

Robert James Lawyers

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22 December 2006

Our Ref: ACP:102701-5

Scott Gregson
General Manager - Adjudications
Australian Competition and Consumer
Commission
PO Box 119
DICKSON ACT 2602

Dear Mr Gregson,

Notification - Exclusive Dealing

We act for Dare Franchising Pty Ltd ACN 109 063 381 ("Dare Gallery").

We enclose a notification under section 93(1) of the Trade Practices Act 1974 ("Act") in relation to conduct by Dare Gallery which may breach section 47(6) of the Act.

We also enclose a cheque for \$100.00 being the relevant fee for lodging a notification by a proprietary company in relation to conduct under section 47(6) of the Act.

Please do not hesitate to contact us if you have any queries.

Yours faithfully,
ROBERT JAMES

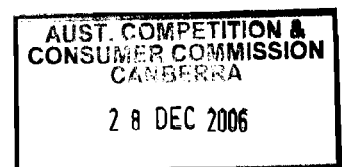


Andrea Pane
Partner

Direct line: (03) 8628-2004
Email: andrea@robertjames.com.au

Enc.

ACP-102701-5-1-V1:ACP



FORM G

Commonwealth of Australia
Trade Practices Act 1974 – Sub-section 93(1)

N92750

**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), (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:

Dare Franchising Pty Ltd ACN 109 063 381("Dare Gallery")

(b) Short description of business carried on by that person:

Dare Gallery is in the business of granting Dare Gallery franchisees the right to operate a Dare Gallery business ("Franchised Business") on the terms set out in the franchise agreement between the parties. The Franchised Business involves the sale of indoor and outdoor furniture ("Products") by the Dare Gallery franchisees to customers using the Dare Gallery system, name and logo.

(c) Address in Australia for service of documents on that person:

C/- Attention: Andrea Pane, Robert James Lawyers, Level 10, 200 Queen Street, Melbourne, Victoria 3000.

2. (a) Description of the goods or services in relation to the supply or acquisition of which the notice relates:

The notification relates to the:

- acquisition of Products by Dare Gallery franchisees for supply to customers of the Franchised Business; and
- acquisition of computer point of sale system software ("POS Software") and ongoing maintenance services for the POS Software.

(b) Description of the conduct or proposed conduct:

See Annexure "A".

3. (a) Class or classes of persons to which the conduct relates:

Persons who are franchisees or will become franchisees of Dare Gallery and who are granted the right to operate Franchised Businesses on the terms set out in the franchise agreement between the parties.

- (b) Number of those persons –

(i) At present time – 1.

(ii) Estimated within the next year – 2.

- 3(c) Where number of persons stated at 3(b)(i) is less than 50, their names and addresses

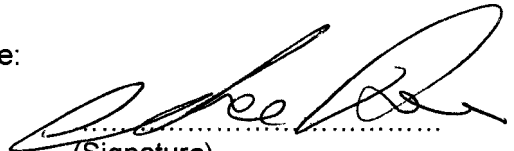
Franchisee	Address
Chstervol Pty Ltd ABN 85388228142	216 Old Geelong Rd, Hoppers Crossing, VIC, 3029

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Andrea Pane
Partner
Robert James Lawyers
Level 10
200 Queen Street
MELBOURNE VIC 3000

Signed for an on behalf of the person giving this notice:

Dated 22/12/2006



(Signature)

ANDREA PANE
(Full Name)

ROBERT JAMES LAWYERS
(Description)

DARE FRANCHISING PTY LTD
ACN 109 063 381

**SUBMISSIONS IN SUPPORT OF
ACCC NOTIFICATION**

ROBERT JAMES
Lawyers
Level 10, 200 Queen Street
MELBOURNE VIC 3000
DX 516 MELBOURNE

Telephone: (03) 8628 2000
Facsimile: (03) 8628 2050
Reference: ACP:102701-5

ANNEXURE "A"

SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION REGARDING THIRD LINE FORCING NOTIFICATION

1 INTRODUCTION

1.1 Dare Franchising Pty Ltd ACN 109 063 381 ("Dare Gallery") is in the business of granting Dare Gallery franchisees the right to operate a Dare Gallery business ("Franchised Business") on the terms set out in the franchise agreement between the parties. The Franchised Business involves the sale of indoor and outdoor furniture and related homewares products such as lamps ("Products") by the Dare Gallery franchisees to customers using the Dare Gallery system, name and logo.

