



FILE No.
DOC:
MARS/PRISM:

14 April 2008

BY EXPRESS POST

Australian Competition and Consumer Commission
Level 35, 360 Elizabeth Street
MELBOURNE VIC 3000



Dear Sir/Madam,

Re: notification Exclusive Dealing

I enclose form G - Notification of Exclusive Dealing along with cheque in the sum of \$100 being the lodgment fee.

Please don't hesitate to contact me if you have any queries.

Yours faithfully
HEALTHY HABITS

STEVEN CREA
Legal Counsel

enc.

Carringbush Business Centre
Level 1 / Suite 103, 134 Cambridge Street
Collingwood VICTORIA 3066
p: 61 3 8415 1033
f: 61 3 8415 1044

RESTRICTION OF PUBLICATION OF PART CLAIMED

Form G

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

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 subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) **Name of person giving notice:**

(Refer to direction 2)

N93394

HEALTHY HABITS FRANCHISING PTY LTD A.C.N.110 487 977 of Suite 103, 134 Cambridge Street, Collingwood, Victoria, 3066 (“Healthy Habits Franchising”)

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

(Refer to direction 3)

Healthy Habits Franchising is a franchisor that licenses the use of all intellectual property relating to the conduct of Healthy Habits sandwich bars in Australia. Healthy Habits Franchising grants franchises to third parties to operate Healthy Habits stores. Several Healthy Habits stores are operated by related entities of Healthy Habits Franchising. A core concept of the Healthy Habits brand is that food sold at a Healthy Habits store is fresh and healthy.

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

Suite 103, 134 Cambridge Street, Collingwood, Victoria, 3066

2. Notified arrangement

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

- Services relating to design, building and project management of the fit out of the stores;
- Goods and services relating to the installation and maintenance of a point of sale system to register and record sales;

- Acquisition of certain food products (some of which are manufactured to Healthy Habits' exclusive specifications) or ingredients for such products, to be sold as menu items in the stores;
- Acquisition of staff uniforms manufactured to Healthy Habits' specifications;
- Acquisition of Healthy Habits branded paper goods manufactured to Healthy Habits' specifications to be used in packaging the products to be sold in the stores; and
- Acquisition of point of sale promotional material to be displayed in the stores.

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

(Refer to direction 4)

A requirement (imposed through the franchise agreement) for Healthy Habits franchisees to purchase the goods or services described in 2(a) above and further the requirement to purchase those goods or services from particular approved third party suppliers.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

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

(Refer to direction 5)

- Franchisees operating Healthy Habits stores throughout Australia in accordance with the terms of the Healthy Habits franchise agreement.

(b) **Number of those persons:**

(i) **At present time:**

23 stores

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

(Refer to direction 6)

30 Stores

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

Please see the Schedule A attached.

4. Public benefit claims

(a) **Arguments in support of notification:**

(Refer to direction 7)

- Group buying power ensures;

- Lower price to franchisees thereby resulting in lower prices to the ultimate consumer;
- the franchisee is able to access benefits negotiated by Healthy Habits Franchising with the supplier such as favourable credit terms;
- high service levels are maintained;
- access to established distribution networks;
- Increase in the quality of the end product to consumers;
- Consistency of product offering between all Healthy Habits stores;
- Consistency in visual appearance of the stores which enables national consumer brand recognition to be established;
- Enables group wide promotions to be conducted across the network which are an essential component of the marketing program;
- Ease of operation of the franchised business as the sourcing or suppliers and product testing does not have to be conducted by every franchisee individually;
- Enables protection of unique recipes owned by Healthy Habits Franchising;

(b) Facts and evidence relied upon in support of these claims:

Healthy Habits stores operate in a highly competitive market. The objective of Healthy Habits Franchising is to be a nationally recognised brand that consumers enjoy and trust. It provides a proven business system for its franchised partners to be competitive through a superior product offering at attractive prices and creates brand recognition and patronage of Healthy Habits stores. To achieve this, it is important that all aspects of the Healthy Habits franchise system are consistent across the network and that products sold by franchisees are of a high standard and competitively priced. The obligations placed on franchisees by the Franchise Agreement to which this notification relates are to ensure the integrity of the Healthy Habits system and materially assists with these aims. It is submitted that the conduct results in a public benefit which outweighs any possible breach of s.47 of the Trade Practices Act 1974 (Cwlth).

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8)

The Australian retail fast food market;

The Australian shop fitting market;

The Australian market in point of sale hardware and software;

The Australian market for the wholesale sale of food products;

6. Public detriments

- (a) **Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:**

(Refer to direction 9)

It is submitted that there is no significant detriment to the public as a result of the notified conduct:

Customer:

- There is no anti-competitive effect on the end customer as the customer will be offered a superior product at a cheaper price than would otherwise be possible thereby fostering competition amongst retailers in the fast food market, which will be pro-competitive resulting in a benefit to the consumer.

