

Deacons

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29 January 2007

Australian Competition & Consumer Commission
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Other Offices

Brisbane
 Canberra
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 Affiliated Firms**

Hong Kong
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Our Ref: 2610755

Dear Sirs

City Farmers Franchising Pty Ltd - Notification

Pursuant to section 93(1) of the *Trade Practices Act 1974*, we enclose a Notification of Exclusive Dealing on behalf of City Farmers Franchising Pty Ltd (**City Farmers**) in respect of proposed arrangements with City Farmers franchisees.

We advise as follows:

1. Under the proposed franchise agreement, franchisees will be required to purchase all products approved by City Farmers for use and supply by franchisees in the franchise business (**Authorised Products**) from City Farmers or from suppliers approved by City Farmers (**Approved Suppliers**);
2. The Authorised Products used in City Farmers network are key elements of City Farmers brand, franchise image and franchise system;
3. We are instructed that the purpose of the proposed supply arrangements referred to in paragraph 1 is not to lessen competition in any market but to ensure:
 - (a) only high quality products that are consistent with City Farmers standards and image are used and supplied by franchisees;
 - (b) the marketing positioning of City Farmers network;
 - (c) that consumers get the benefit of the unique points of difference of the Authorised Products used and supplied; and
 - (d) that franchisees are able to meet the expectations of consumers

**AUST. COMPETITION &
 CONSUMER COMMISSION
 PERTH**

31 JAN 2007

29/01/2007

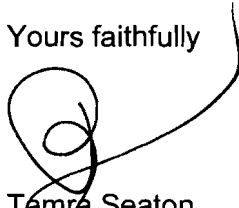
Accordingly, the purpose of the proposed supply arrangements is to assist to maintain the value and reputation of City Farmers brand by ensuring that the products used and supplied are consistent with City Farmers image and standards;

4. The matters referred to in paragraph 3 above are in our view public benefits of the proposed structure. The above benefits will also give the customer certainty;
5. In our view, the proposed structure will not have the effect of lessening competition in any market and may in fact help to increase competition for reasons including the following:
 - (a) franchisees may be new entrants into the retail market for garden, soil and horticultural products and pet products accessories and food supplies. City Farmers image and systems may encourage better retail practices in the retail market and benefit consumers;
 - (b) the proposed structure may assist franchisees in being able to compete in the relevant retail market against supermarkets and larger competitors;
 - (c) in the wholesale market, the volumes and certainty of supply to franchisees may result in cost savings by the supplier, increasing efficiency and competition amongst suppliers. This may ultimately result in cost reductions at the retail level, thereby further enhancing interbrand competition; and
 - (d) also, the supplier may be in a better position to plan for future production, which would offer greater incentives to invest in capital improvements; and
6. We have not attempted to conclusively define the relevant markets. However, on the information to hand, in our view the market for supply of garden soil and horticultural products and pet product and accessories and food supplies is characterised by a large number of participants. We do not believe there is a lessening of competition in the market as a result of the proposed supply arrangements given the large numbers of suppliers in the relevant market. There is, in our view, no public detriment that results from the conduct.

We enclose a cheque for \$100 for the lodgement fee.

Please don't hesitate to contact us if you require any additional information.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Tamra Seaton', written over a faint circular stamp or watermark.

Tamra Seaton
Partner
Deacons

Direct line: (08) 9426 3404

Email: tamra.seaton@deacons.com.au

Encl.

FORM G**COMMONWEALTH OF AUSTRALIA**

Trade Practices Act 1974 – Subsection 93(1)

EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974* of particulars of conduct or of proposed conduct of a kind referred to in subsection 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.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) **Name of person giving notice**City Farmers Franchising Pty Ltd ABN 24 083 012 211 (**City Farmers** or **Franchisor**)(b) **Short description of business carried on by that person**

City Farmers operates a business as franchisor to a network of franchisees (**City Farmers Franchisees**) who operate franchised businesses involving the supply of garden, soil and horticultural products and pet products, accessories and food supplies using the City Farmers system and brand in Western Australia.

