

AUST COMPETITION &
CONSUMER COMMISSION
BRISBANE

20 APR 2008

NOEL WOODALL & ASSOCIATES

LAWYERS

Our Ref. NW:RC:0117325
Your Ref: 579198

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24 April 2008

Australian Competition and
Consumer Commission
P O Box 1004B
Adelaide Street
BRISBANE QLD 4000

PRINCIPAL

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Lindsay Hall
B.Com (Ind Rel)
LL.B., Dip Law

PRACTICE ADMINISTRATOR

Owen Friar

Dear Sir/ Madam,

Re: Football Queensland – Notification of Exclusive Dealing

We confirm we act on behalf of Football Queensland Ltd. We enclose herewith Notification of Exclusive Dealing, Form G, in triplicate together with our trust account cheque in your favour in the sum of \$100.00 being the requisite fee.

Yours faithfully

NOEL WOODALL & ASSOCIATES



NRJ Woodall

Enc.

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:

N93402 Football Queensland Limited ("FQ")

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

FQ governs, administers and regulates football in Queensland. See Attachment A for a full statement of the objects of FQ as set out in its Constitution

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

c/- Noel Woodall & Associates
Solicitors
PO Box 17
PEREGIAN BEACH QLD 4573

2. Notified arrangement

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

Shirts, shorts and socks bearing the manufacturer's logo, and footballs which are produced by manufacturers pursuant to licence agreements with FQ ("Teamwear").

(b) Description of the conduct or proposed conduct:

See Attachment A

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:

Football clubs participating in FQ competitions and competitions run by affiliates of FQ ("FQ Competitions"), manufacturers and retailers of football apparel.

(b) Number of those persons:

(i) At present time:

300 FQ football clubs are currently bound by the licensing program, 13 licensed manufacturers, an unknown number of unlicensed manufacturers and an unknown number of retailers.

(ii) Estimated within the next year:

300 FQ football clubs are currently bound by the licensing program but the number is likely to increase in 2009, 13 licensed manufacturers, an unknown number of unlicensed manufacturers and an unknown number of retailers.

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

N/A

4. Public benefit claims

(a) Arguments in support of notification:

See Attachment A

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

See Attachment A

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):

The relevant markets are: The wholesale and retail markets for sporting apparel.

The relevant markets are considered to be the market for sporting apparel which includes football apparel. FQ is of the view that football apparel does not constitute a market in its own right.

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:

See Attachment A

(b) Facts and evidence relevant to these detriments:

See Attachment A


7. Further information

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

Mr Noel Woodall
c/- Noel Woodall & Associates
PO Box 17
PEREGIAN BEACH QLD 4573
Tel: 07 5448 1222
Fax: 07 5448 2177
Email: nwlawyer@qld.chariot.net.au

Dated 24 APRIL 2008

Signed by/on behalf of the applicant


NOEL RAYMOND JOHN WOODALL
LAWYER
NOEL WOODALL & ASSOCIATIES

ATTACHMENT A - Apparel

1. APPLICANT

FQ's Constitution provides in rule 1.1 that its objects are:

1 Objects of Company

1.1 Objects

The objects for which the Company is established are:

- a. to be the Member of FFA in respect of the State and to comply with the constitution and by-laws of FFA;
- b. to control Football (Soccer) throughout the State, prevent infringement of the constitution and by-laws of FFA and protect Football (Soccer) from abuse;
- c. to foster friendly relations among the officials and players of Soccer by encouraging Soccer games in the State;
- d. to prevent racial, religious, gender or political discrimination or distinction among Soccer players in the State;
- e. to promote, provide for, regulate and manage Soccer tournaments and games in the State;
- f. to promote, provide for, regulate and manage Soccer players representing the State;
- g. to cooperate with FFA, other Members of FFA and other bodies in the promotion and development of, or otherwise in relation to, Soccer, the Statutes and Regulations and the Laws of the Game;
- h. to facilitate the provision and maintenance of grounds, playing fields, materials, equipment and other facilities for Soccer in the State; and
- i. any other object which, in the opinion of the Directors, is in the best interests of Football.

