

17 June 2008

Ms Sharon Clancy
Australian Competition & Consumer Protection
GPO Box 3131
CANBERRA ACT 2601

Dear Madam

Third line forcing notifications lodged by Brabus PA Franchising Pty Ltd in relation to Sebastian and PPS

We respond to your questions as follows.

1. **How were Sebastian and PPS selected to be the nominated suppliers? For example, were they selected through a tender process?**

Price Attack network – PPS

The process for selecting the supplier of products for the Price Attack network is chosen on the basis of a number of factors including:

- (a) quality of goods;
- (b) brand names that are recognisable by customers;
- (c) goods that are consistent with, and not prejudicial to, the Price Attack image and standards;
- (d) suppliers who have the ability to supply a national network;
- (e) pricing;
- (f) discounts provided by the supplier;
- (g) rebates provided by the supplier;
- (h) payment conditions; and
- (i) support provided by the supplier such as education and training programs.

Fix network – Sebastian

The process for selecting the supplier of products for the Fix network is chosen on the basis of a number of factors including:

- (j) quality of goods;
- (k) brand names that are recognisable by customers;
- (l) goods that are consistent with, and not prejudicial to, the Fix image and standards;
- (m) suppliers who have the ability to supply a national network;
- (n) pricing;

- (o) discounts provided by the supplier;
- (p) rebates provided by the supplier;
- (q) payment conditions; and
- (r) support provided by the supplier such as education and training programs.

2. Is there a process in place to review the goods/services provided by Sebastian and PPS to ensure that the claimed public benefits continue to be generated?

The PPS agreement and Sebastian agreement both expire on 31 December 2009.

At the end of the expiry of the agreements, Brabus Franchising will review both Sebastian and PPS as the suppliers of the hair care and beauty products to ensure that Sebastian and PPS will continue to provide:

- (a) the franchisees with competitive advantages;
- (b) efficiencies in the management of the franchise networks;
- (c) consistency of quality of products across all of the retail stores as well as a consistent 'look and feel' across the stores; and
- (d) cost savings to the franchisees' businesses,

thereby maintaining the conditions conducive to ensuring that the public benefits continue to be generated.

3. Does Brabus PA Franchising Pty Ltd receive a rebate or fee from Sebastian and/or PPS? If yes, how much is the rebate and what does Brabus PA Franchising Pty Ltd do with the rebate? Have franchisees been informed about the rebate?

PPS

Brabus Franchising receives from PPS a rebate of 5% for the Price Attack group's net purchases of PPS products. The rebates are used in Brabus Franchising's discretion. Brabus Franchising intends that the rebates will assist with Price Attack related head office expenditure, to develop and strengthen the Price Attack brand and/or may be put into the Price Attack advertising fund.

Receipt of rebates by Brabus Franchising helps reduce upward pressures on fees charged by Brabus Franchising to its franchisees.

PPS also provides each Price Attack store with:

- (a) 3% rebate of their PPS net purchases; and
- (b) discounts for PPS products.

The franchisees are informed about the rebates through the disclosure document and the franchise agreement.

Sebastian

Brabus Franchising does not receive any rebate from Sebastian however:

- (a) Sebastian will contribute to a business development fund, which is used for activities mutually agreed between Brabus Franchising and Sebastian to increase the business of each of Brabus Franchising and Sebastian; and
- (b) each Fix store is provided with a discount for Sebastian products.

4. **Is the requirement to purchase goods/services from Sebastian and PPS an existing or new requirement for existing franchisees? If it is a new requirement, how will the requirement be implemented and are there any transitional arrangements for existing franchisees?**

PPS

Under the current Price Attack franchise agreement, the franchisee must obtain products from any supplier approved by Brabus Franchising, which approval is subject to, inter alia, the product:

- (a) having at least equal in quality to the product it substitutes;
- (b) is suitable for the purpose for which it is intended; and
- (c) is consistent with, and not prejudicial to, the Price Attack image or the Price Attack standards.

The franchisee, under the new Price Attack franchise agreement and when the current Price Attack franchise agreements are renewed, must purchase certain products from PPS and the franchisee may not sell an alternative product to the PPS product. If PPS is unable to supply that particular product within a reasonable period of time of receiving the franchisee's written order, the franchisee may purchase that particular product from another supplier approved by Brabus Franchising for so long as PPS is unable to supply that product.

Sebastian

There is only 1 franchisee at the date of the notification. Under that franchise agreement, the franchisee must obtain products from any supplier approved by Brabus Franchising, which approval is subject to, inter alia, the product:

- (d) having at least equal in quality to the product it substitutes;
- (e) is suitable for the purpose for which it is intended; and
- (f) is consistent with, and not prejudicial to, the Fix image or the Fix standards.

The franchisee, under the new Fix franchise agreement and when the current Fix franchise agreement is renewed, must purchase certain products from Sebastian and the franchisee may not sell an alternative product to the Sebastian product. If Sebastian is unable to supply that particular product within a reasonable period of time of receiving the franchisee's written order, the franchisee may purchase that particular product from another supplier approved by Brabus Franchising for so long as Sebastian is unable to supply that product.

If you have any questions or require further information please do not hesitate to contact Warren Scott on 03 9605 0984 or wscott@millsoakley.com.au.

Yours faithfully

 **WARREN SCOTT**
MILLS OAKLEY LAWYERS