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

Suite A, 554 Newcastle Street, West Perth, Western Australia 6005

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

The notification relates to the supply by City Farmers of franchise rights to City Farmers Franchisees on the condition that in the operation of the franchised business they acquire certain products (**Authorised Products**) from suppliers approved by City Farmers (**Approved Suppliers**).

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

The proposed conduct to which this notification relates concerns the proposed supply arrangements between City Farmers Franchisees and Approved Suppliers, as prescribed under the standard franchise agreement which the City Farmers Franchisees are required to enter into (**Franchise Agreement**).

Under the Franchise Agreement, in the operation of the franchised business, City Farmers Franchisees may only acquire Authorised Products for use or supply in the franchised business from City Farmers or from Approved Suppliers.

This requirement is an integral part of the City Farmers Franchisees' businesses and ensures that:

- (1) only high quality products and services that are consistent with City Farmers' standards and image are used and supplied by City Farmers Franchisees;

- (2) consumers obtain the benefit of the unique points of difference of the City Farmers products and services supplied;
- (3) the City Farmers Franchisees are able to meet the expectations of consumers resulting in consumer certainty; and
- (4) the City Farmers Franchisees are able to access (and in turn offer to their customers) competitive pricing which is likely to be better than is available elsewhere.

City Farmers contends that the proposed arrangements will have a negligible effect on competition within the relevant markets.

The relevant markets for the Authorised Products are the retail and wholesale markets for similar products and services within the areas of the City Farmers Franchisees' franchised businesses.

The proposed conduct is likely to have the following additional benefits for the City Farmers Franchisees, Approved Suppliers and consumers:

- (1) City Farmers' standards and image may assist City Farmers Franchisees to compete in the relevant markets and encourage improved retail practices in those markets resulting in benefits to consumers; and
- (2) the volumes and certainty of supply of the Authorised Products to the City Farmers Franchisees by the Approved Suppliers may result in:
 - (i) cost savings and increased efficiencies which may lead to cost reductions at the consumer level; and
 - (ii) the Approved Suppliers being more likely to be able to plan for future production and investment in capital improvements.

City Farmers contends that the public benefits resulting from the proposed conduct outweigh any public detriments caused by the conduct.

The relevant provisions of the Franchise Agreement are as follows:

“Introduction

- A.** *The Franchisor has developed a system of business for the buying, promotion and retail sale of garden, soil and horticultural products and pet products, accessories and food supplies in Western Australia.*
- B.** *The Licensor is the owner of the Network Name and the Trade Marks and has granted the Franchisor a non-exclusive licence to exploit the Network Name and the Trade Marks on the terms and conditions set out in this Agreement.*
- C.** *The Franchisor has established a reputation and goodwill in its business operating under the Network Name and using the Trade Marks and the Franchisee wishes to obtain the benefits and advantages of associating with the City Farmers Network and adopting the City Farmers System.*
- D.** *In consideration of the Franchisor complying with the Guarantor's requests, the Guarantor has agreed to give a guarantee and indemnity to the*

Franchisor for the performance of the Franchisee's obligations under this Agreement upon the terms and conditions contained in this Agreement.

1. Definitions and Interpretation

1.1 Definition

In this Agreement:

- (3) **Approved Supplier** means a supplier approved in writing by the Franchisor for the supply to the Franchisee of the Authorised Products and other products, goods or services as may be specified by the Franchisor;
- (5) **Authorised Products** means those products authorised in writing by the Franchisor from time to time for sale and supply by the Franchisee in the Business;
- (6) **Business** means the City Farmers Store conducted by the Franchisee under the Store Name at the Premises;
- (8) **City Farmers Franchisee** means any person who is operating a City Farmers Store under franchise from the Franchisor;
- (9) **City Farmers Image** means the specific image created or prescribed by the Franchisor for the operation of a City Farmers Store including the Network Name and Trade Marks under licence from the Licensor and other names and marks, uniform product ranges, specified design and colour schemes for business premises, signs, layouts, fixtures and fittings, equipment, uniforms and identification badges as modified by the Licensor or the Franchisor from time to time;
- (10) **City Farmers Network** means the Franchisor's business of developing, managing and licensing the City Farmers System and the City Farmers Image under the derivatives of the Network Name and includes all associated operational, administrative, management and marketing information and techniques;
- (11) **City Farmers Store** means a business for the promotion and retail sale of garden, soil and horticultural products and pet products (including pet food and supplies) using some or all of the City Farmers System and the City Farmers Image;
- (12) **City Farmers System** means any one or more of the business formats, systems, methods, procedures, policies, operations, standards and controls upon the operation of City Farmers Stores as may be specified by the Franchisor from time to time in the Operations Manual or otherwise in writing;
- (26) **Franchise** means the rights granted by the Franchisor and the Licensor to the Franchisee to operate one City Farmers Store on the terms and conditions set out in this Agreement;
- (42) **Network Name** means the name of City Farmers;