1.2 Dare Gallery proposes granting Dare Gallery franchises throughout Australia.

2 THE PROPOSED CONDUCT

Products

2.1 The conduct to which this notification relates is the requirement for Dare Gallery franchisees to acquire Products specified by Dare Gallery from wholesale suppliers who have been approved by Dare Gallery ("Nominated Suppliers").

2.2 Dare Gallery franchises are granted to Dare Gallery franchisees on the condition, among other things, that they agree to:

2.2.1 only sell Products and provide Services in the Franchised Business which have been approved by Dare Gallery; and

2.2.2 acquire those Products specified by Dare Gallery from Nominated Suppliers.

2.3 In addition, Dare Gallery may specify that certain Products are to be acquired from Dare Gallery.

2.4 Details of:

- 2.4.1 Products and Services which have been approved by Dare Gallery;
- 2.4.2 those Products which the Dare Gallery franchisees are required to acquire from Dare Gallery; and
- 2.4.3 those Products which the Dare Gallery franchisees are required to acquire from Dare Gallery's Nominated Suppliers,

will be set out in the operations manual provided by Dare Gallery to the Dare Gallery franchisees.

POS Computer Software and Maintenance Services

- 2.5 The conduct to which this notification relates is the requirement for Dare Gallery franchisees to acquire computer point of sale system software ("POS Software") and ongoing maintenance services for the POS Software from Dare Gallery's nominated suppliers ("Nominated Computer Suppliers")
- 2.6 Dare Gallery franchises are granted to Dare Gallery franchisees on the condition, among other things, that they agree to:
- 2.6.1 acquire the POS Software specified by Dare Gallery from its Nominated Computer Supplier; and
- 2.6.2 enter into an agreement for the ongoing maintenance of the POS Software with Dare Gallery's Nominated Computer Supplier.
- 2.7 Details of:
- 2.7.1 the POS Software which has been approved by Dare Gallery;
- 2.7.2 Dare Gallery's Nominated Computer Suppliers,
- will be set out in the operations manual provided by Dare Gallery to the Dare Gallery franchisees or otherwise notified to the Dare Gallery franchisees.

3 THE PURPOSE OF THE PROPOSED CONDUCT

Products

- 3.1 The purpose of the proposed conduct referred to in clause 2.1 is not to lessen competition in the relevant market or markets but to:
- 3.1.1 ensure consistency and quality in the Products sold in the Franchised Business and that Products sold in the Franchised Business meet Dare Gallery's standards. The quality of Products can vary significantly depending on the source. It is important to the image of the Dare Gallery system that the Products supplied by Dare Gallery franchisees to customers meet Dare Gallery's standards;
- 3.1.2 ensure consistency in customer experience regardless of which Franchised Business they buy the Products from. This gives customers certainty;
- 3.1.3 protect of the value and reputation of Dare Gallery and the Dare Gallery system through the sale of Products in the Franchised Business which are consistent with Dare Gallery's image and position in the relevant market or markets;

- 3.1.4 do its best to ensure that Dare Gallery franchisees are able to acquire the Products at competitive prices through the power of bulk buying, making the Dare Gallery franchisees more competitive in the market.

POS Computer Software and Maintenance Services

- 3.2 The purpose of the proposed conduct referred to in clause 2.5 is not to lessen competition in the relevant market or markets but to:

- 3.2.1 ensure consistency and quality in the POS Software and maintenance services used in the Franchised Business and that POS Software used in the Franchised Business meets Dare Gallery's standards. The quality of POS Software and maintenance services can vary significantly depending on the source;
- 3.2.2 ensure compatibility between Dare Gallery's computer system and the computer systems of the Dare Gallery franchisees;
- 3.2.3 do its best to ensure that Dare Gallery franchisees are able to acquire the POS Software and maintenance services at competitive prices through the power of bulk buying, making the Dare Gallery franchisees more competitive in the market.

4 THE RELEVANT MARKET

Products

- 4.1 Dare Gallery submits that the relevant market is:
 - 4.1.1 the wholesale market for the supply of indoor and outdoor furniture, upholstery materials and homewares in Australia; and
 - 4.1.2 the retail market for the supply of indoor and outdoor furniture and homewares in Australia.
- 4.2 Based on investigations made by Dare Gallery, these markets are highly competitive and there are a number of participants in both the wholesale and retail markets.

