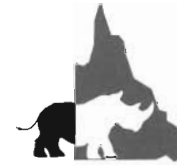


OUR REF:

131:140:1015552:S

YOUR REF:

FILE No.
DO
MA



**QLD LAW GROUP**

*A New Direction*

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22 April 2010

The Registrar  
Exclusive Dealings  
Australian Competition and  
Consumer Commission  
Level 24  
400 George Street  
BRISBANE Q 4000

Dear Sirs

**RE: TONY FERGUSON LICENCING PTY LIMITED - EXCLUSIVE DEALING  
NOTIFICATION - THIRD LINE FORCING**

We are the lawyers for Tony Ferguson Licencing Pty Limited.

**Documents Attached**

- 1 Form G – Notification of Exclusive Dealing;
- 2 General Account Cheque – ACCC - \$100.00.

**About The Notification**

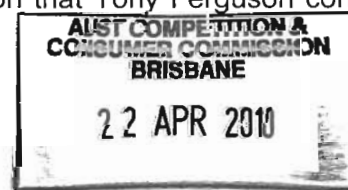
On behalf of Tony Ferguson Licencing Pty Limited, we would like to notify you of a proposed Franchise System that may otherwise infringe the *Trade Practices Act* by third line forcing.

Tony Ferguson proposes to grant licences to owner/operators of Chemist Shops throughout Australia to provide the proprietary Tony Ferguson Weightloss Program involving the sale of meal replacement and weight loss products together with a system for marketing those products and in store support services using proprietary Tony Ferguson information on the condition that the Licensees obtain the products from the nominated supplier, Symbion Pharmacy Services Pty Ltd.

We would ask that the Notification be placed on the public register and that Tony Ferguson be afforded immunity from legal action concerning the third line forcing conduct.

It is submitted that the likely benefit to the public from the notified conduct will outweigh the likely detriment to the public resulting from the conduct as in effect there should be no public detriment as the products involved are proprietary products of Tony Ferguson containing confidential formulae and are not otherwise available to the public except through Tony Ferguson.

There is nothing confidential in the Notification that Tony Ferguson considers commercially sensitive.



OTHER OFFICES AT: SPRINGWOOD • GOLD COAST • BURPENARY • CLAYFIELD • GOODNA (visited) • WOODFORD (visited)

131:140:1015552:S

The Registrar

RE TONY FERGUSON LICENCING PTY LIMITED - EXCLUSIVE DEALING  
NOTIFICATION - THIRD LINE FORCING



**QLD LAW GROUP**

*A New Direction*

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### Further Information

If you require any further information about the Notification, please let us know, otherwise we look forward to the Notification being placed on the ACCC's public register.

### Queries

Should you have any queries please do not hesitate to contact the writer.

Yours faithfully

**QLD LAW GROUP**

Per:



**Steven Johnson**

Principal

stevenjohnson@qldlawgroup.com.au

Encl

210410 Ltr to ACC enc Notification



# 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 in 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)

N94667

Tony Ferguson Licencing Pty Limited ACN 116 309 212 ("Tony Ferguson")

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

Tony Ferguson presently carries on the business of licensing Terry White Chemist outlets throughout Australia to use the proprietary Tony Ferguson Weight Loss Program (the Program) involving the sale of meal replacement and weight loss products and the provision of in-store support services. Exclusive Dealing Notification No. N31493 exists for that business. Tony Ferguson now intends to expand the business by licensing persons who will be the owners/operators of chemist shops other than Terry White Chemists (the Tony Ferguson Franchisees) to use the Program. No Licence Agreements as yet have been entered into.

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

Qld Law Group, GPO Box 1405, Brisbane Q 4001

- (d) **Principal place of business in Australia:**

4 Production Place, Mulgoa NSW 2745

### 2 Notified arrangement

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

The sale and promotion of meal replacement and weight loss products together with a system for marketing those products and in store support services using proprietary Tony Ferguson information to Tony Ferguson Franchisees throughout Australia who will provide the Program to the public.

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

Tony Ferguson has developed meal replacement and weight loss products (the Tony Ferguson Products) and a system for marketing those products and in store support services using proprietary Tony Ferguson information which will be licensed to the Tony Ferguson Franchisees. The Tony Ferguson Products which consist of confidential formulae will be sold to Symbion Pharmacy Services Pty Ltd ACN 000 875 034 (Symbion) who will then on-sell the product to the Tony Ferguson Franchisees.

Tony Ferguson will require a proposed Tony Ferguson Franchisee to purchase the Tony Ferguson Products exclusively from Symbion.

Jalco Food and Beverage Pty Limited ACN 105 620 540 (Jalco) manufactures the products for Tony Ferguson.

