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28 May 2009

Ms Tess Macrae
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001
By email tess.macrae@accc.gov.au

Dear Tess

Cartridge World Australia Pty Ltd & Others
Notifications N93727, N93728, N93729 and N93779
Interested parties submissions and request for further information

We refer to the above notifications and the letter dated 21 April 2009 from Darryl Channing of the ACCC (**Your Letter**).

Cartridge World Australia Pty Ltd (**Cartridge World**) appreciates the opportunity to provide the ACCC with additional information of assistance to the ACCC and to respond to the issues raised in the submissions by franchisees.

Attachment A to Your letter contained an Information Request seeking further information from Cartridge World regarding the requirement of the Cartridge World franchise system that franchisees, as a condition of the franchise, must acquire stock and equipment only from a selection of approved suppliers (**Notified Conduct**). Cartridge World is happy to provide you with its response to the Information Request in Appendix A.

Cartridge World has also prepared a response to the issues raised in the submissions made by the franchisees. This response is attached as Appendix B.

We make the following preliminary comments in this regard:

- 1 At the outset, Cartridge World observes that it purchased the worldwide franchise system from the previous owners on 3 August 2007 and, since that time, Cartridge World has been going through the processes of reviewing and revising the way the system was previously operated worldwide including, in particular, the approved supplier process. As a result, a new procedure has very recently been established for approving suppliers. Cartridge World submits that the implementation of this new procedure and the provision, in particular, for greater franchisee

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representation and participation in that process will address the concerns raised by franchisees in their submissions regarding the appointment of approved suppliers in the past. Key features of the new supplier approval process (which is outlined in greater detail in item 1 of Appendix A) include:

- 1.1 The establishment of a steering committee comprised of 10 franchisee representatives and 1 franchisor representative (**Franchisee Steering Committee**) on 18 March 2009. The Franchisee Steering Committee will be involved in all communication related to the process of contacting the suppliers, agreeing to the requirements to meet quality levels, reviewing the request for proposal documentation and analysing the responses from suppliers. The Franchisee Steering Committee will be actively involved in the decisions for approving suppliers.
 - 1.2 The distribution to all franchisees as part of the annual approved supplier review process of a supplier/product request form inviting franchisees to nominate its preferred existing supplier(s) and/or nominate new suppliers for approval.
 - 1.3 The approval of this template, as well as the supplier approval application form to be distributed to new suppliers nominated by franchisees, by the Franchisee Steering Committee.
 - 1.4 The assessment of supplier approval applications in accordance with the Vendor Certification process set out in the notifications in consultation with the Franchisee Steering Committee.
- 2 It is clear from the content of the submissions that a number of the persons who made the submissions misunderstood the rationale for notifying the Notified Conduct. Those submissions are based on an assumption that Cartridge World lodged the notifications because it wants to further limit or restrict the number of approved suppliers. As the ACCC is aware, the purpose of the notifications was to notify the current processes and requirements of the Cartridge World system which constitute the Notified Conduct and, by so doing, seek to ensure that these current processes and requirements are compliant with the *Trade Practices Act 1974*. There is no intention to change the terms of the Franchise Agreements or the processes and requirements applicable to franchisees pursuant to those Agreements. The Notified Conduct is a current component of the system - not a proposed change.
- 3 A number of the submissions also express concern that, if the notifications remain in place, Cartridge World will confine approval to Cartridge World Supplies for one or more product lines. "Cartridge World Supplies" is a business name owned by the Franchisor. As such, any requirement to purchase product from "Cartridge World Supplies" is not third line forcing and does not form part of the Notified Conduct. Accordingly, Cartridge World's ability to approve only Cartridge World Supplies for one or more product lines is not dependent on, or enhanced by, the immunity the notifications confer. Even if the ACCC formed the view that Cartridge World's intention was to confine supplier approval to Cartridge World Supplies in respect of one or more product lines, this could not be said to result from the Notified Conduct and, as such, would not be relevant to the ACCC's assessment of the notifications.

Nonetheless, Cartridge World confirms that Cartridge World Supplies is not currently the sole approved supplier for any category of product or service and Cartridge World has no intention to make Cartridge World Supplies the sole supplier of any product line. To the contrary, Cartridge World intends to continue its existing practice (discussed in further detail in Appendices A and B) of approving up to 3 "external" suppliers (ie suppliers other than Cartridge World Supplies) for each product line and, in some instances, more than 3 "external" approved suppliers.

Cartridge World claims confidentiality in respect of the whole of the attachment to Appendix A and the references to specific suppliers which are highlighted in Appendix B. Confidentiality is claimed because these suppliers have not yet been notified that they are being considered as an approved supplier and this information is currently confidential.

We look forward to receiving confirmation from the Commission that it is satisfied that the test for immunity is met in respect of the Notified Conduct. In the interim, if Cartridge World can be of any further assistance to the Commission, please let us know.

