

AUST. COMPETITION &  
CONSUMER COMMISSION  
SYDNEY

17 OCT 2006

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**Directors**  
Elisabeth Ritchie  
Marwan Kojok



**BAYBRIDGE**

Our Ref: ER:AS:60134  
Your Ref:

12 October 2006

Australian Competition and Consumer Commission  
Level 7, 123 Pitt Street  
SYDNEY NSW 2000

Dear Sir,

**EXCLUSIVE DEALING NOTIFICATION**

We act on behalf of Gelatissimo Pty Ltd.

**Enclosed** are the following:

1. Form G with Annexure to Form G;
2. Relevant provisions of Franchise Agreement;
3. Cheque for lodgement fees of \$100.00.

If you have any queries in relation to the above please contact the writer.

Yours faithfully  
**BAYBRIDGE LAWYERS**

A handwritten signature in black ink, appearing to be 'ER' or similar initials.

Elisabeth Ritchie  
Direct Email: eritchie@baybridge.com.au

Encl.

FILE No:
DOC:
MARS/PRISM:

17 OCT 2006

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

N31737

To the Australian Competition and Consumer Commission:

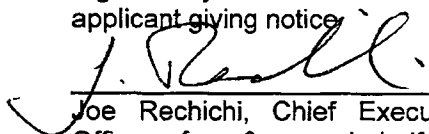
Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6), or (7), or paragraph 47(8) (a), (b) or (c) or (9) (a), (b), (c) or (d) of that Act in which the person giving notice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

1. (a) Name of person giving notice : **GELATISSIMO PTY LIMITED (A.C.N. 100 053 307)**  
  
(b) Short description of business carried on by that person: **THE GRANTING OF FRANCHISE LICENSES FOR THE OPERATION OF BUSINESSES PROVIDING GELATO, GELATO RELATED PRODUCTS, ASSOCIATED FOODS AND BEVERAGES.**  
  
(c) Address in Australia for service of documents on that person: **C/- BAYBRIDGE LAWYERS, SUITE 106, LEVEL 1, 109 PITT STREET, SYDNEY NSW 2000**
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates: **PRODUCTS OFFERED FOR SALE IN THE COURSE OF OPERATING A LICENSED BUSINESS GRANTED BY GELATISSIMO PTY LIMITED.**  
  
(b) Description of the conduct or proposed conduct: **REQUIREMENT FOR FRANCHISEES TO PURCHASE PRODUCTS FROM GELATISSIMO PTY LIMITED AND NOMINATED AND/OR APPROVED THIRD PARTY SUPPLIERS. THESE SUPPLIERS ARE LISTED IN SCHEDULE B OF THE ATTACHED ANNEXURE TO FORM G AND MAY BE UPDATED FROM TIME TO TIME.**
3. (a) Class or classes of persons to which the conduct relates: **FRANCHISEES**  
  
(b) Number of those persons--
  - (i) At present time: 9
  - (ii) Estimated within the next year: 19  
(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses: **SEE SCHEDULE A OF THE ATTACHED ANNEXURE TO FORM G**
4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Joe Rechichi, Unit 6, Parklands Estate, 9 – 11 South Street, RYDALMERE NSW

Dated: 12<sup>th</sup> October 2006

Signed by/on behalf of the  
applicant giving notice

  
Joe Rechichi, Chief Executive  
Office, for & on behalf of  
Gelattissimo Pty Limited

17 OCT 2006

**Annexure to Form G**

**Exclusive Dealing Notification-Third Line Forcing**

**GELATISSIMO PTY LTD  
ACN 100 053 307**

Gelatissimo Pty Limited (A.C.N 100 053 307) ("**Gelatissimo**") operates a franchise system ("**the Franchise System**") involving a particular method and system of preparing, supplying and selling gelato, gelato related products, associated foods and beverages in conjunction with the Gelatissimo Name, the Gelatissimo Trade Mark and certain other specified products as directed by Gelatissimo.

Gelatissimo Manufacturing Pty Limited (ACN 059 564 453) is a related company to Gelatissimo and has similar directors and shareholders.

At the time of this application, Gelatissimo is the franchisor in respect of 9 franchisees throughout Australia and their respective names and addresses are provided in **Schedule A**. Gelatissimo has disclosed to the existing franchisees those matters raised in this exclusive dealing notification.

The franchisees of Gelatissimo are required, in meeting their obligations under the Franchise Agreement and Operations Manual, to purchase products from nominated or approved suppliers.

