

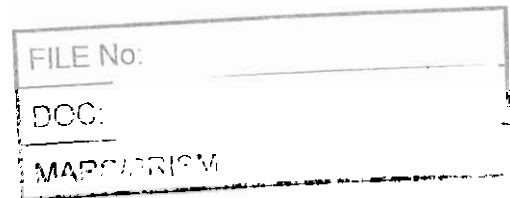
Our Ref: 266225 / 266226



3 August 2009

BY REGISTERED POST

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602



Dear Sir/Madam

Notifications – Third Line Forcing and Exclusive Dealing

We act for the following entities, which together own and operate the Essential Beauty franchise network (together, the **Franchisors**):

- Essential Beauty Franchising Pty Ltd A.C.N. 095 561 621;
- Essential Beauty Franchising (NSW) Pty Ltd A.C.N. 112 379 414;
Essential Beauty Franchising (Qld) Pty Ltd A.C.N. 130 663 099;
- Essential Beauty Franchising (Vic) Pty Ltd A.C.N. 109 565 086; and
Essential Beauty Franchising (WA) Pty Ltd A.C.N. 108 421 192.

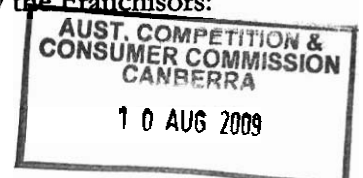
The relevant Franchisors responsible for the operation of the Essential Beauty franchise network in the territories of Queensland, Victoria, Tasmania and Western Australia have appointed the following entities as master franchisees in the jurisdictions for which they are responsible (together, the **Master Franchisees**):

- Essential Beauty Chermide Pty Ltd A.C.N. 133 264 427 as trustee of the Essential Beauty Discretionary Trust A.B.N. 45 762 903 161 (master franchisee in the State of Queensland);
- Essential Beauty Victoria Pty Ltd A.C.N. 109 408 442 (master franchisee in the States of Victoria and Tasmania); and
- Pilton Holdings Pty Ltd A.C.N. 107 903 104 as trustee for the Forrest Family Trust (master franchisee in the State of Western Australia).

We now **enclose** for your attention two notifications under section 93(1) of the *Trade Practices Act 1974 (Act)* in relation to the following conduct proposed to be engaged in by the **Franchisors**:

third line forcing; and

exclusive dealing (related to the third line forcing conduct).



Please also note that the third line forcing conduct is the primary conduct requiring notification, and the exclusive dealing conduct is ancillary.

We also enclose for your attention a third notification under section 93(1) of the Act, in relation to third line forcing conduct proposed to be engaged in by the Master Franchisees.

Please also find enclosed a cheque for \$3,300.00, being in payment of the following fees for lodging notifications in relation to third line forcing and related exclusive dealing conduct under section 47 of the Act:

- \$500.00 for third line forcing notifications lodged by the Franchisors (being \$100 per Franchisor entity);
- \$2,500.00 for the related exclusive dealing notification lodged by the Franchisors (being \$500 per Franchisor entity); and
- \$300.00 for third line forcing notifications lodged by the Master Franchisee (being \$100 per Master Franchisee entity).

Please do not hesitate to contact the writer should you have any queries in relation to any of the enclosed notifications.

Yours faithfully
KELLY & CO

per:



LUKE DALE

Partner

Direct Telephone: 08 8205 0580

Direct Facsimile: 08 8205 0805

Email: ldale@kellyco.com.au

Enclosure(s): Form G x 3
Cheque

Form G

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) *Name of person giving notice:*

- N94070 (i) Essential Beauty Franchising Pty Ltd A.C.N. 095 561 621 (**SA Franchisor**).
- N94071 (ii) Essential Beauty Franchising (NSW) Pty Ltd A.C.N. 112 379 414 (**NSW Franchisor**).
- N94072 (iii) Essential Beauty Franchising (Qld) Pty Ltd A.C.N. 130 663 099 (**QLD Franchisor**).
- N94073 (iv) Essential Beauty Franchising (Vic) Pty Ltd A.C.N. 109 565 086 (**VIC Franchisor**).
- N94074 (v) Essential Beauty Franchising (WA) Pty Ltd A.C.N. 108 421 192 (**WA Franchisor**).

(b) *Short description of business carried on by that person:*

The SA Franchisor, NSW Franchisor, QLD Franchisor, VIC Franchisor and WA Franchisor (collectively the **Franchisors**) own and operate a business as franchisor to a network of franchisees located throughout Australia, which operate retail outlets supplying personal grooming and beauty services, and related products, under the Essential Beauty systems and brands (**Essential Beauty Franchise**).

The responsibility for operation of the Essential Beauty Franchise in each jurisdiction in Australia is divided between the Franchisors as follows:

- the SA Franchisor offers Essential Beauty Franchises in South Australia and the Northern Territory;
- the NSW Franchisor offers Essential Beauty Franchises in New South Wales;
- the QLD Franchisor offers Essential Beauty Franchises in Queensland;
- the VIC Franchisor offers Essential Beauty Franchises in Victoria and Tasmania; and

- the WA Franchisor offers Essential Beauty Franchises in Western Australia.

The QLD Franchisor, VIC Franchisor and WA Franchisor have each appointed master franchisees in the jurisdiction(s) for which they are responsible, and authorised these master franchisees to grant Essential Beauty Franchises to franchisees in the relevant jurisdiction. The relevant entities appointed as master franchisees by these Franchisors are as follows (collectively the **Master Franchisees**):

- Essential Beauty Chermside Pty Ltd A.C.N. 133 264 427 as trustee of the Essential Beauty Discretionary Trust A.B.N. 45 762 903 161 (**QLD Master Franchisee**) has been appointed as master franchisee by the QLD Franchisor in the State of Queensland;

Essential Beauty Victoria Pty Ltd A.C.N. 109 408 442 (**VIC Master Franchisee**) has been appointed as master franchisee by the VIC Franchisor in the States of Victoria and Tasmania; and

- Pilton Holdings Pty Ltd A.C.N. 107 903 104 as trustee for the Forrest Family Trust (**WA Master Franchisee**) has been appointed as master franchisee by the WA Franchisor in the State of Western Australia.

(c) *Address in Australia for service of documents on that person:*

Luke Dale, Partner, Kelly & Co. Lawyers, GPO Box 286, Adelaide SA 5001.

2. Notified arrangement

(a) *Description of the goods or services in relation to the supply or acquisition of which this notice relates:*

The notification relates to the acquisition of certain products, equipment and other goods and services required for the conduct of an Essential Beauty Franchise (**Goods and Services**) which the Franchisors require franchisees to use exclusively in order to operate an Essential Beauty Franchise business.

(b) *Description of the conduct or proposed conduct:*

Section 47 of the *Trade Practices Act 1974* (Cth) (**Act**) prohibits anti-competitive dealing, and outlines a number of proscribed practices which amount to exclusive dealing.

Sections 47(2)(d) and (3)(d) of the Act, in conjunction with section 47(1), prohibit exclusive dealing which arises when goods or services are supplied to a purchaser on the condition that the purchaser will not acquire goods or services from a competitor of the supplier or when a supplier refuses to supply goods or services to a purchaser for the reason that the purchaser does not agree not to acquire particular goods or services from a competitor of the supplier (to the extent that such conduct causes a substantial lessening of competition within the relevant market).

The proposed conduct outlined below may fall within these provisions of the Act as it is a condition of the Essential Beauty Franchise agreement (**Agreement**) that

franchisees acquire the Approved Goods and Services (defined below) only from the Franchisors, or Approved Suppliers (as defined below).

However, the Franchisors each maintain, as outlined below in section 4, that the proposed exclusivity regarding the Approved Goods and Services is necessary from a quality control perspective and is an integral part of the Essential Beauty format and system, and contend that it will have a negligible effect on competition within the relevant markets.

Agreements

Those Franchisors which have appointed Master Franchisees have done so pursuant to two different standard form Master Franchise Agreements. Use of the latest form of Master Franchise Agreement commenced in approximately October 2008 (**Latest Master Agreement**) and has been entered into by the QLD Franchisor and the QLD Master Franchisee. The VIC Master Franchisee and WA Master Franchisee have entered into the previous form of the Master Franchise Agreement (**Earlier Master Agreement**), which is presently in effect between these entities and their respective Franchisors. The substantive content of both formats of Master Agreement is largely identical.

In those jurisdictions in which no master franchisee has been appointed by the relevant Franchisor, Franchisors enter into Agreements directly with franchisees.

In those jurisdictions in which the Master Franchisees have been appointed, historically the Franchisor, relevant Master Franchisee and franchisees were all parties to the Franchise Agreements. The franchise model implemented in these territories has been revised for commercial reasons and therefore, since approximately October 2008, the latest Franchise Agreements between Master Franchisees and franchisees do not include the relevant Franchisors as a party.

Accordingly, two forms of standard Franchise Agreements presently exist in the Essential Beauty Franchise network. First is the latest form of Franchise Agreement which commenced in approximately October 2008 (**Latest Franchise Agreement**), while the second format is the earlier form of Agreement utilised prior to October 2008, which is still in place with certain franchisees (**Earlier Franchise Agreement**).

The substantive content of the Latest Franchise Agreements is identical, regardless of whether the entity granting the Essential Beauty Franchise to an appointed franchisee is a Franchisor, or a Master Franchisee. Similarly, the form of the Earlier Franchise Agreement which is still in place with certain franchisees is substantively identical regardless of whether or not a Master Franchisee is a party to the arrangement.

Proposed Conduct

Under each and every form of Franchise Agreement, franchisees in each jurisdiction pay an upfront fee to the relevant Franchisor (or Master Franchisee, as appropriate) upon execution of the relevant Franchise Agreement, and an ongoing service fee, in return for which they:

- (i) are granted an Essential Beauty Franchise;

- (ii) receive access to Goods and Services at competitive prices from the Franchisor responsible for that jurisdiction, or suppliers approved by the applicable Franchisor responsible for that jurisdiction (**Approved Suppliers**);
- (iii) supply to customers only those Goods and Services, using only that equipment, which have been approved by applicable Franchisor in that jurisdiction (**Approved Goods and Services**);
- (iv) receive initial training from the applicable Franchisor/Master Franchisee in relation to the operation of an Essential Beauty Franchise business; and
- (v) receive ongoing back up and support from the relevant Franchisor/Master Franchisee in relation to the operation of an Essential Beauty Franchise business.

Under the Master Agreements, the Master Franchisees pay an upfront fee to the relevant Franchisor entity, and a proportion of certain amounts which are paid to Master Franchisees by appointed franchisees, in return for which Master Franchisees are authorised to grant Essential Beauty Franchises to franchisees within the appointed territory, and receive ongoing back up and support from the relevant Franchisor in relation to the operation of the Master Franchisee's business. Under the Latest Master Agreement, appointed Master Franchisees are entitled to themselves operate an Essential Beauty Franchise. Under both forms of Master Agreement, Master Franchisees are required to:

- (i) ensure that franchisees comply with the requirements of Franchise Agreements which relate to Approved Suppliers and Approved Goods and Services; and
- (ii) maintain adequate stock to themselves supply to franchisees the Approved Goods and Services, which have been acquired by the Master Franchisees from either the applicable Franchisor entity, or Approved Suppliers.

The conduct to which this notification specifically relates is the proposed supply arrangements between franchisees and Master Franchisees on the one hand and the Franchisors on the other, and the supply of goods which are acquired by franchisees from the Franchisors or the Approved Suppliers (or from the Master Franchisees which have acquired the goods from the Franchisors or the Approved Suppliers) to consumers.

It is a condition that:

- (i) franchisees acquire the Approved Goods and Services only from the Franchisors, under the standard Franchise Agreements; and
- (ii) Master Franchisees acquire the Approved Goods and Services only from the relevant Franchisors, under the standard Master Agreements.