Yours sincerely



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Appendix A

Response to ACCC Information Request

- 1 *Cartridge World states that it reviews the suppliers that it has approved annually, in December of each year. Please provide details of the review conducted in December 2008, including details of potential new suppliers that were considered for approval and any additions to or deletions from the approved supplier list as a result of the review.*

The Cartridge World franchise system was purchased by the current owner in 2007. The current owners have been going through the processes of reviewing and revising the way the System was previously operated worldwide. One of the issues which has been the subject of this review is the approved supplier process. Cartridge World deferred its annual review of suppliers which was to occur in December 2008 to enable it to review the approved supplier process. As a result, a new procedure for the approval of suppliers has now been established and Cartridge World is currently conducting a review of its approved suppliers in accordance with this new procedure, which review is occurring in place of the December review.

The new review process introduced by the current owner is as follows:

- A steering committee comprised of 10 franchisee representatives and 1 franchisor representative was appointed on 18 March 2009 (**Franchisee Steering Committee**).
- Distribution of a template to all franchisees which lists selected approved products and invites each franchisee to identify its preferred existing supplier or nominate a new supplier for each product. The template also provides space for each franchisee to identify other products used in its business and to identify its preferred supplier or nominate a new supplier for those products. The form of the template was approved by the Franchisee Steering Committee. The template for the most recent review was distributed by email dated 19 March 2009. Prior to the current review, there were approximately 16 to 20 approved suppliers. As a result of distribution of the template on 19 March, 48 of Cartridge World's 225 franchisees have requested that Cartridge World consider approval of approximately 50 additional suppliers.
- Cartridge World is currently collating the responses to the template. Prior to the current review there were approximately 16 to 20 approved suppliers. Approximately 50 new suppliers have been nominated by franchisees. A list of these nominations is attached to this Appendix A. As disclosed by this list of nominations, while the Notifications extend only to the specification of third party approved suppliers of goods, this list includes suppliers of services, in addition to suppliers of goods. Cartridge World observes that approved third party suppliers of services to Cartridge World franchisees are recommended suppliers only; there is no requirement for franchisees to acquire services from approved third party suppliers.

- Following collation of the responses to the template, each existing and nominated supplier will be invited to submit an application form including its full name and contact details (including company registration details, if applicable) as well as other details relevant to approval as an approved supplier. The content of the application form is in the process of being approved by the Franchisee Steering Committee prior to distribution to suppliers.

Following receipt of completed supplier application forms, Cartridge World will assess the applications in accordance with the Vendor Certification process set out in the notifications. The Vendor Certification process will be conducted in consultation with the Franchisee Steering Committee.

- Cartridge World would be happy to provide ACCC with the results of the current supplier review once this is complete. It is anticipated that the review will be completed by the middle of August 2009.

- 2 *Cartridge World also states that it immediately considers applications to approve new suppliers where a franchisee identifies a new product line where there is currently no approved supplier and the Master Franchisee has made a positive recommendation to Cartridge World about the supplier.*

Please provide details of all such requests considered by Cartridge World since January 2008, including, where a request to approve a new supplier was rejected, the reasons why the request was rejected. Please also advise how long such requests generally take to be considered.

The approval of suppliers for new product lines (for which there is, thus, no pre-existing approved supplier) is discrete from the annual approved supplier process outlined in the response to item 1 above.

In addition to inviting franchisees to direct requests for approval of suppliers for new product lines to the relevant Master Franchisee, Cartridge World has made it clear to franchisees that they may submit requests for approval of new products directly to Cartridge World. However, Cartridge World has not received any requests either via the Master Franchisees or directly from franchisees since January 2008.

Cartridge World anticipates that, were it to receive such a request, it would take approximately 1 month from the time that it receives a request to determine whether the new product is approved. This time period may be shorter if the request for approval of a supplier in respect of a product is for a supplier that is already on the approved supplier list in respect of a different product.

Cartridge World is unaware of the time period that the Master Franchisees take to consider requests it receives from franchisees and determine whether to make a positive recommendation about the supplier to Cartridge World.

- 3 *With respect to both annual reviews and immediate reviews, the information provided by Cartridge World indicates that a request by a franchisee to have a new supplier approved will be considered by Cartridge World if the Master Franchisee recommends to Cartridge World that it consider approval.*

Please advise the process by which Master Franchisees determine whether to recommend consideration of a new supplier, including the criteria applied by Master Franchisees in making their recommendations. Please also provide details of any instances, since January 2008, where a Master Franchisee has not made a positive recommendation to Cartridge World in respect of a request by a franchisee to add a supplier, including the reasons why the Master Franchisee did not recommend that Cartridge World consider the supplier for approval.

Cartridge World is unaware of the process that the Master Franchisee implements in determining whether to recommend a new supplier for approval by Cartridge World. Cartridge World has not considered it necessary to inquire into, or seek to oversee, the process adopted by Master Franchisees because, as noted in the response to item 2 above, Cartridge World has clearly communicated to franchisees that, as for approval of suppliers for new product lines, franchisees may submit requests for approval of additional suppliers for existing products directly to Cartridge World without Master Franchisee approval.

However, Cartridge World is unaware of any requests made by franchisees to their Master Franchisee, whether resulting in a positive or negative recommendation, in the period since January 2008. Accordingly, Cartridge World is unable to furnish to the Commission any information regarding the instances since January 2008 (if any) in which a Master Franchisee has received a request from a franchisee for approval of an additional supplier in respect of which the Master Franchisee has determined not to make a positive recommendation to Cartridge World.