Jalco is an independent company with no financial interest in Tony Ferguson and Tony Ferguson has no financial interest in Jalco.

Tony Ferguson will sell the Tony Ferguson Products to Symbion who conduct a business distributing products to Chemists throughout Australia. It is planned that the Tony Ferguson Franchisees will supplement their product range by selling the Tony Ferguson Products in their chemist shops and providing the Program to the public.

Symbion will purchase the Tony Ferguson Products from Tony Ferguson, store the Tony Ferguson Products in their distribution centres and then sell and distribute the Tony Ferguson Products throughout Australia to the Tony Ferguson Franchisees.

It is a condition of the proposed Licence Agreement between Tony Ferguson and the Tony Ferguson Franchisees that the Tony Ferguson Products must be purchased from Symbion and not Tony Ferguson.

It is also proposed to develop, manufacture and supply other Tony Ferguson products to be sold to Symbion for on-supply to the Tony Ferguson Franchisees.

It is submitted that the condition imposed on the proposed Tony Ferguson Franchisees for them to acquire the Tony Ferguson Products exclusively from Symbion may infringe the *Trade Practices Act* by third line forcing being conduct within sections 47(6) and (7) of the *Trade Practices Act*.

The Tony Ferguson Franchisees will be required, under the proposed Licence Agreement, to purchase the Tony Ferguson Products solely from Symbion unless Symbion are unable to supply the products. The effect, however, is that the Tony Ferguson Products, which contain confidential formulae cannot be obtained elsewhere.

(Refer to direction 4)

3 **Persons, 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)

Tony Ferguson Franchisees

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

- |      |   |     |
|------|---|-----|
| (i)  | <b>At present time:</b>                                     | Nil |
| (ii) | <b>Estimated within the next year:</b><br>(see direction 6) | 100 |

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

Not Applicable

4 **Public benefit claims**

(a) **Arguments in support of notification**  
(Refer to direction 7)

The proposed conduct will benefit the public as it will:

1. allow consistent distribution and supply of the Tony Ferguson Products throughout Australia to the proposed Tony Ferguson Franchisees by using arguably the leading distributor of products to chemist shops in Australia so that the public will have the products readily available to them at all times and not be inconvenienced by distribution difficulties.
2. allow the benefits of reduced costs through bulk purchasing to be able to be passed on to the public;
3. allow a uniformity of costs throughout Australia so that members of the public in isolated regions are able to purchase the Tony Ferguson Products at the same price as other members of the public;
4. provide the public with advice from trained weight loss practitioners and receive the full benefit of the Program from the proposed Tony Ferguson Franchisees at no cost to the public once they have joined the Program;
5. improve research and development of the Tony Ferguson Products and the Program due to the involvement of Symbion and Jalco and the funds that will become available from the expansion of the Tony Ferguson business;
6. create a uniformity in the conduct of the Program and the supply and marketing of the Tony Ferguson Products which will reduce advertising costs resulting in lower prices to the public.

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

Tony Ferguson has conducted successfully the Tony Ferguson Weightloss Program through the Terry White Chemists over the past four (4) years and, as the public benefits have occurred during this period, Tony Ferguson has no reason to believe that they will not occur in the future with the proposed Tony Ferguson Franchisees.

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 Tony Ferguson Licence system will entail the sale of Tony Ferguson Products which contain confidential formulae which cannot be obtained elsewhere so that there are no substitutes available for the Tony Ferguson Products which will only be purchased by the public by mail order from Tony Ferguson, from Terry White Chemists (pursuant to Exclusive Dealing Notification No. N31493) and the proposed Tony Ferguson Franchisees. There is no affected market as the market is in fact the market for the proprietary Tony Ferguson Products themselves.

6 **Public Detriments**

- (a) **Detriments to the public resulting or likely to result from the notification, in particularly 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)*

There is no detriment to the public resulting or likely to result from the notification as the Program and the associated products and services are proprietary to Tony Ferguson and not available for sale to the public other than through by mail order or from the Terry White Chemists and the Tony Ferguson Franchisees.

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

The lack of detriment to the public is evidenced by there being no market for the Tony Ferguson Products other than the market for the Tony Ferguson Products themselves.

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 Steven Johnson  
Qld Law Group  
GPO Box 1405, Brisbane. Qld. 4001  
Telephone: 07 3221 8000

Facsimile: 07 3229 9090

Email: [stevenjohnson@qldlawgroup.com.au](mailto:stevenjohnson@qldlawgroup.com.au)

Dated: 22 April 2010

Signed by/on behalf of the Applicant

(Signature) 

Steven Johnson  
(Full Name)

Qld Law Group  
(Organisation)

Principal  
(Position in Organisation)

210410 App for Exclusive Dealing Notification