In the event that a Franchisor does not, is unable to, or chooses not to, supply the Approved Goods and Services to Master Franchisees and/or franchisees, Master Franchisees/franchisees are required to acquire these from Approved Suppliers specified by the applicable Franchisor. This requirement under the standard form of the Agreements is reduced in writing as follows:

- (i) under the Latest Franchise Agreements - as per clauses 5.2.10, 5.6.12, 5.6.14 and 27 set out in Annexure A1 attached to this Form, or provisions of similar wording and effect.
- (ii) under the form of the Earlier Franchise Agreements, which are still in place with certain franchisees - as per clause 9.3 set out in Annexure A2 attached to this Form, or provisions of similar wording and effect;
- (iii) under the Latest Master Agreements – as per clause 13 set out in Annexure A3 attached to this Form, or provisions of similar wording and effect; and
- (iv) under the Earlier Master Agreements – as per clause 9 set out in Annexure A4 attached to this Form, or provisions of similar wording and effect.

Approved Suppliers will be those suppliers that meet the following criteria:

- (i) are considered by the Franchisors to be of good public standing;
- (ii) have satisfied the Franchisors as being capable of meeting the quality standards and criteria applicable to the Essential Beauty Franchise; and
- (iii) have been approved by Franchisors.

Pursuant to the terms of the Master Agreements in place between the Franchisors and their respective Master Franchisees, and the Franchise Agreements in place between Master Franchisees or Franchisors with franchisees, the relevant Franchisor is responsible for the approval of the Approved Goods or Services, regardless of whether or not a Master Franchisee has been appointed in the jurisdiction which the Essential Beauty Franchise is granted to the franchisee.

As at the date of this notification, no franchises have been granted by the relevant Franchisors/Master Franchisee in Tasmania, New South Wales or the Northern Territory and accordingly, no Approved Suppliers have been appointed in respect of these jurisdictions. The Approved Suppliers for the remaining jurisdictions in Australia are:

- (i) for franchisees operating an Essential Beauty Franchise business in South Australia, Victoria and Queensland - Essential Beauty (SA) Pty Ltd A.C.N. 100 278 091 trading as Essential Distribution; and
- (ii) for franchisees operating an Essential Beauty Franchise business in Western Australia – West Granton Pty Ltd A.C.N. 123 914 492 trading as Essential Distribution.

The identity of Approved Suppliers may be varied from time to time.

It is also a condition of both forms of the standard Essential Beauty Franchise Agreements that franchisees supply to consumers only the Approved Goods and Services, which have been acquired from the Franchisors or the Approved Suppliers. This requirement under the Latest Franchise Agreements is reduced in writing as per clauses 5.2.2 and 6.2.1 set out in Annexure A1 attached to this Form (or provisions of similar wording and effect), while the corresponding requirement under the Earlier Franchise Agreements is reduced in writing as per

clauses 13.6 set out in Annexure A2 attached to this Form (or provisions of similar wording and effect).

Master Franchisees are obligated to ensure that franchisees comply with these obligations, pursuant to the Master Agreements – see in this regard clause 13.2 of the Latest Master Agreement, set out in Annexure A3, and clause 9.1.3 of the Earlier Master Agreement, set out in Annexure A4 (or provisions of similar wording and effect). Accordingly, the proposed conduct the subject of this notification can be summarised as follows (**Proposed Conduct**):

- (i) the requirement that Goods and Services be acquired by franchisees and Master Franchisees only from the Franchisors; and
- (ii) the requirement that Master Franchisees only supply the Approved Goods and Services, duly acquired from Approved Suppliers, to appointed franchisees; and
- (iii) the requirement that franchisees only supply the Approved Goods and Services, duly acquired from the Franchisors directly, the Approved Suppliers directly, or from the Franchisor or Approved Suppliers via the Master Franchisees (as intermediary), to consumers.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates:

- (i) Essential Beauty master franchisees; and
- (ii) Essential Beauty franchisees.

(b) Number of those persons:

(i) At present time:

- (i) Essential Beauty Master Franchisees – 3; and
- (ii) Essential Beauty franchisees – 27.

(ii) Estimated within the next year:

- (i) Essential Beauty master franchisees – 0; and
- (ii) Essential Beauty franchisees – 2.

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

See Annexure B

4. Public benefit claims

(a) Arguments in support of notification:

The Franchisors each maintain that consistent with the prescribed image for an Essential Beauty Franchise business:

- (i) only Approved Goods and Services should be supplied to consumers; and

- (ii) all Approved Goods and Services should be supplied to franchisees either by the Franchisors or Approved Suppliers. To facilitate this, in the context of the structure of the Essential Beauty Franchise system, Master Franchisees should be required to purchase Approved Goods and Services from the Franchisors, or Approved Suppliers, and distribute these to franchisees as required.

These requirements are a critical part of the Essential Beauty Franchise system and format, and are required to enable the Franchisors and relevant master franchisees to ensure that the services and products which are supplied to customers meet the high standards and controls set by the Franchisors, and are of the best possible quality.

Purpose and Benefits of Proposed Conduct

The purpose of the Proposed Conduct is to provide the Essential Beauty franchisees with Goods and Services of a consistent quality and standard. Accordingly, the Proposed Conduct is likely to have the benefits listed below for the Franchisors, Master Franchisees, the Essential Beauty franchisees and end consumers:

- (i) The Proposed Conduct will provide franchisees and Master Franchisees with access to Approved Goods and Services at competitive prices, due to the established supply relationships between the Franchisors and their suppliers. This will allow franchisees to establish a competitive advantage in the operation of their Essential Beauty Franchise businesses, and will also benefit the operation of the businesses of Master Franchisees.
- (ii) The Approved Goods and Services proposed to be supplied by the Franchisors to Master Franchisees and franchisees are subject to stringent quality assurance testing and controls, thus minimising adverse effects and maintaining the goodwill and reputation of the Essential Beauty Franchise network and system.
- (iii) Franchisees have the benefit of utilising and supplying to customers Goods and Services which are continually being subjected to strict quality assurance testing, controls and standards. This allows the goodwill and reputation of the Essential Beauty Franchise system to be maintained and developed, which in turn benefits both Master Franchisees and franchisees. Master Franchisees are benefited as the development of the Essential Beauty Franchise assists them in the operation of their business of operating and granting franchises in the Essential Beauty system in the territory for which they are appointed, as opportunities for appointments of new franchisees will increase, with increased reputation and goodwill. Franchisees experience benefit as custom for the Goods and Services offered by franchisees increases.
- (iv) The Proposed Conduct is likely to foster business efficiency by ensuring that franchisees and Master Franchisees have access to a range of products and services of a consistent standard and quality, allowing these parties more time to focus on running their businesses. This may provide a competitive advantage.

- (v) Certain Approved Goods and Services, proposed to be supplied by the Franchisors, are products generally used in the beauty industry which are manufactured exclusively for, or contain enhancements which are unique to, the Essential Beauty Franchise. These products are not available in the general marketplace. The Proposed Conduct is of benefit to franchisees as it will allow franchisees to gain access to these proprietary products and thereby possibly establish an advantage over competitors which are not members of the Essential Beauty Franchise network, and who do not have access to these products.
- (vi) By requiring franchisees to acquire Approved Goods and Services from the Franchisors (or Approved Suppliers), the Proposed Conduct allows the Franchisors and Master Franchisees to ensure that all Essential Beauty franchisees maintain consistently high standards across Australia, and allows promotion of the "Essential Beauty" brand to be maximised. This allows the Franchisors and Master Franchisees to compete more effectively with their competitors in the highly competitive personal grooming and beauty retail industry, which in turn benefits consumers.
- (vii) The Proposed Conduct allows the Franchisors and Master Franchisees to focus on controlling quality and managing and maintaining the "Essential Beauty" brand. This ultimately benefits both the franchisees and consumers as it ensures that they are respectively supplying and purchasing/acquiring personal grooming and beauty products and services which are of a consistently high quality and standard.

(b) Facts and evidence relied upon in support of these claims:

Please see the following attached documentation:

- (i) Attachment I - sample of current Disclosure Document, Latest Franchise Agreement utilised by Franchisors and Master Franchisees, and Latest Master Agreement utilised by Franchisors;
- (ii) Attachment II - Essential Beauty Franchising Brochure, detailing facts and achievements relevant to the Essential Beauty Franchise;
- (iii) Attachment III - List of all beauty salons in Australia, current as of June 2009;
- (iv) Attachment IV – List of wholesalers of beauty and personal grooming products in Australia, current as of June 2009; and
- (v) Attachment V – Table containing comparison of prices charged by Franchisors/Approved Suppliers and selected major competitors, for certain beauty/personal products.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The markets which may be affected by the Proposed Conduct can be reasonably identified as:

- (i) the broad retail and wholesale markets for the supply of personal care, personal grooming and beauty products and equipment; and
- (ii) the retail market for the supply of personal care, personal grooming and beauty services to consumers;

both within Australia.

Both of these markets are characterized by a large number of participants and are highly competitive. In this regard, we refer to Attachment III (specifically in reference to the retail markets described in points (i) and (ii) above) and Attachment IV (in respect of the wholesale market described in point (i) above), and note that the Franchisors and the Approved Suppliers – which number 7 separate entities in total – account for approximately 1.53% of all (being approximately 450 in total) wholesale suppliers of personal care, grooming and beauty products in Australia, while those retail outlets which operate under the "Essential Beauty" brand comprise approximately 0.48% of all retail beauty stores in Australia – being 33 retail premises out of the approximately 6900 beauty salons which consumers can choose to attend.

Significant suppliers in the markets described above include:

- (i) for the retail and wholesale markets for the supply of personal care, personal grooming and beauty products and equipment:
 - A. Salon First (wholesale);
 - B. Ella Baché (wholesale sales to franchisees, and retail);
 - C. National Salon Supplies (wholesale and retail);
 - D. Livingstone International Pty Ltd (wholesale and retail);
 - E. Ella Rouge (retail);
 - F. Hairhouse Warehouse (retail); and
 - G. numerous independent operators, as listed in Attachments III and IV; and
- (ii) for the retail market for the supply of personal care, personal grooming and beauty services to consumers:
 - A. Ella Baché;
 - B. Ella Rouge Beauty;
 - C. Pure Indulgence;
 - D. Hairhouse Warehouse; and
 - E. numerous independent operators, as listed in Attachments III.

6. Public detriments

- (a) *Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:*

Master Franchisees

The Proposed Conduct contemplated by the Franchisors denies the Master Franchisees the opportunity to choose on the normal commercial basis of product quality and price whether or not to purchase and supply to appointed franchisees, for the purposes of the conduct of Essential Beauty Franchise businesses by those franchisees:

- (i) other Goods and Services, which are not Approved Goods and Services; and
- (ii) Approved Goods and Services, from providers other than the Franchisors (or Approved Suppliers).

Franchisees

The Proposed Conduct contemplated by the Franchisors denies the franchisees the opportunity to choose on the normal commercial basis of product quality and price whether or not to purchase:

- (i) other Goods and Services, which are not Approved Goods and Services; and
- (ii) Approved Goods and Services, from providers other than the Franchisors (or Approved Suppliers).

Consumers

The Proposed Conduct will have an insignificant anti-competitive effect on consumers, given that consumers are free to acquire personal grooming and beauty products and services from any supplier they choose. In this regard, we refer to Attachment III, together with the figures and percentages listed in section 5 above.

Suppliers

The Proposed Conduct contemplated by the Franchisors denies suppliers (other than Approved Suppliers) the opportunity to compete for the business of Master Franchisees and franchisees. Notwithstanding this consequence, the anti-competitive effect on wholesale suppliers of the Goods and Services will be insignificant, given the number of other traders operating businesses similar to the Essential Beauty Franchise around Australia to which these suppliers may sell their products. In this regard, we refer to Attachment III, together with the figures and percentages listed in section 5 above.

For the reasons outlined above, the Franchisors each submit that the Proposed Conduct is not likely to cause a substantial lessening of competition in the relevant markets, and nor is it likely to cause any detriment to the public. To the extent that the Proposed Conduct does in fact contravene section 47 of the Act,

the Franchisors each contend that they are entitled to statutory immunity provided by section 93 of the Act, as the public benefits resulting from the Proposed Conduct outweighs any public detriments caused by it.

(b) *Facts and evidence relevant to these detriments:*

As per facts and statements described above.