- 4 *Some franchisees have raised concerns in their submissions that, having requested that Cartridge World consider approving a supplier, they have not received a response to their request. Please advise the process for informing franchisees of the outcome of requests to have approved suppliers added. Please also advise of instances, if any, of which Cartridge World is aware where a franchisee has not been advised of the outcome of a request to have a supplier approved.*

As set out above, the current owners of the Cartridge World system have only owned the franchisor business since 3 August 2007 and cannot comment on whether Franchisees were informed of the outcome of a request to have a supplier approved prior to their acquisition of the business.

The current owners of Cartridge World are not aware of any franchisee requests for the approval of suppliers, made either directly to Cartridge World or via their Master Franchisees, since their acquisition of the franchisor business in August 2007. Accordingly, Cartridge World is not aware of any instances in which a franchisee has not been informed of the outcome of a request for supplier approval.

Going forward, as stated in the submitted notifications, franchisees will be notified of whether additional suppliers they have requested be approved in respect of existing products pursuant to the supplier approval review process outlined in the response to item 1 above by means of the distribution of an email by each Master Franchisee informing all of its franchisees of any newly approved supplier, as well as the annual publication of an approved supplier list on Cartridge World's extranet site. There will be no need for the discrete correspondence with individual franchisees to inform

them of the outcome of their specific requests to have additional suppliers approved for existing products. Where a franchisee's request does not result in the approval of the additional supplier, however, Cartridge World will provide reasons for the refusal to approve that supplier on request.

Where a request is made for a new product line, the same process will be followed namely an email will be distributed by each Master Franchisee to all of the franchisees. Again, where a franchisee's request does not result in the approval of a new product line, Cartridge World will provide reasons for this refusal to approve that supplier on request.

- 5 *Does Cartridge World receive rebates from any approved suppliers? If so, please provide details of rebates received. If rebates are paid by some suppliers please also provide details regarding whether the level of rebates offered is a relevant consideration in appointing approved suppliers.*

Cartridge World does not receive rebates from any approved third party suppliers.

While not directly responsive to the Commission's query, Cartridge World observes for completeness that it does receive a rebate from one distributor of product re-supplied to franchisees by Cartridge World Supplies. This occurs against the background that Cartridge World Supplies sells the relevant product to franchisees at the same price as is paid by Cartridge World. Given that Cartridge World makes no margin on the re-supply of this product to its franchisees, the rebate is expended on the administration and transport costs incurred by Cartridge World in supplying that product to its franchisees. Put simply, the benefit of this rebate is passed on to franchisees, in that franchisees are not required to pay any more for the product than Cartridge World pays for the product.

Again for completeness, Cartridge World observes that it is aware that the Master Franchisees may have negotiated rebates from approved suppliers. Cartridge World does not have full details of these rebates or how they are invested by the Master Franchisees. However, Cartridge World understands that these rebates are spent on advertising and marketing within the relevant Master Franchisee's territory, which benefits all franchisees within that territory. Significantly, as rebates payable to the Master Franchisees are negotiated by those Master Franchisees only after approval by Cartridge World of the suppliers and because Cartridge World has limited knowledge of these rebates, these rebates are not a consideration in Cartridge World's determination of whether to approve a supplier.

- 6 *Cartridge World submits that the notified conduct does not prevent franchisees from sourcing supplies based on their views regarding quality and price because in respect of most product lines franchisees have two or three suppliers approved by Cartridge World.*

Provide Cartridge World's views as to the level of choice having two or three approved suppliers gives franchisees in this regard given the concerns expressed by some franchisees in submissions that the list of currently approved suppliers does not given them adequate choice? In particular, does Cartridge World seek to appoint suppliers that offer different ranges of quality and price from each other?

As stated in the notifications, two of the factors considered by Cartridge World in approving suppliers are the quality of the goods and services provided and price. Price lists are required to be submitted with applications for approval. Cartridge World's focus, when approving suppliers, is to identify the suppliers and product ranges that best meet the approval criteria (which criteria are outlined in the notifications). This does not necessarily result in the appointment of suppliers for any given product that offer differing quality and price. However, Cartridge World maintains that this approach maximises the benefits to franchisees and their customers of the supplier approval process.

Cartridge World will generally appoint up to 3 "external" suppliers (ie suppliers other than Cartridge World Supplies) for each product line. However, in respect of some product categories there are more approved suppliers.

Cartridge World maintains that this provides franchisees with an adequate level of choice. Increasing the number of approved suppliers too greatly will have a detrimental effect on a number of the public benefits identified in the notifications. In particular, scale efficiencies in supply prices that are achieved for franchisees by limiting the number of suppliers to the network will inevitably be adversely affected.

In addition, as already discussed, franchisees have input into the selection of approved suppliers. As franchisees are free to nominate suppliers for approval and the Franchisee Steering Committee approves the supplier approval application form, they are, as a group, instrumental in the determination of which suppliers the network uses. In this regard, franchisees can be said to have a choice as to the network's suppliers.

