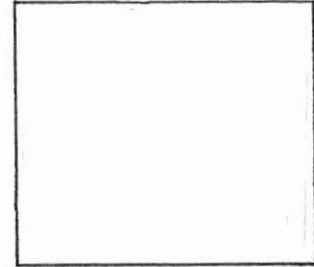


RESTRICTION OF PUBLICATION OF PART CLAIMED



EXCLUDED FROM
PUBLIC REGISTER

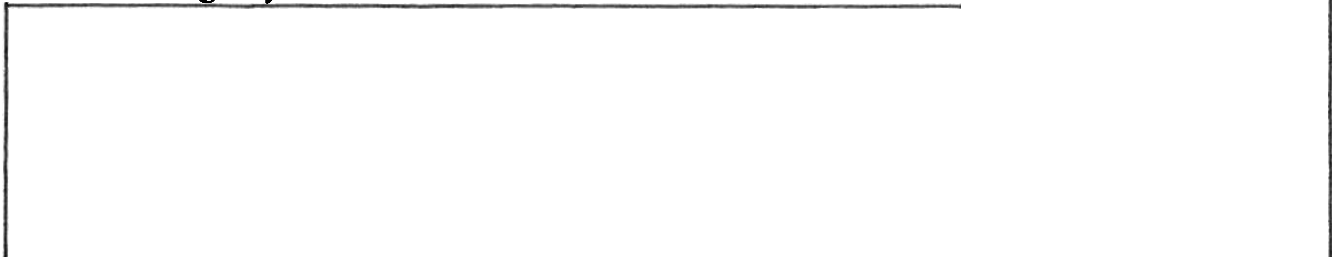
Tess Macrae
ACCC
GPO 3131
Canberra ACT 2601

8/04/2009

Dear Tess

Third Line forcing Notification N93718

I am writing to you as discussed re the above Notification item.



EXCLUDED FROM
PUBLIC REGISTER

In respect to the notification N93718 as a PoolWerx franchisee I would like to raise some concerns over the request form PoolWerx to you over the practice of Third line forcing.

Firstly, this issue has been discussed on our internal intranet network as to its legality and validity. We have been told last year a number of times that this practice is quite acceptable however since then we are now aware that PoolWerx has applied to ACCC to accept the practice.

Previously Poolwerx had a policy for franchises to buy 95% of products from approved suppliers which then changed a while back to 100%. Under the policy there have been many concerning issues from franchises including;

RESTRICTION OF PUBLICATION OF PART CLAIMED

1. Many examples have been presented to PoolWerx where franchises were disadvantaged price wise however this seems to never be followed through. By the description of price disadvantage I mean the preferred suppliers in some cases selling to us at a higher price than other similar retailers or the same product being available from a different supplier at a cheaper price whom we are not permitted to deal with.

2. In 2005 the one and only chemical supplier allotted to deal with ran out of stock. Franchisees were left with no alternative and consequently lost sales and profits. This changed in 2006 when a second supplier was allocated for chemicals as an alternative. Very shortly afterwards the first supplier was removed to buy from and we were again despite protests left vulnerable to one supplier for chemicals which is the major part of our business. In 2008 this new supplier ran out of stock and out of money and consequently in our summer trading period went in to receivership. Franchisees protested for months leading up to the receivership over the fact that they could get no stock to no avail. Franchisees including myself lost thousands of dollars of sales as we had no alternative supplier allowed. Poolwerx eventually suggested that every one buy from anywhere we could get stock. They left us to fight for ourselves as they did not provide us with an alternative supplier. We suffered in many ways being;

- Lost sales from no stock
- Lost clients as we could not service their needs and provide them stock
- Increased administration from more suppliers and stock lines.
- Decreased profits from paying higher prices as we could not negotiate deals on our own in the peak of our season.
- Lost rebates as we were not buying from a supplier paying rebates
- Lost rebates to our franchise system from the chemical supplier which funds our marketing.

3. Suppliers telling us that they can't give us better pricing due to the rebates they pay to PoolWerx. We have been told by PoolWerx the rebates come from other funds within a supplier's budget and don't change the pricing we get at retail level yet this is not right.

4. We have up till recently been told that our buying prices are fixed by suppliers for 12 months and they are the best price in the market. This was often spruiked as part of being a national franchise as a feature of our system. Now more recently we have been told that pricing is not fixed for twelve months and can change with 30 days notice and is to be cheaper than or equal to that in the market which any body can buy at. Despite this new rule we had around 10 days notice for one supplier to go up in price. This supplier went from fixed price for 12 months to 30 day notification to 10 day notification which is not in line with procedure.

RESTRICTION OF PUBLICATION OF PART CLAIMED

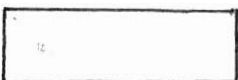
5. In respect to our one and only supplier of chemicals for 2008-09 who we were forced to buy off they with the approval of PoolWerx increased their prices by up to 65%. Poolwerx said this is market price and to accept it. We were left with price rises bigger than the industry acceptance from our one and only supplier. While we were told that PoolWerx, on franchisees behalf, negotiated the best deal the industry very soon after this supplier was bought out and the new supplier dropped prices 20-25% indicating the best price was not negotiated on our behalf. This price drop was necessary as the prices we were paying were far too high.

6. We are told that we are on the best buy price however it is not clear whether this includes rebates to PoolWerx as part of this calculation. Are we on the best buy price individually or when the rebates PoolWerx takes are taken in to account. We as a national franchise should buy at lower prices than independent stores but this is not he case. Effectively by the time we pay franchise fees, marketing fees, IT fees and others our buy price calculates much higher than an independent store.

7. In respect to the vehicles which PoolWerx want us to buy there is a real issue with cost. Until recently the stipulation was a new or near new white van. I recently priced a new van including Volkswagen and found they were consistently \$8000-\$16000 to equivalent modes in the market. It is unfair to expect franchisees to spend this extra amount which cannot be recouped at a later date Once sign written the vans all look the same. The fact that PoolWerx gets a rebate form Volkswagen seems to be the only reason they want franchises to spend the extra money on this type of vehicle.

I hope this information is adequate for you to investigate further however should you require further information on any of these items please do not hesitate to contact me. Finally could I suggest with matters such as this it be considered that franchisees where it affects them be contacted by the ACCC directly or through the franchise communications intranet and asked for comment as issues such as this have a huge impact on our businesses and their ability to perform.

With Thanks



**EXCLUDED FROM
PUBLIC REGISTER**