POS Computer Software and Maintenance Services

- 4.3 Dare Gallery submits that the relevant market is the retail market for the supply of point of sale computer software and ongoing maintenance services in Australia.

4.4 Based on investigations made by Dare Gallery, this market is highly competitive and there are a number of participants in the market.

5 NO LESSENING OF COMPETITION

Products

5.1 Dare Gallery submits that the proposed conduct will not lessen competition in either the wholesale or retail markets referred to above.

5.2 At a wholesale level:

5.2.1 the proposed conduct will not prevent Dare Gallery franchisees from dealing with other suppliers:

(1) Dare Gallery franchisees are independent operators and except for those Products which Dare Gallery specifies must be acquired from either Dare Gallery or its Nominated Suppliers, Dare Gallery franchisees may acquire Products for sale in the Franchised Business from the supplier(s) of their choice provided that the Products are within the range for the Franchised Business;

(2) The agreements to be entered into by Dare Gallery and Nominated Suppliers will not grant exclusive rights to those suppliers for the ongoing supply of Products to Dare Gallery franchisees. Dare Gallery may appoint different suppliers as Nominated Suppliers from time to time. In determining whether to appoint a supplier as an Nominated Supplier, Dare Gallery will consider such things as quality of Products, ability to supply the volume required and price;

5.2.2 Nominated Suppliers will be able to contract with competitors of the Dare Gallery franchisees;

5.2.3 Dare Gallery will not be limited in its dealings with competitors of the Nominated Suppliers.

5.3 At a retail level:

5.3.1 consumers may acquire the Products from any number of businesses, not just Dare Gallery franchisees;

5.3.2 Dare Gallery submits that the proposed conduct will result in better quality Products being supplied to customers in the relevant markets and better prices for those Products.

5.4 As a result, Dare Gallery submits that the proposed conduct will increase competition in the wholesale market and retail markets and result in a number of benefits to the public.

POS Computer Software and Maintenance Services

- 5.5 Dare Gallery submits that the proposed conduct will not lessen competition in the retail market referred to above.
- 5.6 The agreements to be entered into by Dare Gallery and Nominated Computer Suppliers will not grant exclusive rights to those suppliers for the ongoing supply of POS Computer Software and maintenance services to Dare Gallery franchisees. Dare Gallery may appoint different suppliers as Nominated Computer Suppliers from time to time. In determining whether to appoint a supplier as an Nominated Computer Supplier, Dare Gallery will consider such things as quality of POS Software and maintenance services, ability to supply the volume of software required, ability to service the number of Dare Gallery stores within the Dare Gallery group and price.
- 5.7 Nominated Computer Suppliers will be able to contract with competitors of the Dare Gallery franchisees.
- 5.8 Dare Gallery will not be limited in its dealings with competitors of the Nominated Computer Suppliers.
- 5.9 Dare Gallery submits that the proposed conduct will improve the operation of the Dare Gallery franchisees' businesses, making the businesses more competitive which will result in better prices for customers.

6 PUBLIC BENEFIT

- 6.1 Dare Gallery submits that the proposed conduct has considerable public benefit.
- 6.2 The Dare Gallery franchisees will operate in a number of competitive retail markets. The Dare Gallery franchisees' businesses will be found in metropolitan and regional areas throughout Australia. The existence of the Franchised Businesses in the market place will increase competition increasing the likelihood of lower prices for end consumers.
- 6.3 Small independent businesses do not have access to the benefits of larger organisations such as buying power, market presence, group marketing. This puts them at a significant disadvantage.

6.4 Dare Gallery franchisees gain a number of benefits from being part of the Dare Gallery system:

6.4.1 High Quality Products and Certainty of Supply

Dare Gallery has considerable experience in sourcing Products. Dare Gallery will use that experience to source Products which meet Dare Gallery's high standards. Dare Gallery will also approve only those suppliers which, based on Dare Gallery's investigations, are able to supply the volume of Products required by Dare Gallery franchisees at competitive prices.

