

Blanch, Belinda

From: rwilliscroft [rwilliscroft@cassablegal.com.au]
Sent: Thursday, 12 March 2009 6:06 PM
To: Philp, Susan
Cc: Adjudication
Subject: 8721 - Flourish & Evergreen
Attachments: flourish form g PDF Thu Mar 12 2009 18-03-38.534.PDF

CASSAB & ASSOCIATES SOLICITORS

A Solicitor Corporation

ABN: 12 121 584 432

12 March 2009

Director: Sheriff Cassab ; B.Ec, LL.B

Our Ref: SC:RW:8721
Your Ref: Susan Philp

Australian Competition & Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601 VIA EMAIL

Dear Sir/Madam

**RE: FLOURISH & EVERGREEN PTY LIMITED SALE OF BUSINESS TO MIBG
HOLDING PTY LIMITED
BUSINESS: BP MOOREFIELDS ROAD
PREMISES: BP MOOREFIELDS ROAD 152 MOOREFIELDS ROAD, KINGSGROVE**

Please refer *attached* Form G as requested.

Yours Faithfully,

**RENEE WILLISCROFT
LICENSED CONVEYANCER**

Cassab & Associates
Suite 302, 398 Chapel Road
Bankstown NSW 2200
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16/03/2009

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)

N93884 Flourish & Evergreen Pty Limited
.....
.....
.....

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

Service Station situated at 152 Moorefields
Road, Kingsgrove NSW
.....
.....

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

6/19 Angas Street, Meadowbank NSW 2114
.....
.....

2. Notified arrangement

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

Please refer attached copy letter. Original
forwarded under cover of letter dated 3 March
2009.
.....
.....

(b) Description of the conduct or proposed conduct:

..... Please refer attached copy letter. Original
..... forwarded under cover of letter dated 3 March
..... 2009.
.....
.....

(Refer to direction 4)

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)

..... The purchaser of the business who is also the
..... assignee of the lease where the business
..... situates.
.....
.....

(b) Number of those persons:

(i) At present time:

..... One
.....
.....

(ii) Estimated within the next year:

(Refer to direction 6)

..... One
.....
.....

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

..... MIBG Holding Pty Limited
..... C/- 21-23 Cumberland Road, Ingleburn NSW 2565
.....
.....
.....

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please see attached letter.
.....
.....
.....

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

Please see attached letter.
.....
.....
.....

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 sale of service station business.
.....
.....
.....

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)

None
.....
.....
.....

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

Not applicable.
.....
.....
.....


7. Further information

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

Gladys Lau
6/19 Angas Street, Meadowbank NSW 2191
Tel: 0410 532 063

Dated 12/3/09

Signed by/on behalf of the applicant


(Signature)

Gladys Lau
(Full Name)

Flourish & Evergreen Pty Ltd
(Organisation)

Director
(Position in Organisation)

DIRECTIONS

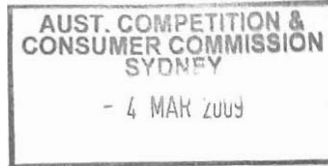
1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

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.

CASSAB & ASSOCIATES SOLICITORS

3 March 2009



Director: Sheriff Cassab : B.Ec. LL.B

Our Ref: SC:RW:8721

Australian Competition & Consumer Commission
GPO Box 3648
SYDNEY NSW 2001

FILE No:	
DOC:	
MARS/PRISM:	

Dear Sir/Madam,

**RE: FLOURISH & EVERGREEN PTY LIMITED SALE OF BUSINESS TO
MIBG HOLDING PTY LIMITED
BUSINESS: BP MOOREFIELDS ROAD
PREMISES: BP MOOREFIELDS ROAD 152 MOOREFIELDS ROAD,
KINGSGROVE**

We refer to the above matter and advise we act on behalf of the vendor of the business.

We advise that our vendor client and the purchaser have mutually agreed in relation to the assignment of the service agreement with BP for the above property.

We *attach* the following:-

1. Third Line Forcing Notification, signed by our client.
2. Cheque for \$600.00 being your fee
3. Copy of letter to the landlord's solicitor in relation to assignment of the lease of the above premises.

If you require any further information, please contact our office.

We await your confirmation of your approval to the attached in order that we may proceed to settlement of our client's sale of business.

Yours faithfully
CASSAB & ASSOCIATES



A Solicitor Corporation A.B.N 12 121 584 432

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PHONE: 9793 2700 • FAX: 9793 2900
DX 11232 BANKSTOWN
Email: scassab@cassablegal.com.au
Website: www.cassablegal.com.au



The Director
Australian Competition & Consumer Commission

5th June, 2007

Dear Sir

Re: Third Line Forcing Notification

Premises: 152 Moorefields Road, Kingsgrove

Flourish & Evergreen Pty Limited (ACN 123 423 718) ("Assignor") is the current owner and operator of a service station site ("Site") where petroleum products supplied by BP Australia Pty Ltd ("BP") are currently retailed by Assignor to the general public.

Assignor and **MIBG Holding Pty Limited (ACN 102 401 812)** ("Assignee") are proposing to enter into a lease over the Site.

Assignor is currently a party to an exclusive supply agreement with BP that allows Assignor to use BP's trademarks in retailing the petroleum products to the general public at the Site ("Supply Agreement").

The Supply Agreement provides that, in the event that the Site is no longer operated by Assignor, the Supply Agreement will be terminated. In such event, damages would be payable by Assignor to BP. Assignor wishes to avoid this liability by assigning the Supply Agreement to Assignee and wishes to make it a condition of the lease that the lessee take an assignment of the Supply Agreement. The obligations on the Assignee to take exclusive supply from BP will terminate on the same date those obligations would have terminated if Assignor had remained the operator at the Site.

As this may result in a technical contravention of subsections 47(6) and (7) of the *Trade Practices Act*, I wish to lodge a notification under subsection 93(1) of that Act.

Enclosed are:

- Notification concerning the proposed lease arrangement lodged on behalf of Assignor; and
- a cheque for \$600.00 in payment of the applicable statutory fees.

Should you have any queries or require any further information, please do not hesitate to contact me on 0410 532 063

Yours faithfully


GLADYS LAU
