



Deacons

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Singapore
Taiwan
Thailand
Vietnam

1 May 2007

Australian Competition & Consumer Commission
Level 7, Angel Place
123 Pitt Street
SYDNEY NSW 2000

Our Ref: 2575129

Dear Sir

**Notification – Form G
McGrath Australasia Pty Ltd – provision of Vendor and Agent Marketing
Services**

We act for McGrath Australasia Pty Limited (**McGrath**).

Pursuant to section 93(1) of the *Trade Practices Act 1974* (Cth) we enclose Notification of exclusive dealing.

We also enclose cheque in the sum of \$100.00 in payment of lodgement fee.

If you have any questions or require further information, please contact Maija Kerry.

Yours faithfully

Fiona Wallwork
Partner
Deacons

Contact: Maija Kerry
Direct line: +61 (0)2 9330 8600
Email: maija.kerry@deacons.com.au

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
2 MAY 2007

FORM G

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)
EXCLUSIVE DEALING

NOTIFICATION

To the Australian Competition & Consumer Commission:

N92901

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) or (c) or (9)(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE AT END OF FORM)

1. (a) **Name of person giving notice**

This Notice is given by McGrath Australasia Pty Ltd ABN 35 118 129 507 (McGrath).

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

McGrath is the franchisor for a network of residential property real estate businesses operating under the McGrath trademarks.

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

c/- Fiona Wallwork
Deacons
Level 8
1 Alfred St
SYDNEY NSW 2000

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

This Notice relates to the provision of vendor and agent marketing services related to marketing / advertising real estate, for example services in relation to the production of signboards, photography, videos, printed collateral including DL's and brochures, floorplans, distribution to mailboxes and copywriting, which are reasonably necessary to facilitate the delivery of consistent and efficient services throughout the network of McGrath Offices. These services are referred to as "Vendor and Agent Marketing Services".

(b) **Description of the conduct or proposed conduct**

A related entity of McGrath, Architype Marketing Pty Limited has been appointed to source suitable suppliers for Vendor and Agent Marketing Services and negotiate suitable terms for the supply of Vendor and Agent Marketing Services to the network of McGrath Offices.

McGrath proposes to require its franchise owners to obtain (where available) Vendor and Agent Marketing Services from those suppliers sourced by Architype Marketing Pty Limited. See Annexure A.

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

Persons who operate a McGrath Office under franchise from McGrath.

(b) **Number of those persons**

(i) **At present time:**

There are 6 McGrath franchise owners at the present time.

(ii) **Estimated within the next year:**

It is estimated that within the next 12 months there will be 20 McGrath franchise owners (Although the actual number will depend on market trends, demand etc).

(c) **Where number of persons stated in item 3(b)(i) is less than 50, their names and address**

Charles Park Real Estate Pty Limited

10 Darley Road, Manly NSW 2095

Charles Park Real Estate Pty Limited

3-5 Bungan Street, Mona Vale NSW 2103

UNS Property Pty Limited

Level 1, 280 Pacific Highway, Lindfield 2070

MNS Property Pty Limited

Level 1, 127 Longueville Road, Lane Cove 2066

Yellow Brick Road Property Pty Limited

3 Young Street, Neutral Bay 2089

MCG Realty Pty Limited

Suite 1, 2 Wilbar Avenue, Cronulla 2230

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

c/- Fiona Wallwork
Deacons,
1 Alfred Street,
Circular Quay,
Sydney NSW 2000

Dated *1 May* 2007

Signed ~~by~~ on behalf of the applicant



(Signature)

FIONA WALLWORK

(Full name)

LAWYER

(Description)

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. Where particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3),(4),(5),(6),(7),(8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be furnished with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the of the period prescribed for the purposes of sub-section 93(7A) of the Act (the "prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in Section 93A of the Act decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3),(4) or (5), or paragraph 47(8)(a) or (b) or (9)(a),(b) or (c) of the Act, it comes into force when it is given.

ANNEXURE A

SUBMISSION BY MCGRATH AUSTRALASIA PTY LIMITED IN SUPPORT OF NOTIFICATION UNDER SECTION 93(1) OF THE TRADE PRACTICES ACT 1974 (“ACT”)

1. Introduction

- 1.1 The purpose of this submission is to assist the Australian Competition and Consumer Commission in its consideration of the facts set out in the Exclusive Dealing Notification given by McGrath Australasia Pty Ltd ABN 35 118 129 507 (**McGrath**).

2. Background

- 2.1 McGrath is the franchisor for the McGrath residential property real estate franchise. McGrath has recently commenced offering franchises for McGrath Offices.
- 2.2 McGrath proposes to require its franchisees to obtain certain Vendor and Agent Marketing Services from approved Vendor Marketing Suppliers.

Vendor and Agent Marketing Services means those vendor and agent marketing services specified by McGrath from time to time including but not limited to services in relation to the production of signboards, property photography, property videos, printing (DL's, brochures), floorplans, distribution (DL's) and copywriting, which are reasonable and necessary to facilitate the delivery of consistent and efficient services throughout the Network as well as maintain brand consistency within the Network.