7 *Please provide Cartridge World's views on the concerns expressed in submissions that some franchisees incur additional freight costs in using approved suppliers that are located a considerable distance from their businesses.*

Cartridge World believes this issue relates to a small number of franchisees in Brisbane who have identified local suppliers of original equipment manufacturer products (OEM) which can, due to their proximity to those franchisees, provide those products at reduced freight costs. These Brisbane franchisees have nominated local OEM suppliers for approval pursuant to the current review process outlined in the response to item 1 above and, accordingly, Cartridge World will be inviting those suppliers to submit an application for approval as an OEM supplier and considering approval of those suppliers.

Cartridge World observes that freight costs are only one factor which is taken into account in determining the suitability of a supplier. The other factors of relevance are set out in the notifications and include, in particular, the price discounts and other benefits to franchisees offered by different suppliers of OEM. In addition, Cartridge World seeks to approve suppliers that maximise the benefits to all franchisees of the approved supplier process, whereas freight costs generally vary across franchisees, such that freight cost benefits associated with a particular supplier may be confined to a small group of franchisees.

Appendix B

Response to Franchisee Submissions on Notifications

Cartridge World responds to the concerns raised in each of the franchisee submissions in turn below.

Summary of submissions excluded from the public register

- 1 *Stock items required to be purchased from approved suppliers are available from non-approved suppliers at substantially lower prices (in some cases, it was submitted, less than half the price of an approved suppliers). It was submitted that the consequence is increased price to consumers and reduced competitiveness of franchisees.*

In each of those instances where a non-approved supplier is able to supply stock at a lower price than the approved suppliers, Cartridge World would either:

- be aware of the non-approved supplier, in which case it has considered the approval of the non-approved supplier but has determined that the supplier is unfit to be an approved Cartridge World supplier, taking into account all of the approval criteria, including price. In such a case, Cartridge World maintains that it is not in the interests of it, the Master Franchisees, the franchisees, or customers of Cartridge World stores to appoint such a supplier; or
- be unaware of the non-approved supplier, which will likely be remedied in the current supplier approval review process referred to in item 1 of Appendix A.

In addition, Cartridge World suspects that the stock items supplied by non-approved suppliers at substantially lower prices than approved suppliers are 'compatible products' which infringe third party intellectual property rights. By contrast, Cartridge World's approved suppliers do not supply products that infringe third party property rights, as this is a pre-condition for approval.

Cartridge World further submits that, based on its experience, there are no circumstance in which products supplied by non-approved suppliers could be obtained for half the price of the approved suppliers' products (as is suggested in the summary of submissions). Cartridge World considers that this must be an exaggeration.

- 2 *Products are available from alternative suppliers that are either identical to or of equivalent quality to stock items supplied by the approved suppliers. It was submitted that original equipment manufacturer products, office equipment, office supplies etc are identical regardless of the supplier.*

Many of the benefits described in the notifications are available because there are a limited number of approved suppliers for each product category. Cartridge World submits that these benefits would be lost if every supplier of a certain product was approved. See item 6 of Appendix A for further discussion.

In any event, if a franchisee has identified a supplier which is able to reliably and consistently supply products which are identical, or of equivalent quality, to those provided by approved suppliers (including equipment manufacture products, office equipment, office supplies, etc), Cartridge World encourages that franchisee to nominate that supplier for approval pursuant to the supplier approval review process outlined in item 1 of Appendix A.

- 3 *The requirement to source products through approved suppliers can increase freight costs for franchisees as approved suppliers are located a considerable distance from some franchisees.*

This concern was the subject of the ACCC's information request and Cartridge World's response is set out in item 7 of Appendix A.

- 4 *There are products that are not available from the approved suppliers necessitating the use of non-approved suppliers. Franchisees submit that they need to be able to source all products requested by customers in order to live up to the promotion of Cartridge World as a "One Stop Shop for all your printer needs".*

Every product necessary for the ink re-filling component of a Cartridge World franchise business is available from approved suppliers. Accordingly, this franchisee comment must relate to additional retail products that a franchisee elects to supply.

If there is a retail product (unrelated to the franchisee's ink re-filling business) that a franchisee wishes to stock, Cartridge World encourages that franchisee to nominate a supplier of that product so that it can ensure that the relevant supplier is reputable. The approval processes discussed in items 1 and 2 of Appendix A provide for franchisees to identify new products relevant to the system and their preferred or proposed suppliers of these products.

- 5 *Some non-approved suppliers stock new release items more quickly than approved suppliers.*

The rationale for, and the public benefits resulting from, the supplier approval process have been discussed in detail in Appendix A and the notifications. These are, in turn, dependent on the application of the approval criteria outlined in the notifications. The ability of a supplier to offer new release items more quickly than its competitors would not, of itself, be sufficient for approval of that supplier having regard to these approval criteria. If a supplier is stocking relevant new release items more quickly than its competitors, but is not an approved Cartridge World supplier, this may be because the supplier performs poorly relative to those of its competitors who are Cartridge World approved suppliers in respect of the other approval criteria considered by Cartridge World. In particular, the approval criteria include such matters as ensuring product quality and that the product does not infringe third party intellectual property rights. As discussed in the notifications, these matters are paramount for the business model that forms part of the franchise system.

- 6 *A number of franchisees support having an approved supplier list but feel the current list is inadequate. Franchisees submit that there is not sufficient choice of suppliers*

on the approved supplier list and that the number of approved suppliers has halved since 2004.

Cartridge World refers to its response to item 6 of Appendix A with respect to choice for franchisees. Cartridge World believes the review process that it is currently implementing increases franchisee involvement in determining the content of the approved supplier list and provides franchisees with adequate choice. As stated in item 1 to Appendix A, approximately 50 additional suppliers nominated by franchisees are currently being considered for approval by Cartridge World.

- 7 *Attempts to get suppliers added (or returned) to the approved supplier list have on occasion not received a response from Cartridge World.*

This concern was the subject of the ACCC's information request and Cartridge World's response is set out in item 4 of Appendix A.

- 8 *There are suppliers that meet the requirements stipulated by Cartridge World that Cartridge World has not added to the approved supplier list.*

It is desirable to limit the number of approved suppliers for a given product line in order to preserve the public benefits that are generated by the approved supplier system. In this regard, Cartridge World refers the ACCC to item 6 of Appendix A. Accordingly, not all suppliers that are able to meet the approval criteria will be approved suppliers. However, Cartridge World endeavours to approve those suppliers that perform best against the approval criteria.

- 9 *The time frames required to get a supplier approved or to obtain permission from Cartridge World to purchase a stock item from a non-approved supplier do not allow franchisees to supply a customer who needs a stock item quickly.*

As discussed in item 2 of Appendix A, Cartridge World anticipates that, were it to receive a franchisee request for supplier approval, it would take approximately 1 month from the time that it receives a request to determine whether the new product is approved. Cartridge World maintains that the benefits of the approval system, including ensuring that suppliers to franchisees are providing good quality products, would far outweigh the detriment of any nominal loss of sales due to the (relatively small) period of time involved in processing requests for supplier approval.

- 10 *Cartridge World Supplies, owned by Cartridge World, is a major approved supplier and two other approved suppliers, Dynamic and Toner Warehouse, are owned by the same person. Franchisees submit that this further limits competition between suppliers.*

As discussed in item 6 of Appendix A, Cartridge World will generally appoint up to 3 "external" suppliers (ie suppliers other than Cartridge World Supplies) for each product line and, in respect of some product categories there are more approved suppliers. Accordingly, there are two other suppliers, in addition to Cartridge World Supplies, Dynamic and Toner Warehouse, which are approved to supply the same products.

In any event, the products offered by Dynamic and Toner Warehouse are not identical in all respects. While Dynamic recently acquired Toner Warehouse, these

two businesses continue to be operated separately by their current owner and the products they supply are distinguishable.

Also, franchisees are able to nominate further suppliers for approval in respect of the same products and services as are supplied by Cartridge World Supplies, Dynamic, Toner Warehouse, and the other two approved suppliers.

- 11 *Some Cartridge World Supplies stock items are of a poor quality and fail to meet the requirements set by Cartridge World.*

The Notified Conduct does not include any requirement to acquire product from Cartridge World Supplies (because such a requirement would constitute full line forcing, not third line forcing) and, accordingly, the approval of Cartridge World Supplies is only relevant to the ACCC's assessment of the Notified Conduct to the extent that that approval otherwise affects the public benefits and detriments associated with the Notified Conduct.

Cartridge World submits that the quality of product supplied by Cartridge World Supplies does not affect the public benefits and detriments associated with the Notified Conduct and, thus, is not relevant to the ACCC's assessment of the Notified Conduct. This is because the approval of Cartridge World Supplies as a supplier of a product line does not restrict the number of third party suppliers approved by Cartridge World for that product line. As discussed in item 6 of Appendix A, Cartridge World will generally appoint up to 3 "external" suppliers (ie suppliers other than Cartridge World Supplies) for each product line.

Cartridge World maintains that, to the best of its knowledge, all items supplied by Cartridge World Supplies are of good merchantable quality and meet the requirements set by Cartridge World when supplied. Cartridge World Supplies endeavours to immediately address any product quality issues (including by recalls, product development, etc).

However Cartridge World would welcome any specific feedback on the quality of product supplied by Cartridge World Supplies as it is interested to ensure the high level of quality associated with the Franchise System continues.

- 12 *Franchisees have little involvement in the selection and review of approved suppliers. Franchisees suggest including an elected franchisee representative(s) in the supplier selection panel.*

The supplier approval review process currently being implemented by Cartridge World (as outlined in item 1 of Appendix A), which includes in particular significant participation by a Franchisee Steering Committee, adequately addresses any concerns regarding franchisee representation in the selection and review of approved suppliers. Cartridge World Australia is confident this new process will address these concerns moving forward.

- 13 *Cartridge World Supplies could become the only approved supplier of some stock items.*

Again, the Notified Conduct does not include any requirement to acquire product from Cartridge World Supplies (because such a requirement would constitute full

line forcing, not third line forcing). Accordingly, Cartridge World's ability to approve only Cartridge World Supplies for one or more product lines is not dependent on, or enhanced by, the immunity the notifications confer. Even if the ACCC formed the view that Cartridge World's intention was to confine supplier approval to Cartridge World Supplies in respect of one or more product lines, this could not be said to result from the Notified Conduct and, as such, would not be relevant to the ACCC's assessment of the notifications.

