

**Mills Oakley Lawyers Pty Ltd**  
ABN: 51 493 069 734  
ACN: 079 480 943

Our ref: WAS/AJW/5017608

All correspondence to:  
PO Box 453  
Collins Street West  
MELBOURNE VIC 8007

**Contact**

Ashleigh Le 03 9605 0849  
Email: ale@millsOakley.com.au

**Partner**

Warren Scott 03 9605 0984  
Email: wscott@millsOakley.com.au

26 August 2008

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

Dear Ms Clancy

**Third line forcing notifications lodged by Brabus PA Franchising Pty Ltd and Brabus Investments Pty Ltd (collectively "Price Attack")**

We request that the information contained in this letter is excluded from the public register in its entirety as it contains commercially sensitive information, is confidential to Price Attack, Wella and PPS and is a part of the success of the Price Attack network.

We refer to your letter dated 29 July 2008.

We note that although Price Attack currently has 135 stores nationwide, there were only 3 submissions, one of which was from the former supplier of the point of sale system.

Generally speaking, we consider that the matters raised in the submissions are not directed to the relevant legal issues. Therefore, we do not consider it necessary to respond to all matters set out in those submissions even though many matters contained in those submissions are disputed.

However, our client has instructed us to respond to the 3 points raised in your letter of 29 July 2008.

**1. Rebates**

***ACCC: "The rebates paid to Brabus by the suppliers nominated by Brabus are unlikely to result in lower prices for franchisees for customers because franchisees generally sell products at recommended prices."***

Price Attack has consolidated the buying power of the Price Attack group to negotiate favourable arrangements with PPS and Wella. PPS and Wella offer rebates not only to the Price Attack head office but also to Price Attack outlets as well as provide the Price Attack franchisees with substantial discounts.

Under the PPS agreement, PPS offers:

- (a) Price Attack head office a rebate of 5% for the Price Attack group's PPS net purchases;
- (b) each Price Attack outlet a rebate of 3% of their PPS net purchases; and

(c) a discount of:

[REDACTED]

Under the Wella Agreement, Wella offers:

[REDACTED]

As outlined above, the rebates received by the Price Attack head office do not cause a higher overall purchasing price at store level because the stores also receive rebates and substantial discounts from PPS and Wella.

The rebates provided to the Price Attack head office will assist with Price Attack related head office expenditures (such as administration and promotion of the Price Attack brand) so that the pressure on Price Attack to increase its fees charged to its franchisees (for example, royalties and marketing fees) is lessened.

The franchisees are not required to sell the products at recommended retail prices. As such, the decrease in costs creates opportunities for franchisees to reduce the retail prices of the products which in turn may lead to lower prices for products at consumer level.

If no rebates were provided to the Price Attack head office, Price Attack may need to consider an increase to the fees charged to the franchisees and as a result, the franchisees may elect to sell the products at a higher price and consumers would have to pay more for the product which is detrimental to the public.

Consequently, the combination of:

- (a) rebates and substantial discounts provided direct to the franchisees; and
- (b) rebates provided to the Price Attack head office resulting in reduction in upward pressure on costs,

lead to cost savings for the franchisees which will provide the franchisees with competitive advantages enabling them to engage in price competition with other hair salon businesses, supermarkets and department stores. The result is potential for increased competition in the market. This is therefore beneficial to the public.

***ACCC: "Additionally, the rebates create inefficiencies because they dampen competition between suppliers to supply Price Attack franchise network and result in supply orders which do not reflect customer demand."***

We disagree with this analysis. The rebates and discounts provided by the suppliers create a strong competitive environment as it puts pressure on the other suppliers to offer rebates or offer the products at lower prices.

The notified conduct and in particular the provision of rebates are expected to spawn pro-competitive responses from the other suppliers. The increased competition at the supply level will result in potential for lower prices at the consumer/retail level, which will be of benefit to consumers.

The PPS Agreement and the Wella Agreement are for a period of 36 months and at the expiry, Price Attack will negotiate and review all suppliers of hair care and beauty products. The process for selecting the supplier of products proceeds on the basis of a number of factors as set out in our earlier submissions which includes, amongst other things, the rebates and

discounts provided by the supplier so as to provide the franchisees with the opportunity to actively compete in this very competitive market.