7. Further information

(a) *Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:*

Mr Luke Dale
Kelly & Co. Lawyers
GPO Box 286
Adelaide SA 5001
Ph: (08) 8205 0580
Fax: (08) 8205 0805

Dated: 3 August 2009

Signed by/on behalf of the applicants



.....
Luke Dale
Partner
Kelly & Co. Lawyers

Annexure A1 – Extract From Latest Franchise Agreement: Section 2(b)

5. FRANCHISEE UNDERTAKINGS

The Franchisee shall, at all times until after the Dissolution Date, using its best endeavours at the full cost of the Franchisee:

5.2. Products & Equipment

5.2.2 Prior to the Dissolution Date only use Products and equipment approved by Essential Beauty;

5.2.10 Enter into a commercial arrangement with Essential Beauty or Approved Suppliers for the purchase of the Products and purchase or lease of equipment needed in the Franchise Business which Essential Beauty nominates from time to time;

5.6. Business Methods

5.6.12 Purchase and maintain New Business Systems introduced by Essential Beauty for utilisation in the Franchised Business and the System;

5.6.14 Sell goods and services to Clients and enter into agreements for purchases with Approved Suppliers using Standard Terms and Conditions;

6. FRANCHISEE ACKNOWLEDGEMENTS

The Franchisee shall not at any time until after the Dissolution Date, directly or indirectly, except with the prior written consent of Essential Beauty:

...

6.2 Products & Equipment

6.2.1 Sell or attempt to sell any goods or services other than the required Business Activities to Clients to the extent permitted by law;

...

27. PURCHASES

- 27.1 The Franchisee agrees to purchase all Products from Approved Suppliers, including the Franchisor, as they have demonstrated to Essential Beauty an ability to meet Essential Beauty's standards and reliability for Products used in the System or sold by franchisees.
- 27.2 Essential Beauty shall, to ensure compatibility and quality standards, either sell to the Franchisee the Specified Equipment, Products and additional goods and equipment required from time to time in the Franchised Business or shall designate Approved Suppliers from whom the Franchisee will make those purchases.
- 27.3 Essential Beauty will assist in the selection of Approved Suppliers and may revoke approval of an Approved Supplier from time to time.
- 27.4 The Franchisee agrees that the Franchisee shall not have the right to withhold any payment or payments of any amounts due by reason of any equipment or supplies purchased or leased from Essential Beauty or Approved Suppliers, or any other amounts or sums due and owing to Essential Beauty by reason of any set off based on the grounds of any alleged non-performance or incorrect completion of any obligations. The Franchisee agrees that acceptance of any part payment will not harm any right to recover the balance due or pursuing any other remedy by the party entitled to receive the payment.
- 27.5 Unless specific trading terms are provided, the Franchisee must pay all Tax Invoices that the Franchisee receives within seven (7) days.
- 27.5.1. Stock invoices from head office are to be paid before receipt of goods via cheque, bank transfer, credit card or cash.

Annexure A2 – Extract From Earlier Franchise Agreement: Section 2(b)

9. Quality of Product

...

- 9.3 The franchisee shall at all times purchase all goods, materials, Products and packaging for the Products from the Franchisor or such suppliers nominated in writing by the Franchisor who have been authorised by the Franchisor to supply the franchisee. It shall be the responsibility of the franchisee to ensure that sufficient stocks are maintained at all times and training given to enable the proper and efficient running of the franchise.

13. Franchisee's Obligations

The franchisee agrees with the Franchisor [and Master Franchisee] as follows:

- 13.6 Not produce sell or supply any Product or service other than those Products referred to in this agreement unless expressly authorised in writing by the Franchisor.

Annexure A3 – Extract From Latest Master Agreement: Section 2(b)

13. SUPPLY OF PRODUCTS AND SERVICES

13.1 Services by Master Franchisee

The Master Franchisee must:

13.1.1 supply to Franchisees the whole range of the Approved Products and Approved Services that EB reasonably required be supplied to Franchisees as required by this Agreement and by the Master Franchisee Procedures Manuals;

13.1.2 not supply any products and services to Franchisees that are not approved by EB;

13.2 Approved Products and Approved Services by Franchisees

The Master Franchisee must use its best endeavours to ensure that all Franchisees do not supply any products or services other than the Approved Products and Approved Services.

13.3 Additional Products and Services

Where the Master Franchisee considers that a service or product could complement the existing Approved Services or Approved Products, the Master Franchisee may request EB to consider adding the products or service or product to the list of Approved Products and Approved Services. The Master Franchisee acknowledges that as a licensee of the Image and the System, EB is entitled to determine whether a service or product is to be delivered or supplied in conjunction with the Image or as part of the System within the Franchise Channel.

13.4 Supply of Approved Products and Approved Services

To the extent permitted by law, EB may require Franchisees to buy Approved Products and Approved Services exclusively and directly from EB and where EB is not able to provide timely supply then from Approved Suppliers.

13.1 Approved Suppliers

13.5.1 EB may require that Franchisees only purchase products other than the Approved Products, from suppliers that have been approved by EB. If EB does this, the Master Franchisee must use its best endeavours to ensure that all Franchisees make their purchases from Approved Suppliers.

13.6 Supply of Approved Goods to Franchisees

The Master Franchisee must ensure sufficient inventory levels of all Approved Products and Approved Services are available to Franchisees as reasonably necessary to meet expected requirements of Franchisees.

Annexure A4 – Extract From Earlier Master Agreement: Section 2(b)

9. PRODUCT

9.1 Use and Purchase of Product

9.1.1 During the Term or any Renewal Term the Master Franchisee shall use all reasonable endeavours to ensure that Franchisees will only use Product approved of by the Company.

9.1.2 The Master Franchisee shall use all reasonable endeavours to ensure that Franchisees purchase all Product from it or the Company or from suppliers who demonstrate an ability to meet the Company's reasonable quality standards and specifications for such Product. The Master Franchisee will carry sufficient stock of the Product, as specified by the Company, to enable it to adequately supply the Franchisees.

9.1.3 The Master Franchisee will use all reasonable endeavours to ensure that the right of the Franchisees to utilise or offer for sale or otherwise deal with the Product is strictly limited in accordance with the terms of the Franchise Agreements and any directives contained in the Operations Manual.

9.2 Not to Alter Product

The Master Franchisee must use all reasonable endeavours to ensure that Franchisees will not, without the prior written approval of the Company, make any changes or modifications whatsoever to the Product.

9.3 Directions

The Master Franchisee will promptly adhere to and implement any reasonable directions of the Company as to:

9.3.1 the Product to be used in The System;

9.3.2 any maximum (but not minimum) price Franchisees may charge Clients for Product;

Annexure B: (section 3(c))

Essential Beauty Master Franchisees and Franchisees

MASTER FRANCHISEES		
State	Name	Address
Queensland	Essential Beauty Chermside Pty Ltd A.C.N. 133 264 427 as trustee of the Essential Beauty Discretionary Trust A.B.N. 45 762 903 161	Unit 117, 100 Bowen Terrace, Fortitude Valley QLD 4005
Victoria & Tasmania	Essential Beauty Victoria Pty Ltd A.C.N. 109 408 442	11 Barak Street, Bulleen VIC 3105
Western Australia	Pilton Holdings Pty Ltd A.C.N. 107 903 104 as trustee for the Forrest Family Trust	Level 2, Unit 52-53, 119 Bowman Street, South Perth WA 6151
FRANCHISEES		
State	Name	Address
South Australia	M. Ruggiero Nominees Pty Ltd A.C.N. 099 850 012	Essential Beauty Rundle Mall - 142 Rundle Mall, Adelaide SA 5000
		Essential Beauty Harbour Town – Shop T106A, 727 Tapleys Hill Road, West Beach SA 5950
	Davval Pty Ltd A.C.N.107 444 977	Essential Beauty Tea Tree Plaza - Shop 65a, 976 North East Road, Modbury SA 5092
	Kasdalis Investments Pty Ltd A.C.N.089 054 124	Essential Beauty Marion - Shop 1089, 297 Diagonal Road, Oaklands Park SA 5046
	VDV Pty Ltd A.C.N.108 952 629	Essential Beauty Arndale - Shop 130, 470 Torrens Road, Kilkenny SA 5009
	Sharissa Pty Ltd A.C.N. 102 723 580	Essential Beauty West Lakes - Shop 17, 111 West Lakes Boulevard, West Lakes SA 5092
	Mspasi Pty Ltd A.C.N. 107 169 808	Essential Beauty Ingle Farm - Shop 1006, corner Walkleys and Montague Roads, Ingle Farm SA 5098
		Essential Beauty North Park – Shop 21, 264 Main North Road, Prospect SA

		5082
	Charom Pty Ltd A.C.N. 108 470 588	Essential Beauty Unley - Shop 24, 204 Unley Road, Unley SA 5061
	S.C.A.M. Pty Ltd A.C.N. 007 820 902	Essential Beauty Colonnades - Shop 40, Beach Road, Noarlunga Centre SA 5168
	Rogers and Garcia Pty Ltd A.C.N. 122 445 103	Essential Beauty Elizabeth - Shop 2a, Elizabeth Way, Elizabeth SA 5112 Essential Beauty Munno Para – Shop T71, Main North Road, Smithfield SA 5114
	Tsoutsoulis Enterprises Pty Ltd A.C.N. 115 071 291	Essential Beauty Hollywood Plaza - Shop 70A, corner Winzor Street & Spains Road, Salisbury Downs SA 5105
Western Australia	Essential Beauty Garden City Pty Ltd A.C.N. 119 778 264	Essential Beauty Hay Street Mall - Shop G2, 611-619 Hay Street Mall, Perth WA 6000
	SK Sabu Pty Ltd A.C.N. 110 856 374	Essential Beauty Centro Galleria - Shop 1085, Centro Galleria, Morley WA 6062
	Geneve Holdings Pty Ltd A.C.N. 123 103 784	Essential Beauty Midland Gate - Shop T47, Midland Gate Shopping Centre, Midland WA 6056
	Get Glamorous Pty Ltd A.C.N. 125 084 335	Essential Beauty Innaloo - Shop 1084, Westfield Innaloo, Innaloo WA 6018 Essential Beauty Rockingham – Shop 36B, 1 Council Avenue, Rockingham WA 6168
	N.I.R. (WA) Pty Ltd A.C.N. 125 658 460	Essential Beauty Carousel - Shop 1006B, 1382 Albany Highway, Cannington WA 6107
	Get Beautiful Pty Ltd A.C.N. 133 423 542	Essential Beauty Joondalup – Shop T229, 420 Joondalup Drive, Joondalup WA 6027 Essential Beauty Armadale

		- Shop T2, 206 Jull Street, Armadale WA 6112
Victoria	MCJ Magro Investments Pty Ltd A.C.N. 113 325 812	Essential Beauty Highpoint - Shop 2139, 120-2000 Rosamond Road, Maribyrnong VIC 3032
	BBO Lifestyle Pty Ltd A.C.N. 118 366 117	Essential Beauty Melbourne Central - Level 2, 206-211 La Trobe Street, Melbourne VIC 3000
	Beaumedics Pty Ltd A.C.N. 117 297 140	Essential Beauty Frankston - Shop G4, Bayside Shopping Centre, Beach Road, Frankston VIC 3199
	Gooru Pty Ltd A.C.N. 113 272 389	Essential Beauty Southland - Shop 1013, 1239 Nepean Highway, Cheltenham VIC 3192
	Jaqueline Barbara Dawson and Fiona Joan Thomas	Essential Beauty Geelong - 118 Moorabook Street, Geelong VIC 3213
	Essential Beauty Knox Pty Ltd A.C.N. 109 473 172	Essential Beauty Knox - Shop 3101, 425 Burwood Highway, Wantirna South VIC 3152
	Roi de La Mer Pty Ltd A.C.N. 126 924 418	Essential Beauty The Foundry - Shop T28, 399 Bourke Street & 368 Little Collins Street, Melbourne VIC 3000 Essential Beauty Doncaster - Shop G205, 619 Doncaster Road, Doncaster VIC 3108
	S.H.F. Enterprises Pty Ltd A.C.N. 076 862 523	Essential Beauty Ivanhoe - 200 Upper Heidelberg Road, Ivanhoe VIC 3079
	Essential Beauty Victoria Pty Ltd A.C.N. 109 408 442	Essential Beauty Chadstone - Shop 254, 1341 Dandenong Road, Chadstone 3148
Queensland	Essential Beauty Brisbane City A.C.N. 127 793 168	Essential Beauty Adelaide Street - 134 Adelaide Street, Brisbane QLD 4000
	Essential Beauty Chermide Pty Ltd A.C.N. 133 264 427	Essential Beauty Chermide - Shop 409, corner Hamilton Road and Gympie Road, Chermide QLD 4032

Form G

Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) *Name of person giving notice:*

- N94075 (i) Essential Beauty Franchising Pty Ltd A.C.N. 095 561 621 (SA Franchisor).
- N94076 (ii) Essential Beauty Franchising (NSW) Pty Ltd A.C.N. 112 379 414 (NSW Franchisor).
- N94077 (iii) Essential Beauty Franchising (Qld) Pty Ltd A.C.N. 130 663 099 (QLD Franchisor).
- N94078 (iv) Essential Beauty Franchising (Vic) Pty Ltd A.C.N. 109 565 086 (VIC Franchisor).
- N94079 (v) Essential Beauty Franchising (WA) Pty Ltd A.C.N. 108 421 192 (WA Franchisor).