Nonetheless, Cartridge World confirms that there is no intention on the part of Cartridge World to make Cartridge World Supplies the sole supplier of any product line.

- 14 *Rebates are being paid to Cartridge World by suppliers and the rebates are not being distributed to the benefit of the franchisees.*

This concern was the subject of the ACCC's information request and Cartridge World's response is set out in item 5 of Appendix A. As discussed in that item 5, Cartridge World does not receive rebates from any approved third party suppliers. Further, while Cartridge World is aware that Master Franchisees may receive rebates from approved third party suppliers, these rebates are negotiated only after approval of those suppliers and Cartridge World has little knowledge of these rebates - that is, they are not a consideration in the decision to approve suppliers.

While Cartridge World receives rebates from one only of Cartridge World Supplies' suppliers, these rebates are applied for the benefit of Cartridge World franchisees. In any event, those rebates are not the result of the Notified Conduct (because the Notified Conduct does not include any requirement to acquire product from Cartridge World Supplies) and, thus, are not relevant to the ACCC's assessment of the notifications.

- 15 *Cartridge World's intellectual property requirements make it difficult for suppliers to become approved suppliers, and existing suppliers may not meet these requirements.*

It is in the interests of all involved in the Cartridge World franchise system that products used in and supplied by Cartridge World stores do not infringe third party intellectual property rights. Cartridge World maintains that the benefit of ensuring that a supplier will not supply infringing product (with the resultant costs and business disruptions of an infringement action that this avoids) far outweighs the detriment of any resultant difficulty for suppliers in obtaining approval.

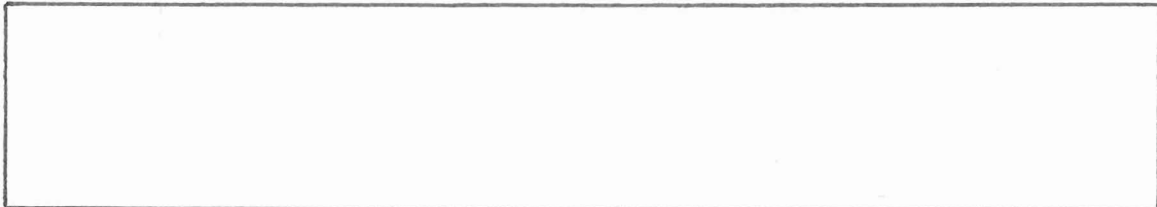
Anonymous Submission dated 12 March 2009

The primary concerns raised by this submission are the lack of franchisee participation in the supplier approval process and the possibility that Cartridge World will confine supplier approval to Cartridge World Supplies for one or more product lines. The former concern is addressed by the new supplier approval review process outlined in item 1 of Appendix A, which provides for significant franchisee representation and participation in that process. The latter concern is addressed by Cartridge World in item 13 of this Appendix B.

Submission by David Connolly

The primary concern raised by this submission is the possibility that Cartridge World will confine supplier approval to Cartridge World Supplies for one or more product lines, noting in particular delivery delays experienced in dealings with Cartridge World Supplies. This concern is addressed by Cartridge World in item 13 of this Appendix B.

As discussed in item 6 of Appendix A, Cartridge World will generally appoint up to 3 "external" suppliers (ie suppliers other than Cartridge World Supplies) for each product line and, in respect of some product categories there are more approved suppliers. As discussed in item 13 of Appendix B, it is not Cartridge World's intention to make Cartridge World Supplies the sole supplier of any product line. In any event, as discussed in item 13, even if the ACCC formed the view that Cartridge World's intention was to confine supplier approval to Cartridge World Supplies in respect of one or more product lines, this could not be said to result from the Notified Conduct and, as such, would not be relevant to the ACCC's assessment of the notifications because the Notified Conduct does not include any requirement to acquire products from Cartridge World Supplies.



In response to Mr Connolly's specific suggestions (appearing in bullet points in his submission), Cartridge World submits as follows (addressing each of the suggestions in the orders in which they appear in Mr Connolly's submission):

- See Cartridge World's comments at item 6 of Appendix A.
- The new supplier approval process outlined in item 1 of Appendix A, including in particular the participation of the Franchisee Steering Committee in that process, will provide adequate franchisee representation in the supplier approval process moving forward.
- See Cartridge World's comments at item 1 of this Appendix B.

Submission by Bluewater Bay Nominees Pty Ltd

The primary concerns raised by this submission are:

- the adequacy of the choice offered to franchisees by approved suppliers, which Cartridge World Supplies addresses at items 6 and 10 of this Appendix B;
- the possibility that Cartridge World will confine supplier approval to Cartridge World Supplies for one or more product lines, which Cartridge World addresses at item 13 of this Appendix B; and
- the time involved in the supplier approval process, which Cartridge World addresses at item 9 of this Appendix B.

In response to the submission's criticism of having approved suppliers for OEM, hardware, software and other associated IT products because there are no quality considerations in respect of the suppliers of these products, Cartridge World submits that there are other factors to consider in addition to the quality of product in approving suppliers. The approval criteria are disclosed in the notifications.

