



31st March, 2009

Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601

Attention: Tess Macrae

Re. Third Line Forcing Notification N93718 lodged by PoolWerx Corporation Pty Ltd

Dear Ms Macrae,

Firstly,

[Redacted] Secondly, I would like to apologize if I stray from the facts. Due to time restraints I do not have the opportunity to research the submission as thoroughly as I would have liked.

One of my major concerns is my inability to 'compete' with my many competitors (currently there are approximately twenty other pool servicing business' operating in my territory. They range from single man in van operators to multi van and retail organizations). As any one would appreciate purchasing materials at a competitive price is paramount to the profitability (and survival) of my business. When I purchase materials from suppliers, PoolWerx designated or others I am purchasing at the same price as my many competitors. However, my competitors are not encumbered with substantial franchise fees. In my case 17% - 18%. Just as an observation, and I stress this is purely my experience - costs of materials from all major suppliers, PoolWerx approved or otherwise show no discernable difference in cost.

Can you see my point. I am aligned with the largest pool servicing organization in the southern hemisphere yet I pay the same for my stock as the one man independent who does not have to make an allowance for substantial franchise fees when considering his retail margin. How can I be competitive let alone profitable? Why aren't I competitive with my stock purchasing? Because the approved PoolWerx suppliers need to cover their cost of the 10% rebate too PoolWerx and this is reflected in their sale price to us. PoolWerx constantly remind us we are on a 'best buy' deal with all our suppliers. Unfortunately, the reality is most operators are on the 'best buy' deal with these same suppliers. Net result - no benefit to franchisees.

In there initial submission to me PoolWerx stated "Direct supply - no middle man - Franchisor makes no margin on product supply". "No margin made by Franchisor means more Gross Margin for you the savings here more than offset a slight increase in fees to franchisor when taking into account the other benefits being provided". I guess it's for your department too decide the difference between a margin and a rebate. I would assume, regardless of definition, if a rebate or part thereof goes into the general revenue of a business then it's a margin.

I was also promised by PoolWerx that I would get 'next day' delivery from suppliers. My chemical supplier which is the one I am most reliant on delivers to my territory once a week! Working from my residential address makes it impossible to store one weeks supply of hazardous materials. In order to operate efficiently and competitively franchisees require more flexibility in their supply arrangements. I can't understand how PoolWerx have made this application without any consultation with the franchisees - their 'business partners' as they like to call us.

In reference to Question 2 - Deacons response to Dr Chadwick's letter. In my copy of the disclosure document I can find no reference to how the rebates are disbursed . However, PoolWerx did advise me of the level of rebates received and how they're disbursed in January this year. I do not think this fact is made clear to prospective franchisees.

Finally, I would ask you to consider a relationship between a franchisor who guarantees sales to a supplier in return for a rebate. Does this not create a monopolistic situation for the franchisee who is forced to purchase from a designated supplier at a designated price. To quote Graeme Samuel when commenting

on Sydney Airport's relationship with Macquarie Bank – “There's very little incentive to either lower charges or increase quality of service”.

Yours Faithfully,

[Redacted Signature]

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