Further, the notified conduct is a pro-competitive response by the Price Attack network to similar arrangements made by its competitors with their suppliers.

In relation to customer demand and supply orders, our client is not aware of what specific circumstances this relates to. The brands the subject of the notifications are major brands that a product operator would stock in any event. Further, there are only 2 brands of products the subject of the notifications, which we submit does not restrict the franchisee's ability to sell other products to address customer demand.

One purpose for having the franchised stores stock and display the PPS and Wella products is to provide the consistency of quality of products across the Price Attack retail stores as well as a consistent 'look and feel' across the stores. Customers will benefit from the consistency of quality between Price Attack stores as well as be able to purchase the products as advertised at any Price Attack outlet.

Further, and in particular in relation to the Wella basin products, franchisee staffs need to be trained in the implementation of the colour. The Wella Agreement requires Wella, at its cost, to employ a dedicated Wella National Key Account Technical Manager on a full time basis to assist the Price Attack group with the training on Wella products and concepts. This promotes not only the consistency of products but also consistency of services. Having different brands for the basin products will result in further costs to the franchisees and create inefficiencies as each franchisee will need to obtain their own training in applying hair colour treatments and the services provided will not be consistent throughout the Price Attack network which would be detrimental to the Price Attack network and ultimately the customers.

We note that there were no submissions from franchisees of the Fix network so we have not discussed the Fix network notification in respect of the Sebastian brand in this letter.

## **2. Shortcuts Point of Sales System (POS System)**

***ACCC: "The Shortcuts computer system is subject to technical and operational problems which limit its utility and reduce any efficiency claims associated with its use. "***

As outlined in the Form G and the further submission, Shortcuts specialises in providing computer systems for the hair and beauty salon and spa industries and in particular Shortcuts provides computer systems for multi-site hair and beauty salon businesses and understands the needs of hair and beauty salon businesses and the hair and beauty salon franchise systems.

It should be noted that no software system is without any problems and any technical and operational issues raised were solved as a matter of priority.

Attached is the submission by Shortcuts in response to the issues raised

We refer to the submission made by Salonezy that there will be greater costs involved in changing to Shortcuts and refer to our submission by letter dated 16 June 2008 that Price Attack has subsidised and will subsidise part of the cost of the POS system for all current franchisees who participated in the planned rollout.

Therefore, any claims of reduced efficiency and limitation of utility are unfounded.

### 3. Telstra Internet Service Provider

***ACCC: "The requirement that franchisees obtain internet services from a single provider will not necessarily result in decreased costs and efficiencies because franchisees have different internet usage patterns which may be best serviced by different providers. "***

We are instructed that Price Attack consulted with other service providers such as Soul, AAPT and some others but the costs were higher than Telstra. Accordingly, using Telstra as the internet service provider would result in decreased costs.

For the efficient management of the system Shortcuts requires that all stores using the Shortcuts system use Telstra as their internet service provider. The purpose of requiring the franchisees to obtain internet services from Telstra is to ensure that the internet connection is the same throughout the Price Attack network so as to ensure efficiency in management of the Price Attack network.

There is no evidence to indicate that franchisees have substantial differences in internet usage patterns particularly as the franchisees are part of the Price Attack network. Further, to allow the franchisees to be serviced by different internet providers would create inefficiencies in the management of the Price Attack network which would result in increased costs for the franchisees. The inefficiencies in the management of the Price Attack network may cause Price Attack to increase fees charged to the franchisees which may result in the franchisees needing to sell the products at a higher price and consumers may have to pay more for the product, which is detrimental to the public.

It is our client's view that the efficient running of the network creates greater benefits to all franchisees than any benefits (if at all) in having different service providers for individual usage patterns.

Accordingly, we submit that the public benefits of the notified conducts outweigh any public detriment.

If you have any questions or require further information please do not hesitate to contact Ashleigh Le on 03 9605 0849 or [ale@millsoakley.com.au](mailto:ale@millsoakley.com.au).

Yours faithfully

**WARREN SCOTT  
PARTNER**