In response to Bluewater Bay Nominees Pty Ltd's suggestions (appearing in the numbered list in the summary of the submission), Cartridge World submits as follows (addressing each of the suggestions in the orders in which they appear in that numbered list submission):

- See Cartridge World's comments at item 6 of Appendix A.
- Increasing the number of approved suppliers will have a detrimental effect on the public benefits identified in the notifications and it does not necessarily maximise the benefits of the supplier approval process for the collective franchisee community to approve numerous local suppliers throughout Australia for a product line. See Cartridge World's comments regarding freight costs offered by local suppliers at item 7 of Appendix A, which are equally applicable in respect of the approval of local suppliers more generally.
- See item 9 of this Appendix B regarding delays in the approval process. Cartridge World is open to discussing methods for streamlining the approval process with representatives of the franchisees (eg the Franchisee Steering Committee).
- The administration of the franchise system, including ensuring that relevant quality standards are adhered to, is ultimately the responsibility of the Franchisor, consistent with the Franchisor's ownership of the brand and role in protecting and enhancing the goodwill associated with that brand. It is in the interests of all franchisees that quality standards be applied consistently between Franchisee and Master Franchisee territories to protect the value to them of the Cartridge World brand from the unilateral actions of individual franchisees. Cartridge World submits that this requires a centralized approach with input from and participation by the Master Franchisees and Franchisees. The review process currently being applied (as outlined in item 1 of Appendix A) permits this. For these reasons, Cartridge World does not believe it is necessary or desirable to fully devolve responsibility for the approval of suppliers to individual Master Franchisees and Franchisees.
- A regular review of the approved supplier list is undertaken. Cartridge World submits that it is not necessary or feasible to conduct a review more frequently than annually. However, as detailed in item 2 of Appendix A, there is scope for franchisees to request that new products and new suppliers be added to the approved supplier list at any time.
- As discussed in item 5 of Appendix A, Cartridge World does not receive rebates from any approved third party suppliers and any rebates that Master Franchisees may receive from approved third party suppliers are not a consideration in the decision by Cartridge World to approve third party suppliers. In any event, the Franchisor is not legally required to disclose anything to franchisees regarding rebates other than:
 - whether rebates are payable.

- the names of any suppliers from whom rebates are received; and
- whether the benefit of the rebates is shared with franchisees.

Cartridge World and/or the Master Franchisees disclose this information in the franchise disclosure documents provided to, and accessible by, franchisees.

Submission by Rodney and Mary-Anne Spark

The primary concerns raised by this submission are the adequacy of the choice offered to franchisees by approved suppliers and the possibility that Cartridge World will confine supplier approval to Cartridge World Supplies for one or more product lines. These concerns are addressed by Cartridge World in items 6, 10 and 13 of this Appendix B.

Cartridge World also notes that this franchisee is on the Franchisee Steering Committee that plays an active role in the new supplier approval process outlined in item 1 of Appendix A.

Submission by Steve Lawrence

The primary concerns raised by this submission are:

- the adequacy of the choice offered to franchisees by approved suppliers, which Cartridge World addresses at items 6 and 10 of this Appendix B;
- the ability of franchisees to acquire the same or similar products from a non-approved supplier at a lower price than is available from the approved suppliers, which Cartridge World addresses at item 1 of this Appendix B;
- the lack of utility of approved suppliers for Office Equipment and Supply product lines in respect of which there are no quality considerations in the selection of suppliers of these products. Cartridge World addresses a similar concern in respect of Bluewater Bay Nominees Pty Ltd's submission above;
- the existence of product categories for which there is no approved supplier, which Cartridge World addresses in item 4 of Appendix B;
- the relative speed with which approved and non-approved suppliers make new product lines available for sale, which Cartridge World addresses in item 5 of this Appendix B. and
- the time involved in the supplier approval process, which Cartridge World addresses at item 9 of this Appendix B.

The comment in Steve Lawrence's submission that, as a result of the notifications, franchisees could be required to change banks, insurance providers, ISPs and window cleaners is inaccurate. Under the Cartridge World franchise agreement and operations manual, designation of approved suppliers only relates to Products, not services. Accordingly, Cartridge World may recommend certain service providers, but the franchisees are free to use other service providers. Cartridge World has not prevented this franchisee from using local courier services and would not seek to do so, given the content of the franchise agreement and operations manual and its awareness that the Franchisee is unable to affect deliveries to its entire territory by using the recommended courier services.