The current nominated and/or approved suppliers of the products are provided in **Schedule B**.

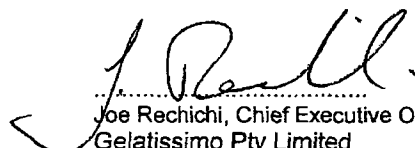
Gelatissimo has special and unique products, including the full range of gelato sold by franchisees, which are manufactured for the Gelatissimo franchise network. These products are made in accordance with Gelatissimo's proprietary recipes and form a central point of distinction for franchisees and the Franchise System. Differentiation is important to the success of franchisees since the sale of gelato and associated goods is a competitive market. The challenging trading conditions further support Gelatissimo's efforts to maintain quality and consistency of image by requiring franchisees to market and sell the same products.

Gelatissimo considers the requirement to purchase the stock is essential to the successful operation of the franchise network, for reasons that include the protection of proprietary knowledge and information relating to the products, quality and consistency of the products and the franchise operation as a whole.

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

1. Quality of the products being sold to the public can be maintained; and
2. Consistency of the products provided by the Franchisees.

Gelatissimo requests the Australian Competition and Consumer Commission to consider this request for exclusive dealing.

  
.....  
Joe Rechichi, Chief Executive Officer  
Gelatissimo Pty Limited  
12 October 2006

### **SCHEDULE A**

	<b><u>Name</u></b>	<b><u>Address</u></b>
1.	Duckphat Pty Ltd	St Ives Shopping Centre 166 Mona vale Road St Ives NSW 2075
2.	Lee Property Group	Shop 3 18 – 20 Military Road Watsons Bay NSW 2030
3.	Gelital Pty Ltd	197 Lygon Street Carlton VIC 3053
4.	Retail Excellence Pty Ltd as trustee for the Retail Excellence Trust	Unit 25, 6-20 Braidwood Street, Strathfield South NSW 2136
5.	GEL. C.B. Pty Ltd	Tenancy 2A, IMAX Bldg 31 Wheat Road Darling Harbour NSW 2000
6.	Ridgeway Cleaning Pty Ltd	Shop 2, 15 Cavill Av Surfers Paradise QLD 4217
7.	Viva A Company	Shop 2, 376 Victoria St Chatswood NSW 2057
8.	Café Cioccolato Pty Ltd	Shop 3, 161-169 Baylis Street Wagga Wagga NSW 2650
9.	Zinjingle Pty Ltd	Tenancy 108, Oceans 101-105 The Esplanade Mooloolaba QLD 4557

**SCHEDULE B**

Gelatissimo Manufacturing Pty Limited (ACN 059 564 453)

# 1 Definitions and interpretation

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## 1.1 Definitions

In this Agreement, unless the context requires otherwise:

**“Administration Fee”** means the fee described as such in item 18 of the Schedule payable to Gelatissimo for the preparation of the Franchise Agreement and associated documentation. For the avoidance of doubt the Administration Fee does not include any costs which Gelatissimo may incur:

- (a) if Gelatissimo is required to use a Licence prepared by a landlord;
- (b) in connection with the amendment or assignment of this Agreement and the Guarantee; or
- (c) in connection with any external legal or administrative costs including monies owing to a landlord or any Government Agency.

**“Advertising Fee”** means the fee described as such in item 16 of the Schedule.

**“Advertising Fund”** means a separate advertising account administered and controlled by Gelatissimo.

**“Approved Ingredients”** means the ingredients and materials specified in the Operations Manual or otherwise notified to the Franchisee, including ingredients and materials manufactured to Gelatissimo’s own formulations or specifications, whether in the Operating Manual or otherwise.

**“Bank”** means a corporation authorised by law to carry on the general business of banking in Australia.

**“Business”** means a retail business providing the Products and Services to the general public under the Business Name and Intellectual Property (including the Marks) or any of them and using the Intellectual Property and the System.

**“Business Day”** means each day of the week except Saturdays, Sundays and public holidays.

**“Business Name”** means Gelatissimo.

**“Code”** means the Franchising Code of Conduct prescribed under the Trade Practices (Industry Codes - Franchising) Regulations 1998 (Cth).

**"Commencement Date"** means the date specified as such in item 8 of the Schedule.

**"Confidential Information"** means all information, regardless of its form, relating to Gelatissimo which:

- (a) is proprietary or confidential in nature or which is treated by Gelatissimo as confidential; and
- (b) is not lawfully in the public domain,

and includes, without limitation, the terms of this Agreement and all information and materials supplied by Gelatissimo to the Franchisee (including but not limited to the Operations Manual and all Training materials).