- (47) **Operations Manual** means any manual or manuals (as amended from time to time) specifying the mode of conduct of a City Farmers Store developed by the Franchisor and lent to the Franchisee in accordance with clause 10.4;
- (57) **Store Name** means the name specified in Item 17 of the Schedule;

6. **Products and Suppliers**

6.1 **Obtaining of Supplies from Franchisor/Approved Supplier**

The Franchisee must obtain all goods and services for use or supply in the Business from the Franchisor or an Approved Supplier and not from any other person without first obtaining the Franchisor's written consent. This consent will not be unreasonably withheld if the Franchisee:

- (1) gives the Franchisor written notice of:
- (a) the nature and quantity of the products that the Franchisee is seeking to purchase;
 - (b) the name and address of the alternative supplier; and
 - (c) the price per unit that will be charged by the alternative supplier for the product;
- (2) provides a written statement from the alternative supplier of:
- (a) the period that those prices will be fixed; and
 - (b) the terms and conditions of supply;
- (3) satisfies the Franchisor that the alternative supplier is able to maintain a continuity of supply of the product; and
- (4) satisfies the Franchisor that the product meets the criteria set out in clause 6.4.

6.2 **Franchisee's Obligations in Supplying Products**

The Franchisee must:

- (1) only offer to its customers Authorised Products;
- (2) not offer, sell or supply any products or services not specified by the Franchisor without first obtaining the Franchisor's written consent;
- (3) ensure that all Authorised Products to be supplied by the Franchisee to customers are displayed, presented and delivered to customers in the manner and to the standards prescribed by the Franchisor from time to time;
- (4) sufficiently stock the Business so that customer demand can be met; and

- (5) *coordinate and develop a pattern of buying Authorised Products which supports the Authorised Products and Approved Suppliers for the benefit of the City Farmers Network as a whole.*

6.3 **Inability to Supply**

If the Franchisor or an Approved Supplier is unable to supply any part of an order by the Franchisee within a reasonable time after receiving that order, the Franchisee may obtain supply from an alternative supplier as long as all the conditions in clause 6.1 are satisfied.

6.4 **Quality Control**

The Franchisor may withhold its consent under clauses 6.1 or 6.2(2) unless the product to be supplied is:

- (1) *at least equal in quality to the Authorised Product it substitutes;*
- (2) *suitable for the purpose for which it is intended;*
- (3) *supplied on no less favourable terms and conditions than the terms and conditions upon which such products have been supplied by the Franchisor or any Approved Supplier; and*
- (4) *consistent with, and does not prejudice, the City Farmers Image.*

6.5 **Franchisor's Response**

If the Franchisor's approval is sought under clauses 6.1 or 6.2(2), the Franchisor will advise the Franchisee of its decision within a reasonable time.

6.6 **Franchisor May Withdraw Approval**

The Franchisor may withdraw any approval given by it under this clause if in its reasonable opinion the quality of the product or services supplied do not meet the standards prescribed by the Franchisor from time to time.

6.7 **New Products**

The Franchisor may at any time by written notice to the Franchisee introduce and require the Franchisee to supply any new products for supply in the Business. When this happens those products will be Authorised Products.