The Notified Conduct does not cover services. By way of clarification, although 'courier services' appear in the table of approved suppliers for different product lines and the markets of potential relevance set out in the Notifications, these services are not the subject of the Notified Conduct and rather represent service providers which are recommended by Cartridge World. In response to Steve Lawrence's comments regarding specific parts of Cartridge World's Notification referred to by Steve Lawrence as Cartridge World's 'submission', Cartridge World further submits the following:

- Pg 3, Dot Point 2 - Cartridge World maintains that, where relevant, it seeks evidence from suppliers that the products they supply meet relevant international standards. Cartridge World submits that all cartridges it imports, packages under the "Cartridge World" brand, and on-sells to franchisees come from manufacturers that are ISO14000 and 9000 compliant. The reason that the packaging of these items does not reflect this is that the same packaging is used for cartridges refilled in Cartridge World stores.
- Pg 3, Dot Point 8 - No comment required.
- Pg 3, Dot Points 10 and 11 - When assessing a supplier against these criteria, Cartridge World seeks to identify those nominated suppliers most likely to provide consistent supply without any "major" supply interruptions. This is not a guarantee that there will never be any supply issues with any approved supplier.
- Pg 3, Dot Point 12 - The level of support provided by suppliers will always vary between suppliers in a market. However, Cartridge World maintains that it seeks to identify those nominated suppliers most likely to provide good customer support when assessing those suppliers against this criterion. The referenced issue with Canon yellow ink occurred prior to the current owners of Cartridge World acquiring the business in August 2007 and, in any event, the relevant product was recalled and replaced at no cost to franchisees.
- Pg 4, Alternative supplier selection - This comment is focussed only on price. As already stated, this is only one consideration in approving suppliers. See item 6 of Appendix A for further discussion.
- Pg 10 - The benefits of limiting the number of approved suppliers are discussed at item 6 of Appendix A. The annual reviews of the supplier list impose significant competitive pressure on approved suppliers and franchisees are invited to participate in this review process (including by means of the Franchisee Steering Committee).
- Pg 13 - See item 4 of Appendix A with regards to this comment. As stated, it is the Master Franchisee's responsibility to provide Franchisees with email notification of newly approved suppliers. Cartridge World will be working with its Master Franchisees moving forward to ensure that these notifications are sent.

In response to the submission's criticism of having approved suppliers for OEM, hardware, software and other associated IT products because there are no quality considerations in respect of the suppliers of these products, Cartridge World submits that there are other factors to consider in addition to the quality of product in approving suppliers. The approval criteria are disclosed in the notifications.

In response to Bluewater Bay Nominees Pty Ltd's suggestions (appearing in the numbered list in the summary of the submission), Cartridge World submits as follows (addressing each of the suggestions in the orders in which they appear in that numbered list submission):

- See Cartridge World's comments at item 6 of Appendix A.
- Increasing the number of approved suppliers will have a detrimental effect on the public benefits identified in the notifications and it does not necessarily maximise the benefits of the supplier approval process for the collective franchisee community to approve numerous local suppliers throughout Australia for a product line. See Cartridge World's comments regarding freight costs offered by local suppliers at item 7 of Appendix A, which are equally applicable in respect of the approval of local suppliers more generally.
- See item 9 of this Appendix B regarding delays in the approval process. Cartridge World is open to discussing methods for streamlining the approval process with representatives of the franchisees (eg the Franchisee Steering Committee).
- The administration of the franchise system, including ensuring that relevant quality standards are adhered to, is ultimately the responsibility of the Franchisor, consistent with the Franchisor's ownership of the brand and role in protecting and enhancing the goodwill associated with that brand. It is in the interests of all franchisees that quality standards be applied consistently between Franchisee and Master Franchisee territories to protect the value to them of the Cartridge World brand from the unilateral actions of individual franchisees. Cartridge World submits that this requires a centralized approach with input from and participation by the Master Franchisees and Franchisees. The review process currently being applied (as outlined in item 1 of Appendix A) permits this. For these reasons, Cartridge World does not believe it is necessary or desirable to fully devolve responsibility for the approval of suppliers to individual Master Franchisees and Franchisees.
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Submission by Rodney and Mary-Anne Spark

The primary concerns raised by this submission are the adequacy of the choice offered to franchisees by approved suppliers and the possibility that Cartridge World will confine supplier approval to Cartridge World Supplies for one or more product lines. These concerns are addressed by Cartridge World in items 6, 10 and 13 of this Appendix B.

Cartridge World also notes that this franchisee is on the Franchisee Steering Committee that plays an active role in the new supplier approval process outlined in item 1 of Appendix A.

Submission by Steve Lawrence

The primary concerns raised by this submission are:

- the adequacy of the choice offered to franchisees by approved suppliers, which Cartridge World addresses at items 6 and 10 of this Appendix B;
- the ability of franchisees to acquire the same or similar products from a non-approved supplier at a lower price than is available from the approved suppliers, which Cartridge World addresses at item 1 of this Appendix B;
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- the relative speed with which approved and non-approved suppliers make new product lines available for sale, which Cartridge World addresses in item 5 of this Appendix B. and
- the time involved in the supplier approval process, which Cartridge World addresses at item 9 of this Appendix B.

The comment in Steve Lawrence's submission that, as a result of the notifications, franchisees could be required to change banks, insurance providers, ISPs and window cleaners is inaccurate. Under the Cartridge World franchise agreement and operations manual, designation of approved suppliers only relates to Products, not services. Accordingly, Cartridge World may recommend certain service providers, but the franchisees are free to use other service providers. Cartridge World has not prevented this franchisee from using local courier services and would not seek to do so, given the content of the franchise agreement and operations manual and its awareness that the Franchisee is unable to affect deliveries to its entire territory by using the recommended courier services.

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