Supplier:

- The anti-competitive effect on wholesale suppliers, other than nominated or approved Healthy Habits suppliers, is insignificant given the number of retailers in Australia to which they may sell their products. Also, suppliers are free to submit a proposal to Healthy Habits Franchising at any time and they will be considered on their merits relative to the offerings tendered by alternative and/or current suppliers. In the event of a more attractive offering, Healthy Habits Franchising may approve or nominate the supplier.

Franchisees:

- Whilst the conduct limits the franchisees' discretion in selecting between suppliers of particular products, the supplier selection process

undertaken by Healthy Habits Franchising is based on the same criteria which the franchisee would adopt if it were making these decisions thereby having the same overall effect on the suppliers in the market. Also, franchisees are able to nominate alternate suppliers who will be accepted by Healthy Habits Franchising in the event that quality control and supply issues can be overcome and prices are competitive.

(b) Facts and evidence relevant to these detriments:

- If at any time an approved supplier does not meet the standards required by Healthy Habits Franchising or its franchisees, alternative suppliers will be sourced by Healthy Habits Franchising. Healthy Habits Franchising is continually undertaking negotiations with suppliers to ensure favourable terms for franchisees.
- There is no guaranteed volume of purchases to be made by franchisees either individually or collectively.
- There is open competition to become an approved supplier as all supplier proposals are considered on the same criteria including but not necessarily limited to, price, quality of product or service, distribution capability, brand equity and reputation.

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Katherine Sampson
Managing Director
Healthy Habits
Suite 103, 134 Cambridge Street
Collingwood, Victoria, 3066
Phone: 03 8415 0133



Dated..... 14th April 2008

Signed by/on behalf of the applicant

.....
(Signature)

.KATHERINE SAMPSON
HEALTHY HABITS FRANCHISING PTY LTD
Managing Director

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

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. 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 section 47 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. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

SCHEDULE A

Healthy Habits Bendigo	Bendigo Mitchell Street		54 Mitchell Street (cnr Queen St)	Bendigo	3550	VIC
Healthy Habits Eastland	Eastland Shopping Centre	G004	171 - 175 Maroondah Hwy	Ringwood	3134	VIC
Healthy Habits Fountain Gate	Westfield Fountain Gate	FC2	352 Princess Highway	Fountain Gate	3805	VIC
Healthy Habits Frankston	Bayside Shopping Centre	G47	28 Beach Street	Frankston	3199	VIC
Healthy Habits Geelong	Westfield Bay City	212	Malop St	Geelong	3220	VIC
Healthy Habits Highpoint	Highpoint Shopping Centre	3199	200 Rosamond Road	Maribyrnong	3032	VIC
Healthy Habits Knox	Knox City Shopping Centre	2022A	425 Burwood Highway	Wantima South	3152	VIC
Healthy Habits Southland	Westfield Southland	FC303	1239 Nepean Highway	Cheltenham	3192	VIC
Healthy Habits The Glen	Centro The Glen	2.27	Springvale Road	Glen Waverley	3150	VIC
Healthy Habits Warrnambool	Centro Warrnambool	10	72 Hopkins Hwy	Warrnambool	3280	VIC
Healthy Habits Watergardens	Watergardens Town Centre	73	399 Melton Highway	Taylors Lakes	3038	VIC
Healthy Habits Cairns Central	Cairns Central Shopping Centre	FC8	Cnr McLeod & Spence Streets	Cairns	4870	QLD
Healthy Habits Carindale	Westfield Carindale	F1	1151 Creek Road	Carindale	4152	QLD
Healthy Habits Helensvale	Westfield Helensvale	FC9	Town Centre Drive	Helensvale	4212	QLD

Healthy Habits Logan Hyperdome	Logan Hyperdome	T335	3828-3846 Pacific Highway	Loganholme	4129	QLD
Healthy Habits Mackay	Caneland Central	GD202 8	Cnr Victoria & Mangrove Rd	Mackay	4740	QLD
Healthy Habits Toowoomba	Grand Central Shopping Centre	81	Margaret & Dent Streets	Toowoomba	4350	QLD
Healthy Habits Townsville	Castletown Shopping Centre	113	Cnr Woolcock & Kings Road	Hyde Park	4812	QLD
Healthy Habits Castle Towers	Castle Towers Shopping Centre	266	6-14 Castle Street	Castle Hill	2154	NSW
Healthy Habits Lismore	Lismore Shopping Square	T50	Cnr Brewster and Uralba Sts	Lismore	2480	NSW
Healthy Habits Macarthur Square	Macarthur Square	UE07	81 Gilchrist Drive	Campbelltown	2560	NSW
Healthy Habits Woden	Westfield Woden	LG56	Keltie Street	Phillip	2606	ACT