(b) *Short description of business carried on by that person:*

The SA Franchisor, NSW Franchisor, QLD Franchisor, VIC Franchisor and WA Franchisor (collectively the **Franchisors**) own and operate a business as franchisor to a network of franchisees located throughout Australia, which operate retail outlets supplying personal grooming and beauty services, and related products, under the Essential Beauty systems and brands (**Essential Beauty Franchise**).

The responsibility for operation of the Essential Beauty Franchise in each jurisdiction in Australia is divided between the Franchisors as follows:

- the SA Franchisor offers Essential Beauty Franchises in South Australia and the Northern Territory;
- the NSW Franchisor offers Essential Beauty Franchises in New South Wales;
- the QLD Franchisor offers Essential Beauty Franchises in Queensland;
- the VIC Franchisor offers Essential Beauty Franchises in Victoria and Tasmania; and

- the WA Franchisor offers Essential Beauty Franchises in Western Australia.

The QLD Franchisor, VIC Franchisor and WA Franchisor have each appointed master franchisees in the jurisdiction(s) for which they are responsible, and authorised these master franchisees to grant Essential Beauty Franchises to franchisees in the relevant jurisdiction. The relevant entities appointed as master franchisees by these Franchisors are as follows (collectively the **Master Franchisees**):

- Essential Beauty Chermside Pty Ltd A.C.N. 133 264 427 as trustee of the Essential Beauty Discretionary Trust A.B.N. 45 762 903 161 (**QLD Master Franchisee**) has been appointed as master franchisee by the QLD Franchisor in the State of Queensland;
- Essential Beauty Victoria Pty Ltd A.C.N. 109 408 442 (**VIC Master Franchisee**) has been appointed as master franchisee by the VIC Franchisor in the States of Victoria and Tasmania; and
- Pilton Holdings Pty Ltd A.C.N. 107 903 104 as trustee for the Forrest Family Trust (**WA Master Franchisee**) has been appointed as master franchisee by the WA Franchisor in the State of Western Australia.

(c) Address in Australia for service of documents on that person:

Luke Dale, Partner, Kelly & Co. Lawyers, GPO Box 286, Adelaide SA 5001.

2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The notification relates to the acquisition of certain products, equipment and other goods and services required for the conduct of an Essential Beauty Franchise (**Goods and Services**) which the Franchisors require franchisees to use exclusively in order to operate an Essential Beauty Franchise business.

(b) Description of the conduct or proposed conduct:

Section 47 of the *Trade Practices Act 1974* (Cth) (**Act**) prohibits anti-competitive dealing, and outlines a number of proscribed practices which amount to exclusive dealing.

Sections 47(6) and (7) of the Act, in conjunction with section 47(1), prohibit third line forcing, which arises when a product or service is offered to a purchaser on the condition that the purchaser also acquires goods or services from a specified third person or class of third persons, or when a party refuses to supply a product or services to a purchaser for the reason that the purchaser does not agree to also acquire goods or services from a specified third person or class of third persons.

The proposed conduct outlined below may fall within these provisions of the Act as it is a condition of the Essential Beauty Franchise agreement (**Agreement**) that franchisees acquire the Approved Goods and Services (defined below) only from the Franchisors, or Approved Suppliers (as defined below).

However, the Franchisors each maintain, as outlined below in section 4, that the proposed arrangements regarding the Approved Goods and Services is necessary from a quality control perspective and is an integral part of the Essential Beauty format and system, and contends that it will have a negligible effect on competition within the relevant markets.

Agreements

Those Franchisors which have appointed Master Franchisees have done so pursuant to two different standard form Master Franchise Agreements. Use of the latest form of Master Franchise Agreement commenced in approximately October 2008 (**Latest Master Agreement**) and has been entered into by the QLD Franchisor and the QLD Master Franchisee. The VIC Master Franchisee and WA Master Franchisee have entered into the previous form of the Master Franchise Agreement (**Earlier Master Agreement**), which is presently in effect between these entities and their respective Franchisors. The substantive content of both formats of Master Agreement is largely identical.

In those jurisdictions in which no master franchisee has been appointed by the relevant Franchisor, Franchisors enter into Agreements directly with franchisees.

In those jurisdictions in which the Master Franchisees have been appointed, historically the Franchisor, relevant Master Franchisee and franchisees were all parties to the Franchise Agreements. The franchise model implemented in these territories has been revised for commercial reasons and therefore, since approximately October 2008, the latest Franchise Agreements between Master Franchisees and franchisees do not include the relevant Franchisors as a party.

Accordingly, two forms of standard Franchise Agreements presently exist in the Essential Beauty Franchise network. First is the latest form of Franchise Agreement which commenced in approximately October 2008 (**Latest Franchise Agreement**), while the second format is the earlier form of Agreement utilised prior to October 2008, which is still in place with certain franchisees (**Earlier Franchise Agreement**).

The substantive content of the Latest Franchise Agreement is identical, regardless of whether the entity granting the Essential Beauty Franchise to an appointed franchisee is a Franchisor, or a Master Franchisee. Similarly, the form of the Earlier Franchise Agreement which is still in place with certain franchisees is substantively identical regardless of whether or not a Master Franchisee is a party to the arrangement.

Proposed Conduct

Under each and every form of Franchise Agreement, franchisees in each jurisdiction pay an upfront fee to the relevant Franchisor (or Master Franchisee, as appropriate) upon execution of the relevant Franchise Agreement, and an ongoing service fee, in return for which they:

- (i) are granted an Essential Beauty Franchise;
- (ii) receive access to Goods and Services at competitive prices from the Franchisor responsible for that jurisdiction, or suppliers approved by the applicable Franchisor responsible for that jurisdiction (**Approved Suppliers**);

- (iii) supply to customers only those Goods and Services, using only that equipment, which have been approved by applicable Franchisor in that jurisdiction (**Approved Goods and Services**);
- (iv) receive initial training from the applicable Franchisor/Master Franchisee in relation to the operation of an Essential Beauty Franchise business; and
- (v) receive ongoing back up and support from the relevant Franchisor/Master Franchisee in relation to the operation of an Essential Beauty Franchise business.

Under the Master Agreements, the Master Franchisees pay an upfront fee to the relevant Franchisor entity, and a proportion of certain amounts which are paid to Master Franchisees by appointed franchisees, in return for which Master Franchisees are authorised to grant Essential Beauty Franchises to franchisees within the appointed territory, and receive ongoing back up and support from the relevant Franchisor in relation to the operation of the Master Franchisee's business. Under the Latest Master Agreement, appointed Master Franchisees are entitled to themselves operate an Essential Beauty Franchise. Under both forms of Master Agreement, Master Franchisees are required to:

- (i) ensure that franchisees comply with the requirements of Franchise Agreements which relate to Approved Suppliers and Approved Goods and Services; and
- (ii) maintain adequate stock to themselves supply to franchisees the Approved Goods and Services, which have been acquired by the Master Franchisees from either the applicable Franchisor entity, or Approved Suppliers.

The conduct to which this notification specifically relates is the proposed supply arrangements between Franchisors on the one hand and the Approved Suppliers on the other, and the supply of goods which are acquired by franchisees either from the Approved Suppliers, or from the Master Franchisees who have acquired the goods from the Approved Suppliers, to consumers.

It is a condition that:

- (i) franchisees acquire the Approved Goods and Services only from the Franchisors, under the standard Franchise Agreements; and
- (ii) Master Franchisees acquire the Approved Goods and Services only from the relevant Franchisors, under the standard Master Agreements.

In the event that a Franchisor does not, is unable to, or chooses not to, supply the Approved Goods and Services to Master Franchisees and/or franchisees, Master Franchisees/franchisees are required to acquire these from Approved Suppliers specified by the applicable Franchisor. This requirement under the standard form of the Agreements is reduced in writing as follows:

- (i) under the Latest Franchise Agreements - as per clauses 5.2.10, 5.6.12, 5.6.14 and 27 set out in Annexure A1 attached to this Form, or provisions of similar wording and effect;
- (ii) under the form of the Earlier Franchise Agreements, which are still in

place with certain franchisees - as per clause 9.3 set out in Annexure A2 attached to this Form, or provisions of similar wording and effect;

- (iii) under the Latest Master Agreements – as per clause 13 set out in Annexure A3 attached to this Form, or provisions of similar wording and effect; and
- (iv) under the Earlier Master Agreements – as per clause 9 set out in Annexure A4 attached to this Form, or provisions of similar wording and effect.

Approved Suppliers will be those suppliers that meet the following criteria:

- (i) are considered by Franchisors to be of good public standing;
- (ii) have satisfied the Franchisors as being able to meet the quality standards and criteria applicable to the Essential Beauty Franchise; and
- (iii) have been approved by Franchisors. (or Master Franchisees, where relevant).

Pursuant to the terms of the Master Agreements in place between the Franchisors and their respective Master Franchisees, and the Franchise Agreements in place between Master Franchisees or Franchisors with franchisees, the relevant Franchisor is responsible for the approval of the Approved Goods or Services, regardless of whether or not a Master Franchisee has been appointed in the jurisdiction which the Essential Beauty Franchise is granted to the franchisee.

As at the date of this notification, no franchises have been granted by the relevant Franchisors/Master Franchisee in Tasmania, New South Wales or the Northern Territory and accordingly, no Approved Suppliers have been appointed in respect of these jurisdictions. The Approved Suppliers for the remaining jurisdictions in Australia are:

- (i) for franchisees operating an Essential Beauty Franchise business in South Australia, Victoria and Queensland - Essential Beauty (SA) Pty Ltd A.C.N. 100 278 091 trading as Essential Distribution; and
- (ii) for franchisees operating an Essential Beauty Franchise business in Western Australia – West Granton Pty Ltd A.C.N. 123 914 492 trading as Essential Distribution.

The identity of Approved Suppliers may be varied from time to time.

It is also a condition under both forms of the standard Essential Beauty Franchise Agreements that franchisees supply to consumers only the Approved Goods and Services, which have been acquired from the Franchisors or the Approved Suppliers. This requirement under the Latest Agreements is reduced in writing as per clauses 5.2.2 and 6.2.1 set out in Annexure A1 attached to this Form (or provisions of similar wording and effect), while the corresponding requirement under the Earlier Agreements is reduced in writing as per clauses 13.6 set out in Annexure A2 attached to this Form (or provisions of similar wording and effect).

Master Franchisees are obligated to ensure that franchisees comply with these

obligations, pursuant to the Master Agreements – see in this regard clause 13.2 of the Latest Master Agreement, set out in Annexure A3, and clause 9.1.3 of the Earlier Master Agreement, set out in Annexure A4 (or provisions of similar wording and effect).