6.8 **Withdrawal of Products**

- (1) *The Franchisor may at any time require the Franchisee to withdraw from supply in the Business any Authorised Product or any other product, which in the Franchisor's reasonable opinion:*
 - (a) *does not conform with the standards, quality controls and specifications for products to be supplied by a City Farmers Store as prescribed by the Franchisor from time to time; or*
 - (b) *does not conform with the range of products to be supplied from a City Farmers Store; or*

(c) *is or may be a health or safety risk.*

(2) *The Franchisee must immediately withdraw a product from supply when so required.*

6.9 Franchisor not liable for Delay

The Franchisor will not be liable to the Franchisee for delay or failure on its part to supply any products or services to the Franchisee if the delay or failure is occasioned by unavailability or by any cause beyond the control of the Franchisor.

6.10 Terms of Supply

The Franchisee must punctually pay for all products and services supplied to the Franchisee by the Franchisor or an Approved Supplier, subject to and in accordance with the Franchisor's or Approved Supplier's written terms and conditions of supply prevailing from time to time.

6.11 Price of Products

(1) *The Franchisor may:*

(a) *offer guidance to the Franchisee as to retail prices for Authorised Products having regard to sound business practice;*

(b) *recommend the retail prices of Authorised Products; and*

(c) *set maximum prices for the sale or supply of products in the Business having regard to the Franchisee's costs in supplying those products.*

(2) *Nothing in subclause 6.11(1) imposes any obligation on the Franchisee to accept the Franchisor's recommendations or guidance as to retail prices which the Franchisee may determine in its discretion.*

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

(1) *the City Farmers Franchisees; and*

(2) *the Approved Suppliers.*

(b) Number of those persons

(i) **At present time:**

(1) *There are currently 10 City Farmers Franchisees; and*

(2) *There are currently 8 Approved Suppliers.*

(ii) Estimated within the next year:

(1) City Farmers Franchisees – 13

(2) Approved Suppliers – 8

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


Refer to Annexure A

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

Tamra Seaton c/- Deacons, Level 39, 108 St Georges Terrace, Perth WA 6000

Dated 22 Jan 2007

Signed by/on behalf of the person giving this notice



(Signature)

TAMRA SEATON
Partner
Deacons

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. If particulars of a condition or of a reason of the type referred to in subsection 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 provided 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 subsection 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 period prescribed for the purposes of subsection 93 (7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 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 subsection 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 subsection 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 subsection 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 Approved Suppliers

Name of Supplier	Business address
Rosman Agencies Pty Ltd ABN 94 081 145 593	7 Longfellow Court, Belmont WA 6104
Pets International Pty Limited (formerly Masterpet Pty Ltd) ABN 20 002 960 330	Lot 1, 126 Jedda Road, Prestons VIC 2170
A. Richards Pty Ltd ABN 97 008 734 852 trading as Richgro Garden Products	203 Acourt Road, Jandakot WA 6164
Balanu Distribution Pty Ltd ACN 115 074 603	30 Graham Street, Centennial Park WA 6330
Wesfeeds Pty Ltd ABN 21 008 704 050	31 Sevenoaks Street, Bentley WA 6102
Advanced Pet Care of Australia Pty Ltd ABN 67 087 757 551	40 Lionel Street, Naval Base WA 6165
Tucker Time for Pets Pty Ltd ABN 68 060 632 162	25 Canvale Rd, Canningvale WA 6155
King, Allan James ABN 35 015 320 446 trading as Kinson Products	11 William Street, Beckenham WA 6107

City Farmers Franchisees

Name of franchisee	Business address
Cold Pantry Pty Ltd	Unit 8, 160 Balcatta Road, Balcatta 6021
Tacll Pty Ltd	93 Belmont Avenue, Belmont 6104
Torre & Torre Holdings Pty Ltd	Joondalup Business Park, 16 Mercer Lane, Joondalup 6027
Valley Cove Pty Ltd	Railway Ave (cnr Centre Road), Kelmscott 6111
Roger & Emma Allin	26 Panton Road, Mandurah 6210
Aarjen Pty Ltd	Roper Street (cnr Yarrick Street), O'Connor 6163
Valley Cove Pty Ltd	1/107 Dixon Road, Rockingham 6168
City Farmers Wembley Pty Ltd	46 Flynn Street (cnr Selby Street), Wembley 6014
Valley Cove Pty Ltd	171 High Road, Willetton 6155
John and Judy Hogan as trustees of the CFB Trust	68 Walter Road, Bedford 6052