



Arch Bevis MP

Federal Member for Brisbane
Chairperson Joint Committee on Intelligence and Security
Chairperson Joint Defence Sub-Committee



15 April, 2010

Mr David Hatfield,
Australian Competition & Consumer Commission
David.hatfield@accc.gov.au

Dear Mr Hatfield,

Since writing to you in March about the qualified immunity provided to Football Queensland by the ACCC I have had the opportunity to read the Football Queensland (FQ) notification of 24th April, 2008.

I note that FQ address one of the matters I raised in my letter. They state that clubs and players may continue to use apparel indefinitely after a license ceases.

Whilst that is welcome, it seems inconsistent with the information on the FQ website which lists only the current shorter list of approved suppliers. No mention is made of the indefinite nature of licensed garments. Nevertheless, I acknowledge that this matter raised in my earlier letter is addressed in the FQ 2008 notification.

The FQ notification includes a number of other matters with which I take issue.

Quality and Minimum Standards

The notification states that the purpose of the policy is:

2 a) i) Ensure that the Teamwear and equipment meets minimum standards.

In fact, retailers and players can readily identify non licensed garments that are equal to or better in quality. My earlier letter includes comment on this issue which I will not repeat here. I simply note that a key aspect of my objection is that better quality garments are actually banned by FQ. That is especially so for goalkeepers.

Moreover, if quality and standard were the purpose of this policy it would be necessary to publish a set of minimum specifications that garments are required to meet identifying such things as materials to be used, perhaps sizing details, stitching material and the like. FQ has not produced such minimum specifications or performance standards.

Their documents simply state that:

The Licensee warrants that the Licensed Commodities will be of good quality, design, material and workmanship and will be suitable for their intended purpose and that no injurious, deleterious or toxic substances will be used in or on the Licensed Commodities and that the same will not cause harm when used as instructed and with ordinary care for their intended purpose and that the said Licensed Commodities will be manufactures, sold and distributed in strict compliance with all applicable laws and regulations.

FQ set no performance standard or specifications. Rather they simply require the licensee to warrant that the garments are good quality etc. without definition or explanation of what constitutes, for example, 'good quality'.

In any event, ensuring minimum quality or performance standards is quite separate from the exclusive licensing arrangement that FQ has established. If indeed FQ's purpose is to establish minimum standards, it could do this without embarking on an exclusive, anti competitive marketing strategy. It could produce a statement of minimum standards and authorise all garments that are submitted and meet that standard.

For example, all playing fields are required to meet minimum standards in size, change rooms, referee facilities and the like. FQ does not stipulate which contractors must be engaged to maintain these standards. They do not stipulate which supplier of turf must be used. In a nutshell, that illustrates the difference between enforcing minimum standards and the restrictive practices of FQ's garment licensing arrangements

The FQ licensing arrangements have nothing to do with standards.

"Q" Logo

The second purpose stated by FQ for the scheme is:

ii) Ensure that the logos, club names, symbols, emblems and designs and other indicia and trademarks owned by Football Queensland are protected. If the image is protected and promoted, the development of the game is promoted.

This is interesting. FQ are effectively arguing that firstly, they demand their logo be displayed, and then having required it to be displayed, they have to protect it by charging a fee and restricting trade. Effectively, they create a situation, say it could lead to a problem, and then make money out of applying a response to the problem they say exists.

FQ has not produced any information to show that they have encountered improper use of their logo that could be detrimental to either FQ or the game. This is an issue they repeat elsewhere in their application and which I will comment on later in this letter.

Reasons iv) and v) as with i) can be achieved without limiting competition and restricting trade.

Sanctions

The penalties that FQ can impose on clubs who have players wearing non licensed garments are excessive. Fines of \$500, \$1,000 and \$2,000 are harsh. These are penalties that would be placed on predominately suburban community organisations run by volunteers. Ultimately, clubs could face removal from the sport. These are unreasonable penalties.

If the garments are actually good value for money and high quality as FQ contend, why do they have to threaten clubs with such heavy handed penalties to enforce compliance?

Public benefit

Under this heading FQ claim that their restrictive arrangements produce better quality garments for players than would be the case if clubs select them. It is clear from what I have already said, I do not believe this policy has anything to do with quality and in any event, alternative procedures that would ensure minimum quality without restricting trade are available.