FQ's constitution can be viewed on its website:

http://www.footballqueensland.com.au/downloads/108_Constitution.pdf

2. NOTIFIED ARRANGEMENT

FQ has a policy that requires football clubs which participate in FQ Competitions ("**Clubs**") to use only Teamwear from licensed suppliers during FQ Competitions ("**Licensed Program**").

The policy requires only that clubs/teams purchase the Teamwear and balls from the licensed suppliers. Players do not usually purchase directly from the licensed suppliers but may do so. Players are not required to attend training sessions in apparel purchased from a licensee unless training team apparel is a requirement of team participation which is very rare. Players are expected to wear Teamwear only for the purpose of matches normally. The clubs/teams are required to purchase the Teamwear from the licensed suppliers and this apparel is given to the players to wear but ownership is usually retained by the club so it can be used again in the next season.

- a) More specifically, the policy requires all clothing items must exhibit the "Q Logo" and socks must have the "Q" stitched in or be identifiable by sight (by having the name of the supplier visible). The purpose of Football Queensland maintaining this policy is to:

- i) Ensure that the Teamwear and equipment meets minimum standards.
 - ii) Ensure that the logos, club names, symbols, emblems and designs and other indicia and trademarks owned by Football Queensland are protected. If the image is protected and promoted, the development of the game is promoted.
 - iii) Generate income for Football Queensland to be used to help pay the administration costs of Football Queensland and therefore lower costs for the clubs and players.
 - iv) Ensure that logos are displayed in a uniform fashion during matches.
 - v) Promote the "Football Queensland" brand which increases the profile of the sport and effectively promotes the sport for the benefit of the players and Queensland.
- b) The range of products covered by the policy are:
 - i) All team apparel including:
 - 1. Tracksuits;
 - 2. Playing shirts;
 - 3. Playing shorts;
 - 4. Playing socks.
 - 5. Balls.
 - ii) All zone, association and State representative squad apparel.
 - iii) Club/Association specified warm up shirts only.
 - iv) Match and training footballs.

The policy does not apply to apparel worn during training unless required by the club as team apparel.
- c) The policy is communicated to clubs/teams by way of Memoranda sent to the clubs and on Football Queensland's website:
www.footballqueensland.com.au/index.php?display=item&id=158
- d) Football Queensland monitors the policy by auditing club teams on an irregular random basis. If clubs/teams are found to be non-compliant however they are audited weekly until they conform. Penalties are imposed on teams for non-compliance as follows:
 - i) First breach - \$500
 - ii) Second breach - \$1000
 - iii) Third and further breaches - \$2000 per non-compliance and a show cause notice as to why affiliation should not be cancelled.
- e) No fines or penalties have been imposed on any clubs, teams or players by Football Queensland to date.
- f) The clubs and players may continue to use the apparel indefinitely after a Licensee ceases to be licensed.

After a competitive tender process, FQ has granted licences to thirteen apparel manufacturers. The following table sets out the licensed manufacturers:

Name	Products Licensed
LWR Manufacturing (Aust) Ltd	Team apparel and training and match footballs using Adidas and LWR products
Buffalo Sports	Team apparel and training and match footballs using Gorilla and Buffalo products
Sports Brands Australia Pty Ltd	Team apparel and training and match footballs using Mitre products
Nike Australia	Team apparel and training and match footballs using Nike products
Soccer Shirts International (Aust)	Team apparel and training and match footballs using SSI products
GSM International	Team apparel and training and match footballs using GSM International and Veto Sports products
Attack Sports	Team apparel using Attack Sportswear products
Statewide Sports	Team apparel and training and match footballs using Uhlsport products
Concept Sports International	Team apparel using the Chevron and Hummel brands
Kombat	Team apparel
Double Diamond Distributors	Team apparel using Vapa Tech coated fabric
Official Sports Supplies	Team apparel
Covo Sports International Pty Ltd	Team apparel and training and match footballs

All current licence agreements were entered into on 1 October 2007 and expire on 30 September 2010. FQ will undertake a new tender process for the Licence Program prior to the termination of the existing licence agreements. An indicative copy of the licence agreements is attached, Attachment "B".