6.4.2 Better Buying Power

Dare Gallery franchisees by themselves would have little or no ability to negotiate with:

- Nominated Suppliers the types of prices for Products which Dare Gallery is able to negotiate; and
- Nominated Computer Suppliers the types of price for POS Software and maintenance services which Dare Gallery is able to negotiate.

If the Dare Gallery franchisees negotiated independently with any of the Nominated Suppliers or Nominated Computer Suppliers, they would in all likelihood have to pay a higher price. In some cases, Dare Gallery franchisees may not even have the opportunity to be supplied at all by that particular supplier if they were to approach them independently.

6.4.3 Increased Sales

By being part of the Dare Gallery system, the Dare Gallery franchisees have market presence and group marketing power which they would otherwise not have. By the Dare Gallery franchisees all branding their businesses using Dare Gallery's name and logo, they increase customer awareness of the Products that the Dare Gallery businesses provide. In addition, Dare Gallery will undertake marketing and promotional activities on behalf of the Dare Gallery group, increasing the profile of the Dare Gallery businesses within the relevant markets. By pooling funds, Dare Gallery will be able to undertake professional advertising, marketing and promotional campaigns at a fraction of the comparative (often prohibitive) cost of individual business initiatives. The branding of the businesses and the group marketing will draw more customers to the Dare Gallery franchisees' businesses than if they were independents, resulting in increased sales.

6.4.4 Increased Profitability

By being part of the Dare Gallery system, the Dare Gallery franchisees will be able to acquire:

- Products; and
- the POS Software and maintenance services,

at much more competitive prices than if they were independents. This improves the profitability of Dare Gallery franchisees' businesses and helps them achieve the economies of scale normally associated with larger organisations.

6.4.5 Improved Management and Operating Skills

Dare Gallery has considerable experience in operating retail businesses. By sharing its experience with the Dare Gallery franchisees and providing them with systems and operating procedures to follow, Dare Gallery provides the Dare Gallery franchisees with significant advantages normally associated with big business management and operating techniques. This encourages more efficient retail practices within the Dare Gallery franchisees businesses, increasing their competitiveness within the relevant markets.

6.4.6 Improved Productivity through Reduction in Business Administration

Dare Gallery will provide the Dare Gallery franchisees with advice and guidance on the conduct of the Franchised Business, including administrative and general operating procedures for the proper conduct of the Franchised Business. This encourages more efficient practices within the Dare Gallery franchisees businesses, increasing productivity.

6.5 Dare Gallery submits that, as a consequence of the benefits provided by Dare Gallery to Dare Gallery franchisees and the benefits of the proposed conduct, consumers in the relevant retail markets will benefit.

6.6 The increased competitiveness and viability of the Dare Gallery franchisees enables them to compete with larger businesses, resulting in greater competition at the retail level and better prices and increased service levels for end consumers. If independent businesses such as those operated by the Dare Gallery franchisees were to be pushed out of the marketplace the major competitors would have greater market share enabling them to increase the prices of products to the public.

6.7 There is also evidence to suggest that the majority of profits earned by Dare Gallery franchisees are spent locally, resulting in greater demand for products and services in the areas in which the Dare Gallery franchisees operate and increasing competition in those areas. This is particularly important in regional areas.

6.8 There are also a number of benefits to be gained by the Nominated Suppliers and Nominated Computer Suppliers from the proposed conduct. By being appointed as a Nominated Supplier or Nominated Computer Supplier, the supplier will have some degree of certainty as to volumes of:

- Products; and
- POS Software and maintenance services,

which Dare Gallery franchisees will require. This will give them a greater ability to plan for their business and may encourage them to invest in their business. The increased volumes will also result in greater economies of scale and efficiencies within the Nominated Supplier's and Nominated Computer Supplier's business. This in turn enables the:

- Nominated Supplier to supply the Products to Dare Gallery franchisees at more competitive prices; and
- Nominated Computer Supplier to supply the POS Software and maintenance services to Dare Gallery franchisees at more competitive prices,

increasing competition and resulting in lower prices to end consumers.

7 PUBLIC DETRIMENT

7.1 Dare Gallery submits that there is no public detriment that results from the proposed conduct.

8 CONCLUSION

8.1 To the extent that the proposed conduct contravenes section 47 of the Act, Dare Gallery submits that the public benefits resulting from the proposed conduct outweigh any public detriment caused by the proposed conduct.