Their comment however, raises another issue. FQ are effectively saying that club administrators are incapable of selecting suitable garments. That is wrong and insulting to club officials. These officials are required to make decisions about field management, clubhouses, coaching appointments, to negotiate with local government and deal with a wide range of other matters. However, when it comes to selecting team clothes, we are to believe they can't be trusted. The underlying assumption in FQ's logic is wrong.

Image

Under a heading about 'Image of the game and promotion of the FQ brand', FQ again refer to protecting their "Q" logo. They confuse their legitimate right to protect their name and logo with their actual policy that demands use of their logo, and then restricting its use to a select list of suppliers, all for a fee.

It is spurious to argue that the game of football is promoted if players display a "Q". As noted above, they claim;

If the image is protected and promoted, the development of the game is promoted.

FQ seem more concerned about promoting the organisation, Football Queensland via the display of the "Q", than promoting the game. Having been a keen supporter of the game for more than twenty years, it seems to me that the thousands of players who play football in Queensland every weekend could not care less about the existence of the "Q" on their garments.

The image of the game and its promotion is the product of many things. Displaying the "Q" on playing garments is not one of them.

Income

The one purpose of their licensing scheme advanced by FQ with which I agree is that it generates income. I won't go over the comments I have made about this in my earlier letter.

FQ say that \$208,084 was raised by this scheme from 1.10.06 to 30.9.07. That represents about \$700 per club based on their advice of about 300 affiliated clubs.

An estimate of registered players is difficult. Based on the number of teams in the Brisbane competition and assuming an average of fourteen players per team, a conservative estimate of the number of registered players is greater than 10,000. That does not take into account areas outside of Brisbane.

The Sunshine Coast has sixteen clubs with over 5,200 members.

On the Gold Coast there are twenty-three clubs. It is likely that together they have many more than 5,000 registered players.

It is reasonable to assume that there are well in excess of 20,000 players registered in Queensland.

On that basis, the total revenue generated for FQ by this restriction of trade is less than \$10 per player. FQ could provide official figures. I believe the above calculation is very conservative.

A small increase in players' registration fees would generate similar income without adopting restrictive trade practices. Of course, there are a range of other sponsorship and commercial schemes that could generate similar income without any increase in player fees, which I would regard as preferable.

I note that FQ refer to the Red Kits program which provided coaching equipment and footballs for teams. They mention this program was 'helped' by the restrictive licensing scheme.

These kits have the name of a corporate sponsor, Red Rooster on them. Red Rooster is a fast food chicken company. If FQ are going to rely in part on that program as a justification for their immunity, they should disclose how much of the program was actually funded by the licensing scheme. I assume given the profile given to Red Rooster through this program that Red Rooster in fact paid for the major portion of the Red Kits program not the licensed clothing companies.

The Market

FQ assert in their notification that "football apparel does not constitute a market in its own right". Without entering a detailed economic debate on the point, it is the case that a number of companies, both retail and wholesale, specialise in football apparel. This is exactly their market. For others it is a very substantial part of their market.

The fact is FQ have made no assessment of the market. Their notification refers to 'an unknown number of unlicensed manufacturers and an unknown number of retailers.'

Whilst I am not in a position to identify the size of the market, its existence is beyond doubt. So too, is the detriment felt, especially by the specialist football suppliers.

Unfortunately, as small and medium size firms with limited potential buyers, they are not in a position to comfortably make public criticisms of those who run the sport. Confidential inquiries with Queensland sporting stores and football specialist stores would perhaps provide the ACCC with more accurate information.

Value for money

The FQ notification admits that:

"Apparel not subject to the License Program would be of a similar value".

This admission undermines one of FQ's key assertions, that the licensing program ensures better quality and value for clubs. If by their own assessment, non licensed products are of similar value, there can be no case to substantiate the granting of immunity.

Conclusion

These matters taken together with the issues raised in my earlier letter provide a compelling case for removing the FQ immunity that permits their restrictive garment licensing scheme.

I look forward to your consideration of this matter.

As with my earlier letter, I have no objection to this letter being made available to Football Queensland and displayed on the ACCC website.

I would appreciate the opportunity to respond to any other views that may be presented on this matter.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Arch Bevis', is written on a light-colored background.

The Hon Arch Bevis MP