The process used by FQ to appoint the 2007-2010 Licensees was the calling of applications to join the program from the industry. The requirements being those set out in clause 2 (a) of Attachment "B".

There is no guarantee to Licensees that the License will be renewed at the end of the current licence period.

These arrangements may constitute conduct of the kind described in s 47(6) of the Trade Practices Act 1974 ("TPA"). FQ submits that this notification should be allowed to remain in force and the notified conduct be afforded the statutory protection provided by s 93 of the

TPA, in order to achieve commercial certainty and in view of the considerable public benefits outlined below.

3. PUBLIC BENEFITS

The proposed arrangements will result in significant public benefits, as set out below.

a) Minimum standard of quality

The tendering process for the Licence Program ensures that there is a minimum standard of quality for Teamwear.

The Licence Program was introduced largely to ensure that the quality of the Teamwear met a certain minimum standard. Before the Licence Program started there were incidents where apparel did not last even one whole competition season and Clubs had to acquire new apparel during that season or the following season. While unlicensed apparel may possibly be purchased by clubs at a lower cost (due to the number of licensed suppliers - this is by no means certain however), the policy ensures that the licensed products are of a certain quality.

FQ is of the view that the minimum standard of quality arising from the Licence Program Clubs saves money for the clubs over time due to the increased quality of the Teamwear and promotes the image of the game. The program also helps provide funding to FQ which FQ is able to utilise to introduce programs such as the Red Kits program. This program funded to the extent of \$466,000 by FQ in 2008 provided every team registered to FQ with a team set of footballs and coaching equipment free of charge - the first such program carried on in Australia by a football organisation. This program directly provided clubs and teams with quality merchandise and saved each club a minimum of approximately \$300.00 per team in normal expenditure.

The standard of quality is also protected by the licence agreements.

Clause 8.1: The Licensee warrants that the Licensed Commodities will be of good quality, design, material and workmanship and will be suitable for their intended purpose and that no injurious, deleterious or toxic substances will be used in or on the Licensed Commodities and that the same will not cause harm when used as instructed and with ordinary care for their intended purpose and that the said Licensed Commodities will be manufactured, sold and distributed in strict compliance with all applicable laws and regulations.

Clause 8.3: If the standard, quality, appearance or style of any Licensed Commodity or related packaging ceased to be acceptable to the Licensor or in the event there is an occurrence or factor connected with any such Licensed Commodity which reflects unfavourably upon the reputation or standing or goodwill of the Licensor, the Licensor shall, acting reasonably, have the right by notice in writing to withdraw its approval of such Licensed Commodity provided that the Licensee shall be entitled to re-submit the Licensed Commodities and related packaging in accordance with and subject to the foregoing provisions of this clause 8. Upon giving notice of withdrawal of approval by the Licensor, the Licensee shall forthwith cease to use the License Property in the manufacture, sale, advertising, distribution, provision or use of such Licensed Commodity and within ten (10) days thereafter shall pay all amounts due to the Licensor hereunder in respect of such Licensed Commodity. If there are other Licensed Commodities under this

Agreement in respect of which the Licensor has not withdrawn its approval, this agreement shall mutatis mutandis remain in full force and effect as to those other Licensed Commodities.

b) Timely supply

Licensing the 13 apparel manufacturers ensures that clubs have a wide choice of supplier and will be able to access appropriate apparel in a timely manner.

Lead times and distribution methods are considered in the tender process for licences. This assists in ensuring that the clubs obtain the Teamwear in a timely manner. Given the number of licensed suppliers it is unlikely that a club would encounter any delay in obtaining the Teamwear.

c) Image of the game and promotion of the FQ brand

FQ's "Q" logo is attached to the shirts, shorts and socks produced by the licensed manufacturers. The level of quality and the timeliness of supply of apparel help to lift the profile of football and assists in attracting sponsors to the sport. It is essential for the long term success of football in Queensland that FQ's brand be used during games and in an organised manner.

