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Our Ref: GVS:MJD:082758
Contact: Geoffrey Shiff

19 March, 2009

General Manager
Adjudication Branch
Australian Competition & Consumer Commission
GPO BOX 3131
CANBERRA ACT 2601


By Email: adjudication@acc.gov.au

Dear Sir / Madam,

**NOTIFICATION OF EXCLUSIVE DEALING – VILLA & HUT FRANCHISING
PTY LTD ACN 125 356 667 (“VHF”)**

We refer to the matter above and enclose a notification of exclusive dealing under subsection 93(1) of the Trade Practices Act 1974 (Cth) (“TPA”) lodged by VHF.

We also enclose a cheque in the amount of \$100 being the required lodgement fee for a third line forcing notification.


Yours faithfully
SHIFF & COMPANY

AUST. COMPETITION &
CONSUMER COMMISSION
CANBERRA
23 MAR 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)

N93895 Villa & Hut Franchising Pty Ltd ACN 125 356 667 (“VHF”)

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

VHF operates a franchise system involving businesses branded as “Villa & Hut Kafé”. Villa & Hut Kafé franchises sell premium coffee and tea products, associated beverages, food and in some cases may be authorised to sell Villa & Hut branded homewares and furniture.

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

c/- Geoffrey Shiff
Shiff & Company
Lawyers & Consultants
Level 2, 34 Queen Street
Melbourne VIC 3000

2. Notified arrangement

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

The supply of a right to use the franchise system, the image and trade marks which are licensed to VHF and the supply of franchise support services from VHF. Pursuant to these supplies, franchisees of VHF are granted the right to sell coffee and tea products, other beverages, food and in some cases Villa & Hut branded homewares and furniture under the brand name “Villa & Hut Kafé” and “Villa & Hut”

(b) Description of the conduct or proposed conduct:

In order to ensure that the coffee products sold by franchisees of VHF are of a consistent and high quality across the system, VHF has **developed a special blend** of coffee beans with Amanti Coffee (Goston A-Vend Pty Ltd & Amanti Coffee Pty Ltd). This blend is called the Villa & Hut Kafe Blend, which is exclusive to VHF and is labelled as such on each supply.

Franchisees are supplied with the right to use the franchise system, image and trade marks which are licensed to VHF and are supplied with franchise support services by VHF on the condition that they only purchase and use the coffee blend developed by VHF and available from Amanti Coffee.

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)

Persons who enter into a franchise agreement with VHF to operate a franchised business under the brand "Villa & Hut Kafé"

(b) Number of those persons:

(i) At present time:

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

20

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

Villa & Hut Kafé at Direct Factory Outlets, Brisbane Airport
F213, Direct Factory Outlets, 1 Airport Drive, Brisbane, Queensland 4007
Phone: (07) 3114 7277
Fax: (07) 3114 7278

Villa & Hut Kafé at Torquay Central, Victoria
T1, Torquay Central, 41 Bristol Road, Torquay, Victoria 3228
Phone: (03) 5264 7288
Fax: (03) 5264 7299

4. Public benefit claims

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

By requiring all franchisees to purchase the same brand and blend of coffee, VHF will ensure that:

- volumes required by the franchise network as a whole will be sufficient for Amanti Coffee to have a reliable inventory for franchisees to access when supply is required. This promotes efficiency for individual franchisees in ordering their coffee beans; and
- there is a consistency in taste and quality of coffee products sold throughout the franchise network. This promotes the interests of individual franchisees by protecting them from the possibility of other franchisees choosing to provide and sell sub-standard and defective coffee which would have the effect of tarnishing the reputation of the brand and the franchise system. This also has the effect of promoting product quality for the public who will consume the coffee products sold by Villa & Hut Kafés.

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

N/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):
(Refer to direction 8)

The goods are provided by a supplier who operates in the wholesale coffee bean supply market.

The market for wholesale coffee beans is highly competitive and too large for VHF to provide quantification of likely effects of the exclusive dealing forming the subject of this notification.

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)

VHF submits that the relatively low number of affected businesses, coupled with the highly competitive nature of the affected market will minimise the detriment caused.

The public detriment, if any, would be produced by requiring franchisees of VHF to purchase from a single supplier, thereby eliminating their ability to test the market for the best price. VHF submits that this is not a significant detriment because:

- Any savings available are likely to be small; and
- Franchisees would not be obliged to pass any of these savings that may be realised if they were free to test the market. The retail price of coffee provided to the public is determined by many factors and not solely in relation to the price of its ingredients.

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

N/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:

Geoffrey Shiff
Shiff & Company
Lawyers & Consultants
Level 2, 34 Queen Street
Melbourne VIC 3000

Dated..... 16.03.09

Signed by/on behalf of the applicant.....

(Signature)

FRANZ MADLENER

(Full Name)

VILLA + HUT Group.....

(Organisation)

MANAGING DIRECTOR.....

(Position in Organisation)