Accordingly, the proposed conduct the subject of this notification can be summarised as follows (**Proposed Conduct**):

- (i) the requirement that Goods and Services be acquired by franchisees and Master Franchisees only from Approved Suppliers; and
- (ii) the requirement that Master Franchisees only supply the Approved Goods and Services, duly acquired from Approved Suppliers, to appointed franchisees; and
- (iii) the requirement that franchisees only supply the Approved Goods and Services, duly acquired from Approved Suppliers directly, the Franchisors directly, or from the Franchisor or Approved Suppliers via the Master Franchisees (as intermediary), to consumers.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) *Class or classes of persons to which the conduct relates:*

- (i) Essential Beauty Master Franchisees; and
- (ii) Essential Beauty franchisees.

(b) *Number of those persons:*

(i) *At present time:*

- (i) Essential Beauty Master Franchisees – 3; and
- (i) Essential Beauty franchisees – 27.

(ii) *Estimated within the next year:*

- (i) Essential Beauty master franchisees – 0; and
- (ii) Essential Beauty franchisees – 2.

(c) *Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:*

See Annexure B

4. Public benefit claims

(a) *Arguments in support of notification:*

The Franchisors each maintain that consistent with the prescribed image for an Essential Beauty Franchise business:

- (i) only Approved Goods and Services should be supplied to consumers; and
- (ii) all Approved Goods and Services should be supplied to franchisees either by the Franchisors or Approved Suppliers. To facilitate this, in the

context of the structure of the Essential Beauty Franchise system, Master Franchisees should be required to purchase Approved Goods and Services from the Franchisors, or Approved Suppliers, and distribute these to franchisees as required.

These requirements are a critical part of the Essential Beauty Franchise system and format, and are required to enable the Franchisors and relevant master franchisees to ensure that the services and products which are supplied to customers meet the high standards and controls set by the Franchisors, and are of the best possible quality.

Purpose and Benefits of Proposed Conduct

The purpose of the Proposed Conduct is to provide the Essential Beauty franchisees with Goods and Services of a consistent quality and standard. Accordingly, the Proposed Conduct is likely to have the benefits listed below for the Franchisors and relevant master franchisees, the Essential Beauty franchisees and end consumers:

- (i) The Proposed Conduct will provide franchisees and Master Franchisees with access to Approved Goods and Services at competitive prices, due to the established supply relationships between the Franchisors and the Approved Suppliers. This will allow franchisees to establish a competitive advantage in the operation of their Essential Beauty Franchise businesses, and will also benefit the operation of the businesses of Master Franchisees.
- (ii) The Approved Goods and Services proposed to be supplied by the Approved Suppliers to Master Franchisees and franchisees are subject to stringent quality assurance testing and controls, thus minimising adverse effects and maintaining the goodwill and reputation of the Essential Beauty Franchise network and system.
- (iii) Franchisees have the benefit of utilising and supplying to customers Goods and Services which are continually being subjected to strict quality assurance testing, controls and standards. This allows the goodwill and reputation of the Essential Beauty Franchise system to be maintained and developed, which in turn benefits both Master Franchisees and franchisees. Master Franchisees are benefited as the development of the Essential Beauty Franchise assists them in the operation of their business of operating and granting franchises in the Essential Beauty system in the territory for which they are appointed, as opportunities for appointments of new franchisees will increase, with increased reputation and goodwill. Franchisees experience benefit as custom for the Goods and Services offered by franchisees increases.
- (iv) The Proposed Conduct is likely to foster business efficiency by ensuring that franchisees and Master Franchisees have access to a range of products and services of a consistent standard and quality, allowing these parties more time to focus on running their businesses. This may provide a competitive advantage.
- (v) Certain Approved Goods and Services, proposed to be supplied by the Franchisors, are products generally used in the beauty industry which are

manufactured exclusively for, or contain enhancements which are unique to, the Essential Beauty Franchise. These products are not available in the general marketplace. The Proposed Conduct is of benefit to franchisees as it will allow franchisees to gain access to these proprietary products and thereby possibly establish an advantage over competitors which are not members of the Essential Beauty Franchise network, and who do not have access to these products.

- (vi) By requiring franchisees to acquire Approved Goods and Services from the Approved Suppliers (or Franchisors directly), the Proposed Conduct allows the Franchisors and Master Franchisees to ensure that all Essential Beauty franchisees maintain consistently high standards across Australia, and allows promotion of the "Essential Beauty" brand to be maximised. This allows the Franchisors and Master Franchisees to compete more effectively with their competitors in the highly competitive personal grooming and beauty retail industry, which in turn benefits consumers.
- (vii) The Proposed Conduct allows the Franchisors and Master Franchisees to focus on controlling quality and managing and maintaining the "Essential Beauty" brand. This ultimately benefits both the franchisees and consumers as it ensures that they are respectively supplying and purchasing/acquiring personal grooming and beauty products and services which are of a consistently high quality and standard.
- (viii) The Proposed Conduct provides the Approved Suppliers with certainty of supply and quantities of supply to the franchisees and Master Franchisees which may result in:
 - A. cost savings in the management of their businesses;
 - B. increased business efficiency, which gives them more time to focus on running their businesses, planning future production and innovative strategies. This may provide them with a competitive advantage in the wholesale market; and
 - C. promotion of competition amongst Approved Suppliers.
- (ix) Notwithstanding the fact that one of the Approved Suppliers appointed to date is a corporate associate of the Franchisors, while the other is a corporate associate of the WA Master Franchisee, the Approved Suppliers are free to supply products and services similar to the Approved Goods and Services to competitors of Essential Beauty franchisees. Further, the Franchisors are not restricted in their dealings with competitors of Approved Suppliers.

(b) *Facts and evidence relied upon in support of these claims:*

Please see the following attached documentation:

- (i) Attachment I - sample of current Disclosure Document and Latest Franchise Agreement utilised by Franchisors and Master Franchisees, and Latest Master Agreement utilised by Franchisors;

- (ii) Attachment II - Essential Beauty Franchising Brochure, detailing facts and achievements relevant to the Essential Beauty Franchise;
- (iii) Attachment III - List of all beauty salons in Australia, current as of June 2009;
- (iv) Attachment IV – List of wholesalers of beauty and personal grooming products in Australia, current as of June 2009; and
- (v) Attachment V – Table containing comparison of prices charged by Franchisors/Approved Suppliers and selected major competitors, for certain beauty/personal products.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The markets which may be affected by the Proposed Conduct can be reasonably identified as:

- (i) the broad retail and wholesale markets for the supply of personal care, personal grooming and beauty products and equipment; and
- (ii) the retail market for the supply of personal care, personal grooming and beauty services to consumers;

both within Australia.

Both of these markets are characterized by a large number of participants and are highly competitive. In this regard, we refer to Attachment III (specifically in reference to the retail markets described in points (i) and (ii) above) and Attachment IV (in respect of the wholesale market described in point (i) above), and note that the Franchisors and the Approved Suppliers – which number 7 separate entities in total – account for approximately 1.53% of all (being approximately 450 in total) wholesale suppliers of personal care, grooming and beauty products in Australia, while those retail outlets which operate under the "Essential Beauty" brand comprise approximately 0.48% of all retail beauty stores in Australia – being 33 retail premises out of the approximately 6900 beauty salons which consumers can choose to attend.

Significant suppliers in the markets described above include:

- (i) for the retail and wholesale markets for the supply of personal care, personal grooming and beauty products and equipment:

- A. Salon First (wholesale);
 - B. Ella Baché (wholesale sales to franchisees, and retail);
 - C. National Salon Supplies (wholesale and retail);
 - D. Livingstone International Pty Ltd (wholesale and retail);
 - E. Ella Rouge (retail);
 - F. Hairhouse Warehouse (retail); and
 - G. numerous independent operators, as listed in Attachments III and IV; and
- (ii) for the retail market for the supply of personal care, personal grooming and beauty services to consumers:
- A. Ella Baché;
 - B. Ella Rouge Beauty;
 - C. Pure Indulgence;
 - D. Hairhouse Warehouse; and
 - E. numerous independent operators, as listed in Attachments III.

6. Public detriments

- (a) *Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:*

Master Franchisees

The Proposed Conduct contemplated by the Franchisors denies the Master Franchisees the opportunity to choose on the normal commercial basis of product quality and price whether or not to purchase and supply to appointed franchisees, for the purposes of the conduct of Essential Beauty Franchise businesses by those franchisees:

- (i) other Goods and Services, which are not Approved Goods and Services; and
- (ii) Approved Goods and Services, from providers other than the Franchisors (or Approved Suppliers).

Franchisees

The Proposed Conduct contemplated by the Franchisors denies the franchisees the opportunity to choose on the normal commercial basis of product quality and price whether or not to purchase:

- (iii) other Goods and Services, which are not Approved Goods and Services; and
- (iv) Approved Goods and Services, from providers other than the Approved

Suppliers (or Franchisors/master franchisees).

Consumers

The Proposed Conduct will have an insignificant anti-competitive effect on consumers, given that consumers are free to acquire personal grooming and beauty products and services from any supplier they choose. In this regard, we refer to Attachment III, together with the figures and percentages listed in section 5 above.

Suppliers

The Proposed Conduct contemplated by the Franchisors denies suppliers (other than Approved Suppliers) the opportunity to compete for the business of franchisees. Notwithstanding this consequence, the anti-competitive effect on wholesale suppliers of the Goods and Services will be insignificant, given the number of other traders operating businesses similar to the Essential Beauty Franchise around Australia to which these suppliers may sell their products. In this regard, we refer to Attachment III, together with the figures and percentages listed in section 5 above.

For the reasons outlined above, the Franchisors each submit that the Proposed Conduct is not likely to cause a substantial lessening of competition in the relevant markets, and nor is it likely to cause any detriment to the public. To the extent that the Proposed Conduct does in fact contravene section 47 of the Act, the Franchisors each contend that they are entitled to statutory immunity provided by section 93 of the Act, as the public benefits resulting from the Proposed Conduct outweighs any public detriments caused by it.

(b) *Facts and evidence relevant to these detriments:*

As per facts and statements described above.

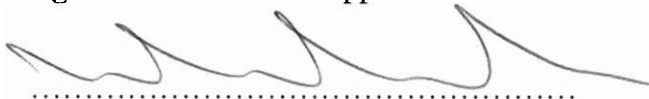
7. Further information

(a) *Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:*

Mr Luke Dale
Kelly & Co. Lawyers
GPO Box 286
Adelaide SA 5001
Ph: (08) 8205 0580
Fax: (08) 8205 0805

Dated: 3 August 2009

Signed on behalf of the applicants



.....
Luke Dale
Partner
Kelly & Co. Lawyers

Annexure A1 – Extract From Latest Agreement: Section 2(b)

5. FRANCHISEE UNDERTAKINGS

The Franchisee shall, at all times until after the Dissolution Date, using its best endeavours at the full cost of the Franchisee:

...

5.2. Products & Equipment

5.2.2 Prior to the Dissolution Date only use Products and equipment approved by Essential Beauty;

5.2.10 Enter into a commercial arrangement with Essential Beauty or Approved Suppliers for the purchase of the Products and purchase or lease of equipment needed in the Franchise Business which Essential Beauty nominates from time to time;

...

5.6. Business Methods

5.6.12 Purchase and maintain New Business Systems introduced by Essential Beauty for utilisation in the Franchised Business and the System;

5.6.14 Sell goods and services to Clients and enter into agreements for purchases with Approved Suppliers using Standard Terms and Conditions;

...

6. FRANCHISEE ACKNOWLEDGEMENTS

The Franchisee shall not at any time until after the Dissolution Date, directly or indirectly, except with the prior written consent of Essential Beauty:

...

6.2 Products & Equipment

6.2.1 Sell or attempt to sell any goods or services other than the required Business Activities to Clients to the extent permitted by law;

...