In order to protect the intellectual property rights FQ must have the ability to choose the suppliers of FQ's marks.

d) The Licence Program generates income for FQ

The revenue generated by the Licence Program helps keep costs lower for Clubs and players.

The licensees are required to pay fees to Football Queensland as follows:

- i) A non refundable Advance Payment of \$20,000 per annum payable in quarterly instalments.
- ii) A 5% royalty in all sales payable monthly in arrears.

Revenue raised by the Licensed Program from 1.10.06 to 30.9.07 was \$208084.00. The revenue is spent to promote, foster and develop the sport of football in Queensland through the administration of the competition. The revenue raised from the Licensed Program is spent as follows:

- In support of FQ general operations to reduce the costs of fees to participating clubs and teams and individuals.
- In support of programs which promote racial tolerance through the game of football.
- In funding the creation of innovative programs designed to increase the number of persons participating in the sport, ie. The junior squirts program for 3-5 year olds.
- The delivery of programs such as the Red Kits program which provides significant amounts of free football equipment to teams and clubs at the grass roots level.
- In support of programs to increase disabled persons' participation in football.
- In support of government programs promoting fair play and respect for officials.
- In funding football development programs.

Licensees pay fees, accept strict quality controls and meet specifications, in return for the Clubs being required to obtain Teamwear. However the Licensees are not guaranteed any exclusivity.

Even though the licensees pay the advance fee and royalty under the Licence Program, this has not resulted in any ascertainable increased cost to the Clubs or players for the apparel due to the large number of licensed suppliers and the importance of the suppliers to the overall market place with most large suppliers represented in the licensed group.

e) A high level of choice has been retained

There are thirteen manufacturers of Teamwear who produce a large range in style, materials, price and colours. The quality of the Teamwear also varies between the licensed manufacturers providing the Clubs a different price range for Teamwear whilst maintaining a minimum guaranteed quality standard.

The Clubs are still free to buy from any retailer that stocks licensed products.

g) Minimal cost of administrating Licensed Program

The administrative costs of the Licensing Program are negligible. FQ administers the tender process internally and referees complete a team sheet before each match. Since the Licence Program was implemented, the team sheet has included provision for the referee to mark whether the team is wearing compliant clothing .

4. PUBLIC DETRIMENT

FQ submits that there is no significant anti-competitive detriment associated with the notified conduct for the reasons set out below:

- a. The Licence Program is not likely to lead to any increase in prices for the Teamwear purchased by Clubs compared to unlicensed apparel of the same quality. The certainty of volume for manufacturers may result in reductions in price. Apparel not subject to the Licensed Program would be of a similar value. This can be evidenced by a comparison of the sale price.
- b. The Licence Program will not lead to any substantial lessening in competition in any relevant market, since there are thirteen manufacturers of Teamwear competing against each other and Clubs are free to choose any supplier they wish. With thirteen suppliers it is unlikely that there will be reduced competition in the supply of the Teamwear, particularly as most of the larger suppliers are represented in the group of licensed and unlicensed suppliers. Clubs also have a great degree of choice in style and colour and price of Teamwear. The Licence Program is an efficient and accepted means of ensuring appropriate quality and other controls over competition apparel and the use of FQ brand.
- c. There is no wastage of Teamwear as the clubs can continue to use it after a Licensee's licence ceases.
- d. FQ does not guarantee to Licensees that further licensees will not be added to the Licensed Program.
- e. The administration costs are absorbed by FQ.
- f. Suppliers are not required to supply details of pricing in the tender process. Accordingly, FQ in no way seeks to control the competition between the licensed suppliers.

5. CONCLUSION

FQ submits that the Licence Program does not give rise to any real anti-competitive detriment, and will result in considerable public benefit. Accordingly, FQ submits that the Australian Competition and Consumer Commission ought to allow this notification to stand.