Vendor Marketing Suppliers means those suppliers that have been approved by McGrath to provide the Vendor Marketing Services.

- 2.3 A related entity of McGrath, Architype Marketing Pty Limited has been appointed to source suitable suppliers for Vendor and Agent Marketing Services and negotiate suitable terms for the supply of Vendor and Agent Marketing Services to the network of McGrath Offices.
- 2.4 McGrath proposes to require its franchise owners to obtain (where available) Vendor and Agent Marketing Services from those suppliers sourced by Architype Marketing Pty Limited.

3. Franchise Agreement

- 3.1 The Franchise Agreement will include the following clauses:

12. VENDOR AND AGENT MARKETING SERVICES

12.1 Acknowledgements

The Franchise Owner acknowledges agrees that:

- (a) *McGrath has appointed Architype to:*
- (i) *identify quality suppliers of Vendor and Agent Marketing Services; and*
 - (ii) *on behalf of the Network negotiate the terms and conditions (including price) for the provision of Vendor and Agent Marketing Services; and*

- (b) *the Vendor and Agent Marketing Services provided by Vendor and Agent Marketing Suppliers:*
 - (i) *are essential to maintaining McGrath's standards for a McGrath Office which are to be adopted consistency throughout the Network; and*
 - (ii) *assist to enhance the unique position of the Network in the market for Real Estate Services.*

12.2 Vendor and Agent Marketing Suppliers

- (c) *McGrath will procure Architype to use reasonable endeavours to negotiate competitive terms and conditions (including price) with Vendor and Agent Marketing Suppliers for the provision of the Vendor and Agent Marketing Services to the Network.*
- (d) *The Franchise Owner must obtain the Vendor and Agent Marketing Services from the Vendor and Agent Marketing Suppliers.*
- (e) *The Franchise Owner must comply with the terms and conditions of supply of the Vendor and Agent Marketing Services that have been negotiated between Architype (on behalf of the Network) and the Vendor and Agent Marketing Suppliers.*
- (f) *Where a Vendor and Agent Marketing Supplier is unable to or does not provide the Vendor and Agent Marketing Service, the Franchise Owner may use or obtain the relevant Vendor and Agent Marketing Service from an alternative supplier approved by McGrath.*
- (g) *The Franchise Owner must obtain McGrath's prior written approval to using the alternative supplier of the Vendor and Agent Marketing Service under clause 12.2(d) above, which approval must not be unreasonably withheld where the alternative supplier meets McGrath's quality standards and requirements.*

12.3 Marketing Rebates

- (h) *The Franchise Owner acknowledges and agrees that Architype may from time to time receive rebates and other financial incentives from Vendor Marketing Suppliers for the supply of Vendor and Agent Marketing Services (**Marketing Rebates**).*
- (i) *The Marketing Rebates will be retained by Architype in consideration for Architype providing services in connection with identifying quality suppliers of Vendor and Agent Marketing Services negotiating the terms and conditions (including price) for the provision of Vendor Marketing Services.*
- (j) *The Franchise Owner acknowledges and agrees that:*
 - (i) *the Marketing Rebates will be paid directly from the Vendor to Architype.*
 - (ii) *The Franchise Owner is not entitled to any Marketing Rebates; and*
 - (iii) *McGrath and Architype are not required to account to the Franchise Owner for the Marketing Rebates.*

4. No anti-competitive detriment

The arrangement will not result in any anti-competitive detriment for the following reasons:

- (a) the Australian real estate services market is a highly competitive market with a number of participants;
- (b) the Australian vendor marketing services market is a highly competitive market with a number of participants;
- (c) the business carried on by the franchisee is substantially that of providing real estate agency services, and the requirement that the franchisee use specified suppliers of Vendor Marketing Services will assist the franchisee provide the real estate agency services in a cost effective and consistent manner; and
- (d) the franchisee is only required to use a Vendor Marketing Supplier where a Vendor Marketing Supplier has been identified by McGrath for the provision of particular services and where the Vendor Marketing Supplier is able to provide the Vendor Marketing Services to the franchisee. If a Vendor Marketing Supplier is not able to provide the Vendor Marketing Services to the franchisee, the franchisee may use the services of any other equivalent supplier.

5. Public benefit

The public benefit arising from the conduct outweighs any detriment. The public benefits include:

- (a) requiring franchisees to only use Vendor Marketing Suppliers approved by McGrath will improve the quality of marketing of residential real estate properties throughout the network of McGrath Offices, which will benefit consumers;
- (b) Architype (a related entity of McGrath) will negotiate competitive prices and terms for the provision of the Vendor Marketing Services. This will ultimately benefit the franchisees and consumers; and
- (c) the Vendor Marketing Services supplied to the franchisees will improve the quality of real estate services provided by the network of McGrath Offices, and will ensure that they are competitive in terms of both cost and customer service.

Dated 1 May 2007

Signed by/on behalf of the applicant



(Signature)

Fiona Wallace

(Full name)

Lawyer

(Description)