27. PURCHASES

- 27.1 The Franchisee agrees to purchase all Products from Approved Suppliers, including the Franchisor, as they have demonstrated to Essential Beauty an ability to meet Essential Beauty's standards and reliability for Products used in the System or sold by franchisees.
- 27.2 Essential Beauty shall, to ensure compatibility and quality standards, either sell to the Franchisee the Specified Equipment, Products and additional goods and equipment required from time to time in the Franchised Business or shall designate Approved Suppliers from whom the Franchisee will make those purchases.
- 27.3 Essential Beauty will assist in the selection of Approved Suppliers and may revoke approval of an Approved Supplier from time to time.
- 27.4 The Franchisee agrees that the Franchisee shall not have the right to withhold any payment or payments of any amounts due by reason of any equipment or supplies purchased or leased from Essential Beauty or Approved Suppliers, or any other amounts or sums due and owing to Essential Beauty by reason of any set off based on the grounds of any alleged non-performance or incorrect completion of any obligations. The Franchisee agrees that acceptance of any part payment will not harm any right to recover the balance due or pursuing any other remedy by the party entitled to receive the payment.
- 27.5 Unless specific trading terms are provided, the Franchisee must pay all Tax Invoices that the Franchisee receives within seven (7) days.
- 27.5.1. Stock invoices from head office are to be paid before receipt of goods via cheque, bank transfer, credit card or cash.

Annexure A2 – Extract From Earlier Agreement: Section 2(b)

9. Quality of Product

- 9.3 The franchisee shall at all times purchase all goods, materials, Products and packaging for the Products from the Franchisor or such suppliers nominated in writing by the Franchisor who have been authorised by the Franchisor to supply the franchisee. It shall be the responsibility of the franchisee to ensure that sufficient stocks are maintained at all times and training given to enable the proper and efficient running of the franchise.

13. Franchisee's Obligations

The franchisee agrees with the Franchisor [and Master Franchisee] as follows:

- 13.6 Not produce sell or supply any Product or service other than those Products referred to in this agreement unless expressly authorised in writing by the Franchisor.

Annexure A3 – Extract From Latest Master Agreement: Section 2(b)

13. SUPPLY OF PRODUCTS AND SERVICES

13.1 Services by Master Franchisee

The Master Franchisee must:

13.1.1 supply to Franchisees the whole range of the Approved Products and Approved Services that EB reasonably required be supplied to Franchisees as required by this Agreement and by the Master Franchisee Procedures Manuals;

13.1.2 not supply any products and services to Franchisees that are not approved by EB;

13.2 Approved Products and Approved Services by Franchisees

The Master Franchisee must use its best endeavours to ensure that all Franchisees do not supply any products or services other than the Approved Products and Approved Services.

13.3 Additional Products and Services

Where the Master Franchisee considers that a service or product could complement the existing Approved Services or Approved Products, the Master Franchisee may request EB to consider adding the products or service or product to the list of Approved Products and Approved Services. The Master Franchisee acknowledges that as a licensee of the Image and the System, EB is entitled to determine whether a service or product is to be delivered or supplied in conjunction with the Image or as part of the System within the Franchise Channel.

13.4 Supply of Approved Products and Approved Services

To the extent permitted by law, EB may require Franchisees to buy Approved Products and Approved Services exclusively and directly from EB and where EB is not able to provide timely supply then from Approved Suppliers.

13.1 Approved Suppliers

13.5.1 EB may require that Franchisees only purchase products other than the Approved Products, from suppliers that have been approved by EB. If EB does this, the Master Franchisee must use its best endeavours to ensure that all Franchisees make their purchases from Approved Suppliers.

13.6 Supply of Approved Goods to Franchisees

The Master Franchisee must ensure sufficient inventory levels of all Approved Products and Approved Services are available to Franchisees as reasonably necessary to meet expected requirements of Franchisees.

Annexure A4 – Extract From Earlier Master Agreement: Section 2(b)

9. PRODUCT

9.1 Use and Purchase of Product

9.1.1 During the Term or any Renewal Term the Master Franchisee shall use all reasonable endeavours to ensure that Franchisees will only use Product approved of by the Company.

9.1.2 The Master Franchisee shall use all reasonable endeavours to ensure that Franchisees purchase all Product from it or the Company or from suppliers who demonstrate an ability to meet the Company's reasonable quality standards and specifications for such Product. The Master Franchisee will carry sufficient stock of the Product, as specified by the Company, to enable it to adequately supply the Franchisees.

9.1.3 The Master Franchisee will use all reasonable endeavours to ensure that the right of the Franchisees to utilise or offer for sale or otherwise deal with the Product is strictly limited in accordance with the terms of the Franchise Agreements and any directives contained in the Operations Manual.

9.2 Not to Alter Product

The Master Franchisee must use all reasonable endeavours to ensure that Franchisees will not, without the prior written approval of the Company, make any changes or modifications whatsoever to the Product.

9.3 Directions

The Master Franchisee will promptly adhere to and implement any reasonable directions of the Company as to:

9.3.1 the Product to be used in The System;

9.3.2 any maximum (but not minimum) price Franchisees may charge Clients for Product;

Annexure B: (section 3(c))

Essential Beauty Master Franchisees and Franchisees

MASTER FRANCHISEES		
State	Name	Address
Queensland	Essential Beauty Chermside Pty Ltd A.C.N. 133 264 427 as trustee of the Essential Beauty Discretionary Trust A.B.N. 45 762 903 161	Unit 117, 100 Bowen Terrace, Fortitude Valley QLD 4005
Victoria & Tasmania	Essential Beauty Victoria Pty Ltd A.C.N. 109 408 442	11 Barak Street, Bulleen VIC 3105
Western Australia	Pilton Holdings Pty Ltd A.C.N. 107 903 104 as trustee for the Forrest Family Trust	Level 2, Unit 52-53, 119 Bowman Street, South Perth WA 6151
FRANCHISEES		
State	Name	Address
South Australia	M. Ruggiero Nominees Pty Ltd A.C.N. 099 850 012	Essential Beauty Rundle Mall - 142 Rundle Mall, Adelaide SA 5000 Essential Beauty Harbour Town – Shop T106A, 727 Tapleys Hill Road, West Beach SA 5950
	Davval Pty Ltd A.C.N.107 444 977	Essential Beauty Tea Tree Plaza - Shop 65a, 976 North East Road, Modbury SA 5092
	Kasdalis Investments Pty Ltd A.C.N.089 054 124	Essential Beauty Marion - Shop 1089, 297 Diagonal Road, Oaklands Park SA 5046
	VDV Pty Ltd A.C.N.108 952 629	Essential Beauty Arndale - Shop 130, 470 Torrens Road, Kilkenny SA 5009
	Sharissa Pty Ltd A.C.N. 102 723 580	Essential Beauty West Lakes - Shop 17, 111 West Lakes Boulevard, West Lakes SA 5092
	Mspasi Pty Ltd A.C.N. 107 169 808	Essential Beauty Ingle Farm - Shop 1006, corner Walkleys and Montague Roads, Ingle Farm SA 5098 Essential Beauty North Park – Shop 21, 264 Main North Road, Prospect SA 5082

	Charom Pty Ltd A.C.N. 108 470 588	Essential Beauty Unley - Shop 24, 204 Unley Road, Unley SA 5061
	S.C.A.M. Pty Ltd A.C.N. 007 820 902	Essential Beauty Colonnades - Shop 40, Beach Road, Noarlunga Centre SA 5168
	Rogers and Garcia Pty Ltd A.C.N. 122 445 103	Essential Beauty Elizabeth - Shop 2a, Elizabeth Way, Elizabeth SA 5112 Essential Beauty Munno Para – Shop T71, Main North Road, Smithfield SA 5114
	Tsoutsoulis Enterprises Pty Ltd A.C.N. 115 071 291	Essential Beauty Hollywood Plaza - Shop 70A, corner Winzor Street & Spains Road, Salisbury Downs SA 5105
Western Australia	Essential Beauty Garden City Pty Ltd A.C.N. 119 778 264	Essential Beauty Hay Street Mall - Shop G2, 611-619 Hay Street Mall, Perth WA 6000
	SK Sabu Pty Ltd A.C.N. 110 856 374	Essential Beauty Centro Galleria - Shop 1085, Centro Galleria, Morley WA 6062
	Geneve Holdings Pty Ltd A.C.N. 123 103 784	Essential Beauty Midland Gate - Shop T47, Midland Gate Shopping Centre, Midland WA 6056
	Get Glamorous Pty Ltd A.C.N. 125 084 335	Essential Beauty Innaloo - Shop 1084, Westfield Innaloo, Innaloo WA 6018 Essential Beauty Rockingham – Shop 36B, 1 Council Avenue, Rockingham WA 6168
	N.I.R. (WA) Pty Ltd A.C.N. 125 658 460	Essential Beauty Carousel - Shop 1006B, 1382 Albany Highway, Cannington WA 6107
	Get Beautiful Pty Ltd A.C.N. 133 423 542	Essential Beauty Joondalup – Shop T229, 420 Joondalup Drive, Joondalup WA 6027 Essential Beauty Armadale – Shop T2, 206 Jull Street,

		Armadale WA 6112
Victoria	MCJ Magro Investments Pty Ltd A.C.N. 113 325 812	Essential Beauty Highpoint - Shop 2139, 120-2000 Rosamond Road, Maribyrnong VIC 3032
	BBO Lifestyle Pty Ltd A.C.N. 118 366 117	Essential Beauty Melbourne Central - Level 2, 206-211 La Trobe Street, Melbourne VIC 3000
	Beaumedics Pty Ltd A.C.N. 117 297 140	Essential Beauty Frankston - Shop G4, Bayside Shopping Centre, Beach Road, Frankston VIC 3199
	Gooru Pty Ltd A.C.N. 113 272 389	Essential Beauty Southland - Shop 1013, 1239 Nepean Highway, Cheltenham VIC 3192
	Jaqueline Barbara Dawson and Fiona Joan Thomas	Essential Beauty Geelong - 118 Moorabook Street, Geelong VIC 3213
	Essential Beauty Knox Pty Ltd A.C.N. 109 473 172	Essential Beauty Knox - Shop 3101, 425 Burwood Highway, Wantirna South VIC 3152
	Roi de La Mer Pty Ltd A.C.N. 126 924 418	Essential Beauty The Foundry - Shop T28, 399 Bourke Street & 368 Little Collins Street, Melbourne VIC 3000 Essential Beauty Doncaster - Shop G205, 619 Doncaster Road, Doncaster VIC 3108
	S.H.F. Enterprises Pty Ltd A.C.N. 076 862 523	Essential Beauty Ivanhoe - 200 Upper Heidelberg Road, Ivanhoe VIC 3079
	Essential Beauty Victoria Pty Ltd A.C.N. 109 408 442	Essential Beauty Chadstone - Shop 254, 1341 Dandenong Road, Chadstone 3148
Queensland	Essential Beauty Brisbane City A.C.N. 127 793 168	Essential Beauty Adelaide Street - 134 Adelaide Street, Brisbane QLD 4000
	Essential Beauty Chermiside Pty Ltd A.C.N. 133 264 427	Essential Beauty Chermiside - Shop 409, corner Hamilton Road and Gympie Road, Chermiside QLD 4032

Form G

Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of person giving notice:

- N94080 (i) Essential Beauty Chermside Pty Ltd A.C.N. 133 264 427 as trustee of the Essential Beauty Discretionary Trust A.B.N. 45 762 903 161 (**QLD Master Franchisee**).
- N94081 (ii) Essential Beauty Victoria Pty Ltd A.C.N. 109 408 442 (**VIC Master Franchisee**).
- N94082 (iii) Pilton Holdings Pty Ltd A.C.N. 107 903 104 as trustee for the Forrest Family Trust (**WA Master Franchisee**).

(b) Short description of business carried on by that person:

The following entities (collectively the **Franchisors**) own and operate a business as franchisor to a network of franchisees located throughout Australia, which operate retail outlets supplying personal grooming and beauty services, and related products, under the Essential Beauty systems and brands (**Essential Beauty Franchise**):

- (i) Essential Beauty Franchising Pty Ltd A.C.N. 095 561 621 (**SA Franchisor**);
- (ii) Essential Beauty Franchising (NSW) Pty Ltd A.C.N. 112 379 414 (**NSW Franchisor**);
- (iii) Essential Beauty Franchising (Qld) Pty Ltd A.C.N. 130 663 099 (**QLD Franchisor**);
- (iv) Essential Beauty Franchising (Vic) Pty Ltd A.C.N. 109 565 086 (**VIC Franchisor**); and
- (v) Essential Beauty Franchising (WA) Pty Ltd A.C.N. 108 421 192 (**WA Franchisor**).