**"CPI"** means the Consumer Price Index (All Groups) for the City of Sydney published by the Australian Bureau of Statistics (or any other index published in substitution for this index).

**"Customer"** means a customer or potential customer of Gelatissimo.

**"Disclosure Document"** means the disclosure document relating to the Franchise which was prepared by Gelatissimo and provided to the Franchisee pursuant to the Code.

**"Dispute"** and **"Disputant"** have the meaning given to those terms in clause 32.

**"Encumbrance"** means any mortgage, lien, hypothecation, charge (whether fixed or floating), bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance.

**"Financial Year"** is each twelve-month period ending the last day of June and for the first Financial Year of the Term, the period from the Commencement date until the first 30<sup>th</sup> June in the Term, and for the last Financial Year of the Term, the period commencing on the last 1<sup>st</sup> July in the Term and ending on the last day of the Term.

**"Fit Out Expenses"** means the costs and expenses incurred by Gelatissimo (whether personally or on behalf of the Franchisee) in relation to the fit out of the Premises to Gelatissimo's standard and design in accordance with clause 16.7 and as notified by Gelatissimo to the Franchisee from time to time.

**"Franchise"** means the Franchisee's rights under this Agreement to operate a Business at the Premises.

**"Franchisee"** includes the employees and agents of the Franchisee and where the Franchisee is a natural person the permitted heirs, executors, administrators and assigns of the Franchisee or if the Franchisee is a company its successors in title and permitted assigns and those claiming through or under them respectively.

**"Gelatissimo"** includes its servants, agents, successors in title and assigns and those claiming through or under them respectively.

**"Government Agency"** means:

- (a) a government or government department;
- (b) a governmental, semi-governmental, regulatory or judicial entity or authority; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Gross Sales** means the total value of all sales (including GST) made by the Franchisee in connection with the conduct of the Franchise and includes, but is not limited to, sales by cash, credit, charge account or otherwise,

**Gross Revenue** means all revenue received or receivable by Franchisee the in carrying on the Franchise including, but not limited to:

- (a) Gross Sales;
- (b) the proceeds of the Franchisee's business interruption policy; and
- (c) commissions, promotional fees and any other income received from any suppliers of Stock.

**"GST"** means the goods or services or value added tax, including GST within the meaning of the GST Act.

**"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999*.

**"Guarantee"** means:

- (a) a valid and enforceable guarantee and indemnity of the Franchisee's obligations under or pursuant to this Agreement, in a form acceptable to Gelatissimo and executed by each of the Guarantors;
- (b) which must be accompanied by a certificate of advice in relation to that document from each of an independent:
  - (i) solicitor; and
  - (ii) Certified Public Accountant,

in a form acceptable to Gelatissimo, confirming the advice that they have provided to the Guarantor.

**"Guarantor"** means each person specified as such in item 10 of the Schedule and each director of the Franchisee (and includes any person who may be appointed as a director of the Franchisee during the Term).

**"HACCP Requirements"** means the requirements of a Hazard Analysis Critical Control Point program implemented to identify food safety problems, to monitor such potential problems and to resolve any food safety problems which occur.

**"Initial Franchise Fee"** means the amount specified as such in item 11 of the Schedule.

**"Initial Period"** has the meaning given to that term in clause 32.3.



**"Initial Training"** means the training prior to the Commencement Date, in relation to the management and operating procedures as defined in the Operations Manuals and in accordance with clause 6.1.

**"Intellectual Property"** means all copyright, trade mark rights, patent rights and any other intellectual property subsisting in:

- (a) the Gelatissimo name, logo and the Marks;
- (b) the Gelatissimo colour scheme and corporate identity;
- (c) the Gelatissimo documents, forms and materials including in particular the contents of the Operations Manual and this Agreement;
- (d) the Confidential Information;
- (e) the Product recipes, formulas, specification, design and presentation;
- (f) know-how relating to the operation of the System;
- (g) advertising and promotional material, (whether or not registered or protected by copyright) devised or acquired by Gelatissimo and applied in the sale of the Products and Services and the System;
- (h) the Business Name; and
- (i) the trade dress including the get-up layout and presentation of Products or any packaging as well as the design, layout and décor of the Premises from which the Franchise is conducted.

