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Our ref: MH:AL:2006/69
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Your ref:

17 August 2006

Ms Sheridan de Kruiff
Adjudication Branch
Australian Competition and
Consumer Commission
P.O. Box 1199
DICKSON ACT 2602

Also By Email: adjudication@acc.gov.au

Dear Madam

**SIMON'S FRANCHISING PTY LTD ("Simon's Franchising")
EXCLUSIVE DEALING NOTIFICATION N92569**

We refer to your request for information relating to the Notification and respond as follows:

1. A brief description of Simon's Franchising

Simon's Franchising has developed a system for the business and management of retail outlets trading under a common brand name ("Simon's ...Quality.Value.Variety") and otherwise utilising certain intellectual property.

Simon's Franchising retails a wide range of quality products to customers for their everyday needs. The products range includes greeting cards, confectionery, socks, gloves, beanies and scarves, stationery, candles, giftware, cleaning products, pet products, photo frames and albums, health and beauty, display flowers, plastic ware, craft products, hair care, hair accessories, jewellery, cosmetics, stickers, batteries, toys, party supplies, gift bags, art products and similar items.

The product range is being progressively identified with various distinctive brand names secured by trade marks licensed from a related entity, namely, Simon's Retail Holdings Pty Ltd. The trade marks that are the subject of registration applications lodged with IPO Australia are "Craft Workshop", "Art Workshop", "Revival Essentials", "Ernie's Pet World" and "Cobi".

It is the value and quality of the variety goods that differentiate Simon's from other variety goods stores and many products are exclusive to Simon's Franchising.

The Simon's brand is targeted at people of all ages who wish to purchase quality variety products at good value.

Simon's Franchising currently operates 8 stores in Victoria and proposes to develop a network of franchisees throughout Australia.

The markets can be reasonably identified as:

- (a) the broad wholesale market for variety goods in Australia; and
- (b) the broad retail market for variety goods in Australia.

2. Description of proposed arrangement

It is proposed that franchisees will pay certain fees (royalties) for operating the franchised business on the terms and conditions set out in a franchise agreement.

Under the franchise agreement, franchisees will be required to purchase all retail stock from Simon's Franchising and franchisee must not utilise any other stock without the express written consent of Simon's Franchising.

Simon's Franchising-sourced retail stock is comprised of quality variety goods, which are the key element of Simon's image and brand, namely "*Quality.Value.Variety*", and is integral to the integrity of the franchise system as there is a need to maintain the quality, variety and value of the product range..

Simon's Franchising considers that the requirement to purchase Simon's retail stock is essential to the successful operation of Simon's for the following reasons:

- (a) Simon's Franchising prides itself on the quality, value and variety of goods and is conscious of the need to maintain the same standard of quality in all its franchised businesses;
- (b) the network of franchisees requires the maintenance of quality and consistency of goods retailed to customers.

- (c) Simon's Franchising needs to maintain an image which is instantly and distinctly recognisable by its customers and potential customers. As a result it requires a consistent and distinctive fit-out of franchised premises and of product range.

3. **Public benefits**

Simon's has not been designed to substantially, or indeed minimally, lessen competition within the relevant markets. The proposed obligation for franchisees to exclusively purchase Simon's-sourced retail stock is an integral part of the Simon's system and it will have a negligible effect on competition within the relevant market.

Simon's Franchising considers that the public benefit outweighs any public detriment because:

- (a) franchisees will have guaranteed access to Simon's-sourced retail stock at competitive prices;
- (b) this will in turn allow franchisees to supply quality variety goods to customers at favourable prices and establish a competitive advantage;
- (c) Simon's Franchising will be able to focus on controlling the quality and price-competitiveness of goods sold which will ensure that retail customers are provided with products of a consistent standard (quality and price) in keeping with the Simon's image and brand;
- (d) franchisees will be able to promote and advertise themselves as a group, avoiding the cost and inefficiencies of running single and independent promotions and marketing campaigns; and
- (e) control over the source of supply will help Simon's Franchising ensure prompt and consistent delivery times of retail stock to franchisees (for availability to the public).

In our view, the proposed arrangement has no anti-competitive effect on the end consumer. The retailers of variety goods in Australia are numerous, which allows retail customers to "shop around". The proposed arrangement is likely to increase competition for the following reasons:

- (a) franchisees may be new entrants into the retail market for sales of variety goods;
- (b) franchisees will be assisted and educated in competing in the existing retail market; and
- (c) in the wholesale market, the volumes and certainty of supply to franchisees will likely result in cost savings, increased efficiency and competition from suppliers. This will likely result in cost reductions at the retail level, further enhancing interbrand competition.

We respectfully submit that Simon's Franchising is entitled to statutory immunity pursuant to section 93 of the *Trade Practices Act 1974* as the public benefits resulting from the proposed conduct outweighs any public detriment.

Yours faithfully

Herman Partners

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