

Donohue, Erin

From: Donohue, Erin
Sent: Monday, 6 July 2009 3:05 PM
To: 'davidchapman@thecoffeeemporium.com.au'
Cc: Palisi, Joanne
Subject: Coffee Emporium Franchising exclusive dealing notification [SEC=UNCLASSIFIED]

Categories: SEC=UNCLASSIFIED
ACCC Classification: SEC=UNCLASSIFIED

Dear Mr Chapman

Further to our conversation on 6 July 2009 could you please provide further information in response to the questions below.

1. Who are the Approved Suppliers and Approved Shopfitters from whom franchisees must acquire products/services?
2. How were the Approved Suppliers and Approved Shopfitters selected? For example, were they selected through a tender process?
3. Are there processes in place to review the products/services provided by the Approved Suppliers/Approved Shopfitters, for example to monitor the price and quality of the products/services provided? If yes, could you please briefly explain the review process.
4. Are the mechanisms in place to allow exceptions to the requirement that franchisees are required to purchase products/service from the nominated suppliers? If yes, could you please briefly explain on what basis the exceptions are allowed.
5. Is the requirement to use Approved Suppliers and Approved Shopfitters an existing or new requirement? If a new requirement, have existing franchisees been informed of the change, is this consistent with their franchise agreement and are there any transition arrangements for existing franchisees?
6. Do franchisees benefit from cost savings which may arise from being required to purchase products and services from the nominated suppliers?
7. Can you please clarify if the requirement to use only Approved Equipment in the fit out of stores requires franchisees to purchase the Approved Equipment from nominated suppliers other than those identified in response to question 1? If so, please also answer the above questions in respect of these nominated suppliers.

As discussed, the Trade Practices Act requires the ACCC to maintain a public register of information provided in the notification process.

In light of this, please advise us if there is any information in your response that you would not like to be placed on the ACCC's public register.

The ACCC is able to exclude information from the public register if it contains details of:

- a secret formula or process
- the cash consideration offered for the acquisition of shares or assets
- the current costs of manufacturing, producing or marketing goods or services

The ACCC also has discretion under the Act to exclude confidential nature of the material for any other reason

If you wish to exclude any information (either in whole or part) reasons must be provided for the request.

Finally, I note that in the description of the conduct you have also included the requirement that franchisees purchase certain products from the Coffee Emporium rather than nominated third parties. Please be aware that this is not third line forcing conduct and is not covered by the notification. However, such conduct would only risk breaching the Act if it had the purpose or effect of substantially lessening competition.

I would be grateful for a response to this letter by **20 July 2009**.

Feel free to contact me should you have any further questions.

Regards

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