**"Licence"** means any licence or lease of the Premises granted to the Franchisee, including but not limited to the sub-licence referred to in clause 16.3(a)(ii) or clause 16.3(b)(ii).

**"Local Store Marketing Amount"** means the amount specified in item 21 of the Schedule, as amended by Gelatissimo from time to time by 21 days' written notice to the Franchisee, and is not related to the Advertising Fee in any way.

**"Local Store Marketing Period"** means the period described as such in item 21 of the Schedule, being the period within which the Franchisee must spend the Local Store Marketing Amount in accordance with clause 10.4.

**"Manager"** means the person or persons nominated by the Franchisee and approved by Gelatissimo in writing (provided such approval has not been withdrawn by Gelatissimo by notice to the Franchisee in writing) and the first such approved person is named in item 2 of the Schedule.

**"Marks"** means the names, logos and trade marks, service marks, insignia, logos, colour schemes, domain names or internet addresses specified in item 26 of the Schedule or as used by Gelatissimo from time to time in association with its business.

**"Minister"** means the government minister responsible for administration of the Trade Practices (Industry Codes - Franchising) Regulations 1998 from time to time, being, at the date of this Agreement, the Minister for Small Business and Tourism.

**"Month"** means a calendar month except that the first month of the Term will commence on the Commencement Date and the final month of the Term will conclude on the date of the expiry or earlier determination of the Term.

**"Monthly Gross Revenue"** means Gross Revenue received or receivable by the Franchisee each Month.

**"Opening Promotion Costs"** means the fee described as such in item 19 of the Schedule for advertising, marketing and promotional costs and reasonable travel and accommodation costs incurred by Gelatissimo in connection with opening the Premises, as notified by Gelatissimo to the Franchisee on or before the Commencement Date in writing.

**"Operations Manual"** means a manual of that name provided by Gelatissimo to the Franchisee for the duration of the Term (and, if applicable, of the Renewal Term), as amended by Gelatissimo from time to time.

**"Payments"** means all payments of money or valuable consideration payable by the Franchisee to Gelatissimo in connection with the Franchise, including but not limited to the Initial Franchise Fee, the Opening Promotion Costs, the Royalty Fee, the Advertising Fee, the Fit Out Expenses and all payments in relation to Stock ordered by the Franchisee.

**"Premises"** means the premises described in item 6 of the Schedule and, if Gelatissimo approves a change of premises during the Term, the premises approved by Gelatissimo in writing from which the Business is to be conducted by the Franchisee.

**"Products"** means gelato, milk-related drinks, ice-blended drinks, coffee, desserts, cakes, pastries, soft drinks, water, chocolates, nougat, gifts, any Approved Ingredients, and any other Products as may be specified by Gelatissimo from time to time.

**"Project Management Fee"** means the percentage of the Fit Out Expenses specified in item 15 of the Schedule.

**"Related Company"** means a related body corporate (as defined by the Corporations Act 2001) of the Franchisee.

**"Renewal Fee"** means the amount specified as such in item 24 of the Schedule.

**"Renewal Term"** means the period specified as such in item 23 of the Schedule.

**"Restricted Activities"** has the meaning given to that term in clause 28.2.

**"Restriction Area"** has the meaning given to that term in clause 28.3.

**"Restriction Period"** has the meaning given to that term in clause 28.4.

**"Royalty Fee"** means the amount specified in Item 25 of the Schedule.

**"Royalty Due Date"** means the date specified in Item 28 of the Schedule.

**“Services”** means the merchandising and sale of the Products and such further related services as may from time to time be expressly permitted in writing by Gelatissimo.

**“Stock”** includes all Products, materials, stationery and other consumables used in the Business by the Franchisee.

**“System”** means the methods of manufacturing, providing, preparing and displaying Products and Services by using the image, methods, techniques, Intellectual Property, Confidential Information and know how of Gelatissimo.

**“Term”** means the period set out in item 7 of the Schedule beginning on the Commencement Date subject to any earlier termination of this Agreement.

**“Territory”** means the geographical region specified as such in item 9 of the Schedule or any other geographical region nominated by Gelatissimo.

**“Training”** means any training program provided by or at the direction of, Gelatissimo, including, but not limited to, Initial Training.

**“Training Fee”** means the fee determined by Gelatissimo and notified to the Franchisee as applicable to particular Training.

**“Trust”** means the trust named in item 3 of the Schedule (if any).

**“Trust Deed”** means the trust deed of the Trust, as amended from time to time.

## **1.2 Words and expressions**

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Agreement;
- (e) a reference to this Agreement includes any schedules or annexures;
- (f) headings are for convenience and do not affect interpretation;
- (g) the background or recitals to this Agreement are adopted as and form part of this Agreement;
- (h) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (i) a reference to “\$”, “A\$” or “dollar” is a reference to Australian currency;

- (j) a reference to a time is a reference to Australian Eastern Standard Time;
- (k) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (l) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (m) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (n) a reference to any legislation or to any provision of any legislation includes:
  - (i) any modification or re-enactment of the legislation;
  - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
  - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (o) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it; and
- (p) the words "including", "for example", "such as" or other similar expressions (in any form) are not words of limitation.

### 1.3 Other rules of interpretation

In this Agreement, unless expressly provided otherwise:

- (a) **(method of payment)** any payment of money by one party to another will be made in Australian currency by bank cheque or by credit of cleared funds to a bank account specified by the recipient;
- (b) **(consents and approvals)** if the doing of any act, matter or thing requires the consent, approval or agreement of any party, that consent, approval or agreement may be given conditionally or unconditionally or withheld in that party's absolute discretion;
- (c) **(joint and several liability)** a promise, representation or warranty given by or in favour of two or more persons under this Agreement is given by them or for their benefit jointly and severally;
- (d) **(Business Days)** if:
  - (i) the day on or by which any act, matter or thing is to be done is a day other than a Business Day, the act, matter or thing will be done on the next Business Day; and
  - (ii) any money falls due for payment on a date other than a Business Day, that money will be paid on the next Business Day (without interest or any other amount being payable in respect of the intervening period); and

- (e) **(inconsistency within document)** if a clause of this Agreement is inconsistent with a schedule or annexure of this Agreement, the clause prevails to the extent of the inconsistency.

## **20 Stock**

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### **20.1 Acquisition of Stock**

The Franchisee acknowledges that it may only acquire Stock from Gelatissimo or suppliers approved or nominated in writing by Gelatissimo from time to time.

### **20.2 Approved Stock**

- (a) The Franchisee must only use Stock or sell Products which have first been approved by Gelatissimo in writing and the Franchisee acknowledges that the provisions of this clause 20 are necessary to maintain strict quality control in respect of the supply of all Products and Services.
- (b) The Franchisee will not sell or offer for sale through the Business any products or services other than those sold or supplied by Gelatissimo, authorised by Gelatissimo or otherwise allowed by the express terms of this Agreement.
- (c) Gelatissimo may withdraw or vary individual lines of stock from the Products or withdraw its approval to sell certain Products from time to time.

### **20.3 Terms of trade**

- (a) Gelatissimo will supply Stock in accordance with the terms of trade applicable to its franchisees generally from time to time.
- (b) Gelatissimo may reasonably vary its terms of trade from time to time by notice to the Franchisee.
- (c) The Franchisee will pay for all Stock in accordance with the terms of trade on which it is supplied.

### **20.4 Ordering Stock**

The Franchisee may order Stock from Gelatissimo at any time in accordance with Gelatissimo's standard procedures (including order forms) as notified by Gelatissimo from time to time and subject to minimum written notice requirements as notified by Gelatissimo from time to time.

### **20.5 Delivery of Stock by Gelatissimo**

Gelatissimo or its nominated agent will, subject to the payment of the relevant price for Stock as notified to the Franchisee from time to time, use reasonable endeavours to deliver such Stock to the Franchisee within 48 hours if the Premises are located in a Capital City or such other time as may be notified to the Franchisee by Gelatissimo, but if Gelatissimo is unable to supply Stock ordered by the Franchisee within that time, the Franchisee may rescind the order for that Stock and order it from a supplier or other Gelatissimo franchisee approved in writing by Gelatissimo from time to time.

### **20.6 Third party suppliers**

- (a) The Franchisee must pay for all supplies from third parties strictly in accordance with trading terms on which they were or are supplied.

- (b) The Franchisee must comply with all directions given by Gelatissimo in relation to purchases from third party suppliers including, but not limited to, directions related to the acquisition of discounts, allowances and rebates by Gelatissimo or the Franchisee or both (and acknowledges that Gelatissimo may receive such discounts, allowances and rebates from suppliers for its own benefit, and consents to Gelatissimo doing so).

#### **20.7 Minimum level**

The Franchisee must maintain the minimum level of Stock specified in the Operations Manual or as otherwise notified to the Franchisee by Gelatissimo from time to time.