The responsibility for operation of the Essential Beauty Franchise in each jurisdiction in Australia is divided between the Franchisors as follows:

- the SA Franchisor offers Essential Beauty Franchises in South Australia and the Northern Territory;

- the NSW Franchisor offers Essential Beauty Franchises in New South Wales;
- the QLD Franchisor offers Essential Beauty Franchises in Queensland;
- the VIC Franchisor offers Essential Beauty Franchises in Victoria and Tasmania; and
- the WA Franchisor offers Essential Beauty Franchises in Western Australia.

The QLD Franchisor, VIC Franchisor and WA Franchisor have each appointed master franchisees in the jurisdiction(s) for which they are responsible, and authorised these master franchisees to grant Essential Beauty Franchises to franchisees in the relevant jurisdiction. The relevant entities appointed as master franchisees by these Franchisors are as follows (collectively the **Master Franchisees**):

- the QLD Master Franchisee has been appointed as master franchisee by the QLD Franchisor in the State of Queensland;
- the VIC Master Franchisee has been appointed as master franchisee by the VIC Franchisor in the States of Victoria and Tasmania; and
- the WA Master Franchisee has been appointed as master franchisee by the WA Franchisor in the State of Western Australia.

(c) *Address in Australia for service of documents on that person:*

- (i) QLD Master Franchisee – Unit 117, 100 Bowen Terrace, Fortitude Valley QLD 4005, Attention – Ann Marie Donnarumma.
- (ii) VIC Master Franchisee – 11 Barak Street, Bulleen VIC 3105, Attention – Peter Tsamourtzis.
- (iii) WA Master Franchisee – 7 Manly Vale, Kallaroo WA 6025, Attention - Angus Forrest.

2. Notified arrangement

(a) *Description of the goods or services in relation to the supply or acquisition of which this notice relates:*

The notification relates to the acquisition of certain products, equipment and other goods and services required for the conduct of an Essential Beauty Franchise (**Goods and Services**) which the Master Franchisees require appointed franchisees to use exclusively in order to operate an Essential Beauty Franchise business.

(b) Description of the conduct or proposed conduct:

Section 47 of the *Trade Practices Act 1974* (Cth) (**Act**) prohibits anti-competitive dealing, and outlines a number of proscribed practices which amount to exclusive dealing.

Sections 47(6) and (7) of the **Act**, in conjunction with section 47(1), prohibit third line forcing, which arises when a product or service is offered to a purchaser on the condition that the purchaser also acquires goods or services from a specified third person or class of third persons, or when a party refuses to supply a product or services to a purchaser for the reason that the purchaser does not agree to also acquire goods or services from a specified third person or class of third persons.

The proposed conduct outlined below may fall within these provisions of the **Act** as it is a condition of the Essential Beauty Franchise agreement (**Agreement**) that franchisees acquire the Approved Goods and Services (defined below) only from the Franchisors, or Approved Suppliers (as defined below).

However, the Master Franchisees each maintain, as outlined below in section 4, that the proposed arrangements regarding the Approved Goods and Services is necessary from a quality control perspective and is an integral part of the Essential Beauty format and system, and contends that it will have a negligible effect on competition within the relevant markets.

Agreements

Two forms of standard franchise Agreement have been utilised by Master Franchisees with their appointed franchisees.

In those jurisdictions in which the Master Franchisees have been appointed by the respective Franchisors, historically the Franchisor, relevant Master Franchisee and franchisees were all parties to the franchise Agreements. The franchise model implemented in these territories has been revised by the Franchisors for commercial reasons and therefore, since approximately October 2008, the Latest Agreements between Master Franchisees and franchisees do not include the relevant Franchisors as a party.

Accordingly, two forms of standard franchise Agreements presently exist in the Essential Beauty Franchise network, to which the Master Franchisees are a party. First is the latest form of franchise Agreement, which commenced in approximately October 2008 (**Latest Agreement**), while the second format is the earlier form of Agreement utilised prior to October 2008, which is still in place with certain franchisees and has the relevant Franchisor as a party, in addition to the applicable Master Franchisee (**Earlier Agreement**).

Proposed Conduct

Under each and every form of Agreement, franchisees in each jurisdiction pay an upfront fee to the relevant Master Franchisee upon execution of the relevant franchise Agreement, and an ongoing service fee, in return for which they:

- (i) are granted an Essential Beauty Franchise;
- (ii) receive access to Goods and Services at competitive prices from the Franchisor responsible for that jurisdiction, or suppliers approved by the

applicable Franchisor responsible for that jurisdiction (**Approved Suppliers**);

- (iii) supply to customers only those Goods and Services, using only that equipment, which have been approved by the applicable Franchisor in that jurisdiction (**Approved Goods and Services**);
- (iv) receive initial training from the Master Franchisee in relation to the operation of an Essential Beauty Franchise business; and
- (v) receive ongoing back up and support from the Master Franchisee in relation to the operation of an Essential Beauty Franchise business.

The conduct to which this notification specifically relates is the proposed supply arrangements between Master Franchisees on the one hand and the Franchisors and Approved Suppliers on the other, and the supply of goods which are acquired by franchisees from the Franchisors or the Approved Suppliers to consumers.

It is a condition of the standard Agreements that franchisees acquire the Approved Goods and Services only from the applicable Franchisor, responsible for the territory in which the franchisee operates. In the event that the applicable Franchisor does not, is unable to, or chooses not to, supply the Approved Goods and Services to franchisees, it is a further condition of the standard Essential Beauty Franchise agreement that franchisees are required to acquire these from Approved Suppliers specified by the applicable Franchisor. This requirement under the standard form of the Latest Agreements is reduced in writing as per clauses 5.2.10, 5.6.12, 5.6.14 and 27 set out in Annexure A1 attached to this Form, or provisions of similar wording and effect. Under the form of the Earlier Agreements, which are still in place with certain franchisees, the requirement is reduced in writing as per clause 9.3 set out in Annexure A2 attached to this Form, or provisions of similar wording and effect.

Approved Suppliers will be those suppliers that meet the following criteria:

- (i) are considered by Franchisors to be of good public standing;
- (ii) have satisfied the Franchisors as being able to meet the quality standards and criteria applicable to the Essential Beauty Franchise; and
- (iii) have been approved by Franchisors.

Pursuant to the terms of the Master Franchise Agreement in place between the Master Franchisees and the relevant Franchisors, the applicable Franchisor is solely responsible for the approval of the Approved Goods or Services. Though Master Franchisees may suggest new Goods and Services for use in the Essential Beauty Franchise system, the decision as to whether these suggestions are implemented into the system lies solely with the relevant Franchisor. As at the date of this notification, no franchises have been granted by the relevant Franchisors/Master Franchisees in Tasmania, New South Wales or the Northern Territory and accordingly, no Approved Suppliers have been appointed in respect of these jurisdictions. The Approved Suppliers adopted by the Franchisors for the remaining jurisdictions in Australia are:

- (i) for franchisees operating an Essential Beauty Franchise business in South

Australia, Victoria and Queensland - Essential Beauty (SA) Pty Ltd
A.C.N. 100 278 091 trading as Essential Distribution; and

- (ii) for franchisees operating an Essential Beauty Franchise business in Western Australia – West Granton Pty Ltd A.C.N. 123 914 492 trading as Essential Distribution. This Approved Supplier is a corporate associate of the WA Master Franchisee.

The identity of Approved Suppliers may be varied from time to time.

It is also a condition under both forms of the standard Essential Beauty franchise Agreements that franchisees supply to consumers only the Approved Goods and Services, which have been acquired from the Franchisors or the Approved Suppliers. This requirement under the Latest Agreements is reduced in writing as per clauses 5.2.2 and 6.2.1 set out in Annexure A1 attached to this Form (or provisions of similar wording and effect), while the corresponding requirement under the Earlier Agreements is reduced in writing as per clauses 13.6 set out in Annexure A2 attached to this Form (or provisions of similar wording and effect).

Under the terms of the Master Franchise Agreements in force between the Master Franchisees and the relevant Franchisors, the Master Franchisees are obligated to ensure that appointed franchisees comply with the obligations described above.

Accordingly, the proposed conduct the subject of this notification can be summarised as follows (**Proposed Conduct**):

- (i) the requirement that Goods and Services be acquired by franchisees only from the Franchisor responsible for the territory in which they operate, or Approved Suppliers; and
- (ii) the requirement that franchisees only supply the Approved Goods and Services, duly acquired from Approved Suppliers or the Franchisor responsible for the territory in which they operate, directly, to consumers.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates:

Essential Beauty franchisees, appointed by Master Franchisees.

(b) Number of those persons:

(i) At present time:

Essential Beauty franchisees – 15

(ii) Estimated within the next year:

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

See Annexure B

4. Public benefit claims

(a) Arguments in support of notification:

The Master Franchisees each maintain that consistent with the prescribed image for an Essential Beauty Franchise business:

- (i) only Approved Goods and Services should be supplied to consumers; and
- (ii) all Approved Goods and Services should be supplied to franchisees either by the Franchisors or Approved Suppliers.

These requirements are a critical part of the Essential Beauty Franchise system and format, and are required to enable the Franchisors and relevant master franchisees to ensure that the services and products which are supplied to customers meet the high standards and controls set by the Franchisors, and are of the best possible quality.

Purpose and Benefits of Proposed Conduct

The purpose of the Proposed Conduct is to provide the Essential Beauty franchisees with Goods and Services of a consistent quality and standard. Accordingly, the Proposed Conduct is likely to have the benefits listed below for the Franchisors and relevant master franchisees, the Essential Beauty franchisees and end consumers:

- (i) The Proposed Conduct will provide franchisees with access to Approved Goods and Services at competitive prices, due to the established supply relationships between the Franchisors and the Approved Suppliers. This will allow franchisees to establish a competitive advantage in the operation of their Essential Beauty Franchise businesses, and will also benefit the operation of the businesses of Master Franchisee.
- (ii) The Approved Goods and Services proposed to be supplied by the Approved Suppliers to franchisees are subject to stringent quality assurance testing and controls, thus minimising adverse effects and maintaining the goodwill and reputation of the Essential Beauty Franchise network and system.
- (iii) Franchisees have the benefit of utilising and supplying to customers Goods and Services which are continually being subjected to strict quality assurance testing, controls and standards. This allows the goodwill and reputation of the Essential Beauty Franchise system to be maintained and developed, which in turn benefits franchisees as custom for the Goods and Services offered by franchisees increases.
- (iv) The Proposed Conduct is likely to foster business efficiency by ensuring that franchisees have access to a range of products and services of a consistent standard and quality, allowing franchisees more time to focus on running their businesses. This may provide a competitive advantage.
- (v) Certain Approved Goods and Services, proposed to be supplied by the Franchisors, are products generally used in the beauty industry which are manufactured exclusively for, or contain enhancements which are unique to, the Essential Beauty Franchise. These products are not available in

the general marketplace. The Proposed Conduct is of benefit to franchisees as it will allow franchisees to gain access to these proprietary products and thereby possibly establish an advantage over competitors which are not members of the Essential Beauty Franchise network, and who do not have access to these products.

- (vi) By requiring franchisees to acquire Approved Goods and Services from the Approved Suppliers (or Franchisors directly), the Proposed Conduct allows the Franchisors and Master Franchisees to ensure that all Essential Beauty franchisees maintain consistently high standards across Australia, and allows promotion of the "Essential Beauty" brand to be maximised. This allows the Franchisors and Master Franchisees to compete more effectively with their competitors in the highly competitive personal grooming and beauty retail industry, which in turn benefits consumers.
- (vii) The Proposed Conduct allows the Franchisors and Master Franchisees to focus on controlling quality and managing and maintaining the "Essential Beauty" brand. This ultimately benefits both the franchisees and consumers as it ensures that they are respectively supplying and purchasing/acquiring personal grooming and beauty products and services which are of a consistently high quality and standard.
- (viii) The Proposed Conduct provides the Approved Suppliers with certainty of supply and quantities of supply to the franchisees which may result in:
 - A. cost savings in the management of their businesses;
 - B. increased business efficiency, which gives them more time to focus on running their businesses, planning future production and innovative strategies. This may provide them with a competitive advantage in the wholesale market; and
 - C. promotion of competition amongst Approved Suppliers.
- (ix) Notwithstanding the fact that the Approved Suppliers appointed to date are corporate associates of either the Franchisors or the WA Master Franchisee, the Approved Suppliers are free to supply products and services similar to the Approved Goods and Services to competitors of Essential Beauty franchisees. Further, the Franchisors are not restricted in their dealings with competitors of Approved Suppliers.

(b) *Facts and evidence relied upon in support of these claims:*

Please see the following attached documentation:

- (i) Attachment I - sample of current Disclosure Document and Latest Agreement utilised by Master Franchisees;
- (ii) Attachment II - Essential Beauty Franchising Brochure, detailing facts and achievements relevant to the Essential Beauty Franchise;
- (iii) Attachment III - List of all beauty salons in Australia, current as of June 2009;

- (iv) Attachment IV – List of wholesalers of beauty and personal grooming products in Australia, current as of June 2009; and
- (i) Attachment V – Table containing comparison of prices charged by Franchisors/Approved Suppliers and selected major competitors, for certain beauty/personal products.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The markets which may be affected by the Proposed Conduct can be reasonably identified as:

- (i) the broad retail and wholesale markets for the supply of personal care, personal grooming and beauty products and equipment; and
- (ii) the retail market for the supply of personal care, personal grooming and beauty services to consumers;

both within Australia.

Both of these markets are characterized by a large number of participants and are highly competitive. In this regard, we refer to Attachment III (specifically in reference to the retail markets described in points (i) and (ii) above) and Attachment IV (in respect of the wholesale market described in point (i) above), and note that the Franchisors and the Approved Suppliers – which number 7 separate entities in total – account for approximately 1.53% of all (being approximately 450 in total) wholesale suppliers of personal care, grooming and beauty products in Australia, while those retail outlets which operate under the "Essential Beauty" brand comprise approximately 0.48% of all retail beauty stores in Australia – being 33 retail premises out of the approximately 6900 beauty salons which consumers can choose to attend.

Significant suppliers in the markets described above include:

- (i) for the retail and wholesale markets for the supply of personal care, personal grooming and beauty products and equipment:
 - A. Salon First (wholesale);
 - B. Ella Baché (wholesale sales to franchisees, and retail);
 - C. National Salon Supplies (wholesale and retail);
 - D. Livingstone International Pty Ltd (wholesale and retail);
 - E. Ella Rouge (retail);

- F. Hairhouse Warehouse (retail); and
 - G. numerous independent operators, as listed in Attachments III and IV; and
- (ii) for the retail market for the supply of personal care, personal grooming and beauty services to consumers:
- A. Ella Baché;
 - B. Ella Rouge Beauty;
 - C. Pure Indulgence;
 - D. Hairhouse Warehouse; and
 - E. numerous independent operators, as listed in Attachments III.

6. Public detriments

- (a) *Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:*

Franchisees

The Proposed Conduct contemplated by the Master Franchisees denies the franchisees the opportunity to choose on the normal commercial basis of product quality and price whether or not to purchase:

- (i) other Goods and Services, which are not Approved Goods and Services; and
- (ii) Approved Goods and Services, from providers other than the Approved Suppliers (or Franchisors).

Consumers

The Proposed Conduct will have an insignificant anti-competitive effect on consumers, given that consumers are free to acquire personal grooming and beauty products and services from any supplier they choose. In this regard, we refer to Attachment III, together with the figures and percentages listed in section 5 above.

Suppliers

The Proposed Conduct contemplated by the Master Franchisees denies suppliers (other than the Franchisors or Approved Suppliers) the opportunity to compete for the business of franchisees. Notwithstanding this consequence, the anti-competitive effect on wholesale suppliers of the Goods and Services will be insignificant, given the number of other traders operating businesses similar to the Essential Beauty Franchise around Australia to which these suppliers may sell their products. In this regard, we refer to Attachment III, together with the figures and percentages listed in section 5 above.

For the reasons outlined above, the Master Franchisees each submit that the Proposed Conduct is not likely to cause a substantial lessening of competition in

the relevant markets, and nor is it likely to cause any detriment to the public. To the extent that the Proposed Conduct does in fact contravene section 47 of the Act, the Master Franchisees each contend that they are entitled to statutory immunity provided by section 93 of the Act, as the public benefits resulting from the Proposed Conduct outweighs any public detriments caused by it.

(b) Facts and evidence relevant to these detriments:

As per facts and statements described above.

7. Further information

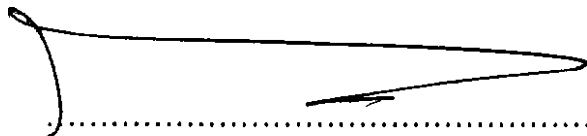
(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Mr Tony Maiello
10 Chapel St
Norwood SA 5067
Ph: (08) 8132 1549 (W) 0416 147 765 (M)
Fax: (08) 8362 7588
Email: tony@essentialbeauty.com.au

Dated: 3 August 2009

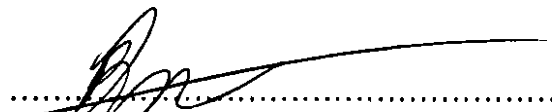
Signed on behalf of the applicants

Signed by the QLD Master Franchisee:



Ann Marie Donnarumma
Director, Essential Beauty Chermside Pty Ltd A.C.N. 133 264 427 as trustee of the
Essential Beauty Discretionary Trust A.B.N. 45 762 903 161

Signed by the VIC Master Franchisee:



Peter Samourtzis
Director, Essential Beauty Victoria Pty Ltd A.C.N. 109 408 442

Signed by the WA Master Franchisee:

A handwritten signature in black ink, appearing to read 'A Forrest', is written over a horizontal dotted line. The signature is stylized and cursive.

Angus Forrest

Director, Pilton Holdings Pty Ltd A.C.N. 107 903 104 as trustee for the Forrest Family Trust

Annexure A1 – Extract From Latest Agreement: Section 2(b)

5. FRANCHISEE UNDERTAKINGS

The Franchisee shall, at all times until after the Dissolution Date, using its best endeavours at the full cost of the Franchisee:

5.2. Products & Equipment

5.2.2 Prior to the Dissolution Date only use Products and equipment approved by Essential Beauty;

5.2.10 Enter into a commercial arrangement with Essential Beauty or Approved Suppliers for the purchase of the Products and purchase or lease of equipment needed in the Franchise Business which Essential Beauty nominates from time to time;

5.6. Business Methods

5.6.12 Purchase and maintain New Business Systems introduced by Essential Beauty for utilisation in the Franchised Business and the System;

5.6.14 Sell goods and services to Clients and enter into agreements for purchases with Approved Suppliers using Standard Terms and Conditions;

6. FRANCHISEE ACKNOWLEDGEMENTS

The Franchisee shall not at any time until after the Dissolution Date, directly or indirectly, except with the prior written consent of Essential Beauty:

6.2 Products & Equipment

6.2.1 Sell or attempt to sell any goods or services other than the required Business Activities to Clients to the extent permitted by law;

...

27. PURCHASES

- 27.1 The Franchisee agrees to purchase all Products from Approved Suppliers, including the Franchisor, as they have demonstrated to Essential Beauty an ability to meet Essential Beauty's standards and reliability for Products used in the System or sold by franchisees.
- 27.2 Essential Beauty shall, to ensure compatibility and quality standards, either sell to the Franchisee the Specified Equipment, Products and additional goods and equipment required from time to time in the Franchised Business or shall designate Approved Suppliers from whom the Franchisee will make those purchases.
- 27.3 Essential Beauty will assist in the selection of Approved Suppliers and may revoke approval of an Approved Supplier from time to time.
- 27.4 The Franchisee agrees that the Franchisee shall not have the right to withhold any payment or payments of any amounts due by reason of any equipment or supplies purchased or leased from Essential Beauty or Approved Suppliers, or any other amounts or sums due and owing to Essential Beauty by reason of any set off based on the grounds of any alleged non-performance or incorrect completion of any obligations. The Franchisee agrees that acceptance of any part payment will not harm any right to recover the balance due or pursuing any other remedy by the party entitled to receive the payment.
- 27.5 Unless specific trading terms are provided, the Franchisee must pay all Tax Invoices that the Franchisee receives within seven (7) days.
- 27.5.1. Stock invoices from head office are to be paid before receipt of goods via cheque, bank transfer, credit card or cash.

Annexure A2 – Extract From Earlier Agreement: Section 2(b)

9. Quality of Product

9.3 The franchisee shall at all times purchase all goods, materials, Products and packaging for the Products from the Franchisor or such suppliers nominated in writing by the Franchisor who have been authorised by the Franchisor to supply the franchisee. It shall be the responsibility of the franchisee to ensure that sufficient stocks are maintained at all times and training given to enable the proper and efficient running of the franchise.

...

13. Franchisee's Obligations

The franchisee agrees with the Franchisor and Master Franchisee as follows:

13.6 Not produce sell or supply any Product or service other than those Products referred to in this agreement unless expressly authorised in writing by the Franchisor.

Annexure B: (section 3(c))

Essential Beauty Franchisees

FRANCHISEES		
State	Name	Address
Western Australia	Essential Beauty Garden City Pty Ltd A.C.N. 119 778 264	Essential Beauty Hay Street Mall - Shop G2, 611-619 Hay Street Mall, Perth WA 6000
	SK Sabu Pty Ltd A.C.N. 110 856 374	Essential Beauty Centro Galleria - Shop 1085, Centro Galleria, Morley WA 6062
	Geneve Holdings Pty Ltd A.C.N. 123 103 784	Essential Beauty Midland Gate - Shop T47, Midland Gate Shopping Centre, Midland WA 6056
	Get Glamorous Pty Ltd A.C.N. 125 084 335	Essential Beauty Innaloo - Shop 1084, Westfield Innaloo, Innaloo WA 6018 Essential Beauty Rockingham -- Shop 36B, 1 Council Avenue, Rockingham WA 6168
	N.I.R. (WA) Pty Ltd A.C.N. 125 658 460	Essential Beauty Carousel - Shop 1006B, 1382 Albany Highway, Cannington WA 6107
	Get Beautiful Pty Ltd A.C.N. 133 423 542	Essential Beauty Joondalup – Shop T229, 420 Joondalup Drive, Joondalup WA 6027 Essential Beauty Armadale – Shop T2, 206 Jull Street, Armadale WA 6112
Victoria	MCJ Magro Investments Pty Ltd A.C.N. 113 325 812	Essential Beauty Highpoint - Shop 2139, 120-2000 Rosamond Road, Maribyrnong VIC 3032
	BBO Lifestyle Pty Ltd A.C.N. 118 366 117	Essential Beauty Melbourne Central - Level 2, 206-211 La Trobe Street, Melbourne VIC 3000
	Beaumedics Pty Ltd A.C.N. 117 297 140	Essential Beauty Frankston - Shop G4, Bayside Shopping Centre, Beach Road, Frankston VIC 3199
	Gooru Pty Ltd A.C.N. 113	Essential Beauty Southland

	272 389	- Shop 1013, 1239 Nepean Highway, Cheltenham VIC 3192
	Jaqueline Barbara Dawson and Fiona Joan Thomas	Essential Beauty Geelong - 118 Moorabook Street, Geelong VIC 3213
	Essential Beauty Knox Pty Ltd A.C.N. 109 473 172	Essential Beauty Knox - Shop 3101, 425 Burwood Highway, Wantirna South VIC 3152
	Roi de La Mer Pty Ltd A.C.N. 126 924 418	Essential Beauty The Foundry - Shop T28, 399 Bourke Street & 368 Little Collins Street, Melbourne VIC 3000 Essential Beauty Doncaster – Shop G205, 619 Doncaster Road, Doncaster VIC 3108
	S.H.F. Enterprises Pty Ltd A.C.N. 076 862 523	Essential Beauty Ivanhoe – 200 Upper Heidelberg Road, Ivanhoe VIC 3079
Queensland	Essential Beauty Brisbane City A.C.N. 127 793 168	Essential Beauty Adelaide Street - 134 Adelaide Street, Brisbane QLD 4000