products. Elite Fitness will run major advertisements in various media to market and sell these products. Elite Fitness considers that the requirement to purchase these health products is essential to the success of the operation of the franchise network for reasons that include quality and consistency of the products and ability to negotiate lower prices with Health Minders. The public will benefit for the following reasons:

1. Enable lower prices to the franchisees due to the volume purchased.
2. Control of the source of supply helps Elite to ensure quality of product especially in an area such as this where there are diverse brands.
3. Because of the uniformity produced by the Franchisees Elite can promote and advertise.