



Australian
Competition &
Consumer
Commission

Our Ref: C2008/1992
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9 June 2009

Phillip Hourigan
Deacons
GPO Box 407
BRISBANE QLD 4001

Dear Mr Hourigan

Third line forcing notification N93718 lodged by PoolWerx Corporation Pty Ltd

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 8 December 2008.

PoolWerx proposes to require franchisees to purchase all approved products and services, of the kind referred to below, from suppliers or the supplier approved by PoolWerx.

Approved products include: pool cleaning products; equipment; inflatable and plastic toys; accessories; fitting equipment; service vans; van signage; and telecommunications, printing, insurance, water testing and calibration equipment and work uniforms.

Legal immunity conferred by the notification commenced on 22 December 2008.

Summary of ACCC considerations

Having considered the notification and submissions from PoolWerx and franchisees, the ACCC does not intend to take further action in this matter at this stage on the basis that it is not apparent that the likely benefit to the public from the notified conduct would not outweigh the likely detriment to the public resulting from the conduct.

In reaching this position the ACCC accepted that as with many franchise systems there is a benefit in arrangements that promote consistency in quality of products across franchise networks. In this instance PoolWerx has sought to achieve this through its approved supplier arrangements which it considers to be a cost effective means of ensuring that standards with respect to quality and consistency are met.

The ACCC noted PoolWerx's submission that the approved supplier arrangements may facilitate relevant products being supplied more cheaply than would otherwise be the case and provide incentives for suppliers to offer greater levels of service and training. However, the ACCC also noted that rebates payable to PoolWerx by approved

suppliers may result in any cost savings to franchisees not being as large as they could be absent the rebates.

Regard was also had to the ongoing competition provided by the manner in which approved suppliers are selected and reviewed, and PoolWerx's interest in approving suppliers that ensure that its franchisees are supplied on competitive terms.

As with any notification, please note that the ACCC may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

This assessment has been made on the basis that PoolWerx will disclose all relevant terms and conditions to current and prospective franchisees. In particular I note that PoolWerx is required to comply with the disclosure requirements of the Franchising Code of Conduct in relation to the notified arrangement. Among other things, these specify that a franchisor must provide information to franchisees in its disclosure document about:

- any restrictions on acquisition of goods or services by the franchisee from other sources
- whether the franchisor or an associate will receive a rebate or other financial benefit from the supply of goods or services to franchisees, including the name of the business providing the rebate or financial benefit and
- whether any such rebate or financial benefit is shared directly or indirectly with franchisees.

More generally I would note that the Franchising Code of Conduct also requires disclosure of:

- ownership by a franchisor or an associate of a franchisor of an interest in any supplier from which the franchisee may be required to acquire goods or services
- any restrictions by a franchisor on the goods or services that a franchisee may supply and
- any restrictions on the persons to whom a franchisee may supply goods or services.

A copy of this letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Gavin Jones on (03) 9290 1475.

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch