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4 February 2010

DELIVERY BY HAND

Adjudication Branch
Australian Competition and Consumer Commission
Level 35, Melbourne Central Tower
360 Elizabeth Street
MELBOURNE VIC 3000



Dear Sir/Madam

Back In Motion Physiotherapy Pty Ltd ACN 109 945 388 Exclusive Dealing Notification (Third Line Forcing)

We act for **Back In Motion Physiotherapy Pty Ltd.**

Please find **enclosed**:

1. Form G Notification; and
2. a cheque for **\$100.00** made payable to **Australian Competition and Consumer Commission** in payment of the lodgement fee.

If you have any questions, please contact Adam Walker using the details at the head of this letter.

Yours faithfully


Stephen Kroker
for GADENS LAWYERS

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:**
(Refer to direction 2)

N94458

Back In Motion Physiotherapy Pty Ltd
ACN 109 945 388 (BIM)

- (b) **Short description of business carried on by that person:**
(Refer to direction 3)

BIM is the franchisor of the "Back In Motion" franchise system of physiotherapy and related health and wellness services, which operate through a network of suburban physiotherapy practices and corporate work place teams.

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

Attention: Mr Adam Walker
Gadens Lawyers
Level 25, 600 Bourke Street
MELBOURNE VIC 3000

2. Notified arrangement

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

- 1) Therapeutic consumables, including oils, creams, gels, bandages, tapes, braces and similar items for use when consulting with and treating patients.
- 2) Printing and stationery, including letterheads, marketing collateral, client educational handouts and similar materials.
- 3) Technology support services, including configuration of franchise local area networks, hardware and software solutions.

- 4) Uniform supplies, including the provision of all mandatory and optional company branded apparel.
- 5) Medical aids, including merchandise for sale in the practices including braces, creams, gels, walking aids, exercise equipment and similar items.

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

(Refer to direction 4)

BIM requiring franchisees to purchase goods and services of the kind described in paragraph 2(a) above from suppliers approved by BIM (accounting for approximately 10% of goods and services acquired by franchisees, but which may increase over time).

BIM franchisees permitted to sell other goods and services, in addition to the goods and services required to be obtained from the approved suppliers.

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:**

(Refer to direction 5)

Current and future franchisees of the Back In Motion franchise system.

(b) **Number of those persons:**

(i) **At present time:**

Approximately 25 persons/entities.

(ii) **Estimated within the next year:**

(Refer to direction 6)

Approximately 5 to 8 new franchisees.

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

Franchisee	Contact Person	Business Address
Eastern Health Services Pty Ltd ACN 099 736 099	Jason Smith	Wantirna South 432 Burwood Highway Wantirna South Vic 3152
Northern Health Services Pty Ltd ACN 107 435 165	Marcus Pain	Coburg: 155 Sydney Road Coburg Vic 3085

Franchisee	Contact Person	Business Address
		Epping: 31-43 Miller Street Epping Vic 3076
Hoang Enterprises Pty Ltd ACN 117 157 838	Bao Hoang	Seaford: 274 Frankston- Dandenong Rd Seaford Vic 3198
North West Health Services Pty Ltd ACN 124 659 712	Anthony Belcher	Hillside: 11/49 Royal Crescent Hillside Vic 3038
		Sydenham: 2/558 Melton Highway Sydenham Vic 3037
Peninsula Health Services Pty Ltd ACN 112 167 530	Adrian Persi Bao Hoang Jason Smith	BIM Corporate Health: 258a Dorset Road Boronia Vic 3155
State Wide Health Services Pty Ltd ACN 116 898 483	Jason Smith	Blackburn South: 164 Middleborough Road Blackburn South Vic 3130
		Clayton: 251 Clayton Road Clayton Vic 3168
Inner Eastern Health Services Pty Ltd ACN 121 828 957	Adrian Quinn	Camberwell: 1207 Toorak Road Camberwell Vic 3124
Tran-Nguyen Health Group Pty Ltd ACN 124 932 056	Kim Nguyen	Ascot Vale: 357 Mt Alexander Road Ascot Vale Vic 3032
Beside Health Services Pty Ltd ACN 124 412 666	Nathan Rickard Bao Hoang	Aspendale Gardens 1 Forbes Street Aspendale Gardens Vic 3195
Bayswater Health Services Pty Ltd ACN 174 046 511	Tom Hindhaugh Kane Burrows	Bayswater: 615 Mountain Highway Bayswater Vic 3153
Melbourne Health Services Pty Ltd ACN 125 670 411	Bao Hoang Brooke Williams	Melbourne: Shop 507, Australia on Collins 260 Collins Street Melbourne Vic 3000

Franchisee	Contact Person	Business Address
Distinctive Physiotherapy Pty Ltd ACN 118 743 838 ATF Schomburgk Family Trust	James Schomburgh	Valley View: 6/901 Grand Junction Road Valley View SA 5093
Distinctive Physiotherapy Pty Ltd ACN 118 743 838 ATF Schomburgk Family Trust and SA Health Services Pty Ltd ACN 108 331 853	James Schomburgh	Campbelltown: 637 Lower North East Road, Campbelltown SA 5074
Mountain Health Services Pty Ltd ACN 128 774 881	Jason Smith	Tecoma: 1574 Burwood Highway, Tecoma Vic 3160
Integrated Health Services Pty Ltd ACN 128 046 168	David Spithill Jason Smith	Montmorency: 429 Main Road, Lower Plenty Vic 3093
Hills Health Services Pty Ltd ACN 128 317 822	Jeremy Hobbs James Schomburgh Jason Smith	Mt Barker: Shop 06A, 20 Druids Ave, Mt Barker SA 5251
Central Health Services Pty Ltd ACN 128 317 822	Jason Smith	Docklands: Level 4, 100 Harbour Esp. Docklands Vic 3008
LV Aladdin Pty Ltd	Matthew and Nicole Tayler	Patterson Lakes: Glades Shopping Centre Thompson Road Patterson Lakes Vic 3197
Two Men and a Boat Pty Ltd	Tom Hindhaugh Kane Burrows	TBA
Newcastle Enterprises Pty Ltd	Tom and Valerie Chickonoski	Marmion: Suite 6, 9 Sheppard Way Marmion WA 6020
My Backs Physio Pty Ltd ATF My Backs Physio Trust	Brad Beer	Mermaid Waters: Q Super Centre Mermaid Waters QLD 4218
Semaphore Pty Ltd	James Mills	Semaphore: 160 Semaphore Road Semaphore SA 5019

4. Public benefit claims

(a) **Arguments in support of notification:**

(Refer to direction 7)

BIM submits that the intended effect of the notified arrangement is to ensure:

- 1) Competitive pricing of goods and services: BIM anticipates that the notified arrangement will enable BIM franchisees to procure goods and services at more attractive prices, thereby improving their capacity to compete.
- 2) Quality control: BIM will scrutinise the quantity of goods and services before approving a supplier for the purposes of the notified arrangement. Franchisees and their clients will benefit for such scrutiny.
- 3) Variation control: By raising the standard and eliminating the 'variation' of products that franchisees buy, the notified arrangement will ensure clients receive consistent products and services across the network. This will reduce client frustration or disappointment, for example, when BIM runs group wide campaigns.
- 4) Continuity of delivery: Proposed arrangements will confirm stock control, inventory numbers, logistics and delivery arrangements and therefore supplier commitment to ensure franchisees (and in turn their clients) can receive ongoing supply of approved products.
- 5) Effective clinical outcomes: By setting a high standard of product expectations and limited supplier arrangements, the notified arrangement will enable franchisees to exceed the expectations of the client in producing effective results and the intended benefits.
- 6) Accessibility and convenience: Given all proposed supply arrangements are with either national suppliers, or people who have committed to BIM's supply expectations, the entire network is assured delivery of product.

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

These claims are supported by basic marketing principles.

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):

(Refer to direction 8)

The relevant market is the supply of physiotherapy services and related products in geographical area served by each franchised business.

The total physiotherapy market in Australia is about \$750 million per annum (IBIS industry report 2008). The entire BIM network of franchised businesses comprises only around \$9 million of this revenue.

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:**

(Refer to direction 9)

BIM submits that the notified arrangement involves no public detriments

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

Not applicable.

7. **Further information**

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

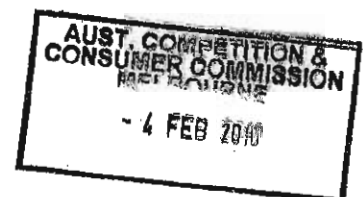
Mr Adam Walker, Senior Associate, Gadens Lawyers, Level 25, 600 Bourke Street, Melbourne, Victoria, 3000 (Telephone: 03 9252 2515; Facsimile: 03 9252 2500; Email: awalker@vic.gadens.com.au)

Dated: 4 February 2010

Signed by/on behalf of the applicant



Gadens Lawyers, for and on behalf of
Back In Motion Physiotherapy Pty Ltd ACN 109 945 388



DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.