



# Deacons

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24 September 2009

Express Post

The General Manager  
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Australian Competition and Consumer Commission  
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Canberra ACT 2601

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Our Ref: 2682982

Dear Sir

**The Noodle Box Franchising (Aust) Pty Ltd - Form G notification**

We act for The Noodle Box Franchising (Aust) Pty Ltd.

Please find enclosed a:

1. Form G – Notification of Exclusive Dealing (in relation to third line forcing); and
2. cheque to the ACCC in the sum of \$100 for the lodgement fee.

Please contact me on (03) 8686 6682 or [greg.hipwell@deacons.com.au](mailto:greg.hipwell@deacons.com.au), or Jessica Rowe (whose contact details are below), with any queries in relation to this matter.

Yours faithfully



Greg Hipwell  
Partner  
Deacons

Contact: Jessica Rowe  
Direct line: +61 (0)3 8686 6501  
Email: [jessica.rowe@deacons.com.au](mailto:jessica.rowe@deacons.com.au)  
Encls.



# 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)

The Noodle Box Franchising (Aust) Pty Ltd ACN 115 296 387 (**Noodle Box**).

N94191

- (b) **Short description of business carried on by that person:**  
(Refer to direction 3)

Noodle Box is the franchisor of a network of franchisees (**Franchisees**) that operate "The Noodle Box" restaurants in Australia. Noodle Box restaurants specialise in the sale of rice and noodle dishes, stir-fry's, beverages and related products under the "The Noodle Box" brand and using Noodle Box's intellectual property.

Bodies corporate related to Noodle Box operate 5 Noodle Box restaurants, which are located in Brisbane and Fairfield (Queensland) and Doncaster East, Geelong and Malvern (Victoria).

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

Suite 13A, 663 Victoria Street, Abbotsford, Victoria 3067.

### 2. Notified arrangement

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

This notification relates to the acquisition of "**Marketing Materials**", being business cards, menu panels, lightboxes, "reward" certificates, advertising flyers and other corporate collateral, by Franchisees.

- (b) **Description of the conduct or proposed conduct:**  
(Refer to direction 4)

Noodle Box intends to require all Franchisees to acquire their requirement of Marketing Materials from 1 nominated supplier, being Cassette Pty Ltd ABN 13 111 642 043 (**Cassette**) or other supplier nominated by Noodle Box from time to time.

Cassette, in conjunction with Noodle Box, has established an intranet site to facilitate the ordering of Marketing Materials by the Noodle Box network. Franchisees will be able to log onto the site, peruse the range of Marketing Materials available, design their own Marketing Materials (using templates and design components preapproved by Noodle Box), and order and pay for the

selected materials. Cassette (or other supplier nominated by Noodle Box) will then manufacture and deliver the Marketing Materials to Franchisees.

Franchisees are not required to pay any fees to Noodle Box or Cassette, or obtain any licence or software from Noodle Box or Cassette, in order to access the intranet site.

The proposed conduct falls within the definition of exclusive dealing in sections 47(6) and (7) of the *Trade Practices Act 1974* (Cth), as Noodle Box proposes to:

supply its services as franchisor on the condition that Franchisees acquire;  
and

refuse to supply its services as franchisor if Franchisees do not acquire (or have not agreed to acquire);

Marketing Materials from Cassette (or other supplier nominated by Noodle Box). For the reasons outlined below however, Noodle Box contends that the public benefits resulting from the proposed conduct will far outweigh any public detriment.

**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)*

All Franchisees.

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

(i) At present time: 51 Franchisees

(ii) Estimated within the next year: 57 Franchisees  
*(Refer to direction 6)*

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

There are currently more than 50 Franchisees.

**4. Public benefit claims**

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

*(Refer to direction 7)*

See paragraph 4(b) below.

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

Noodle Box considers that the proposed conduct will provide the following public benefits.

(i) Price:

By requiring all Franchisees to purchase their requirement of Marketing Materials from 1 supplier, Noodle Box contends that it will be able to secure lower printing costs for Franchisees than they would be able to obtain independently, over any significant period. This is because the volume of Marketing Materials required by the network provides Noodle Box with the bargaining power to secure competitive prices. Additionally,

the use of the intranet ordering platform will enable Cassette (or other supplier nominated by Noodle Box) to "bundle" Franchisees' orders into commercial quantities, again reducing the price at which the Marketing Materials will be offered to Franchisees.

Noodle Box intends to periodically investigate alternative suppliers of Marketing Materials, to ensure that the prices and product offerings of any supplier of Marketing Materials nominated or approved by Noodle Box, are competitive.

(ii) Protection of intellectual property:

All, or the vast majority of, Marketing Materials bear trademarks registered by Noodle Box, or one of its related bodies corporate.

It is essential to the integrity of the Noodle Box brand that the number of parties licensed to use Noodle Box's trademarks is limited, and that the licensed parties use the trademarks strictly in the manner prescribed by Noodle Box. Controlling the use of Noodle Box's trademarks is essential if the value in, and uniqueness of, the Noodle Box brand is to be maintained and enhanced, to the benefit of all Franchisees. Such control also reduces the risk of unauthorised parties passing themselves off as Noodle Box restaurants or associates of Noodle Box, misleading customers as to the origin of products and damaging Noodle Box's market reputation.

(iii) Efficiency and convenience

The establishment of the intranet site for perusing and ordering Marketing Materials will provide Franchisees with an efficient and convenient way to obtain marketing collateral. For example, by using the intranet site, Franchisees will be able to consider and place their orders at their convenience, rather than being forced to do so during business hours. Franchisees will also be able to save incomplete orders, and modify them at a later time.

Additionally, Franchisees will be able to create Marketing Materials specific to their restaurant without having to bear the administrative burden of first requesting and obtaining Noodle Box's consent to the desired design. This is because each combination of "mix and match" design elements on the intranet site will have been preapproved by Noodle Box.

The proposed conduct will also relieve Franchisees of the burden of investigating the standards of products produced by suppliers of marketing materials. That is, Franchisees will be able to order Marketing Materials in the knowledge that Noodle Box has already investigated the supplier's ability to deliver a high quality, cost effective product that complies with Noodle Box's standards.

## 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 markets can be reasonably identified as the Australian markets for the supply of commercial and retail printing services, and design services for marketing materials. Such markets are highly competitive and include a large number of participants.

**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)*

Refer to paragraph 6(b) below.

- (b) Facts and evidence relevant to these detriments:**

The proposed conduct will prevent Franchisees from selecting their supplier of Marketing Materials on the usual commercial basis. However, Noodle Box considers that the efficiencies, price savings and brand protection benefits (as outlined above) far outweigh any such detriment. Indeed over 80% of Franchisees currently voluntarily purchase their requirement of Marketing Materials from Cassette.

Noodle Box does not consider that the proposed conduct will have any adverse effect on consumers. Indeed Noodle Box believes that the proposed conduct will enable Franchisees to obtain Marketing Materials at a price that is competitive, and in a manner that involves little administrative effort. The resultant cost and overhead savings will allow Franchisees to operate more profitable businesses, and provide value to their customers.

Noodle Box maintains that effect of the proposed conduct on suppliers of Marketing Materials will be minimal, if there is any impact at all. This is because the size and competitive nature of the market in which they operate (including large number of suppliers within it), and the relatively small volume of products ordered by Franchisees, means that any impact will be negligible. Noodle Box will also consider alternative suppliers periodically, to ensure that it obtains competitive prices and quality products for its Franchisees.

**7. Further information**

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

Greg Hipwell, Partner, Deacons  
Level 15, 485 Bourke Street, Melbourne, Victoria 3000  
Direct line: (03) 8686 6682  
Email: greg.hipwell@deacons.com.au

Dated: 24 September 2009

Signed on behalf of the applicant

  
.....  
Gregory Hugh Hipwell  
Deacons  
Partner

## 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 the 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.