



AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
- 2 DEC 2010

30 November 2010

**General Manager
Adjudication Branch
Australian Competition and Consumer Commission
Level 7, Angel Place
123 Pitt Street
Sydney NSW 2000**

FILE No:
DOC:
MARS/PRISM:

Dear Sir / Madam,

SECURITY365 – Exclusive Dealing Notification

Please find enclosed a 'Form G' Exclusive Dealing Notification for conduct which may raise issues under the third line forcing provisions of the Trade Practices Act 1974 (Cth).

Also enclosed is a cheque for the filing fee in the amount of **\$100.00**.

If you wish to discuss any aspects of this notification, or require any additional information, please do not hesitate to contact me, or in my absence, Richard Kaplan, the CEO, on (02) 9519-0844.

Yours sincerely,

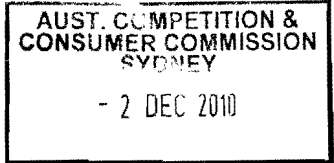
RICHARD KAPLAN AS FULLY AUTHORIZED FOR SOLE DIRECTOR RUVEN KAPLAN

Ruven Kaplan
Director

SECURITY365 PTY LTD

ABN 98 140 453 363
Unit 5/1 Canal Road, ST PETERS NSW 2044
T: +61 2 9519 0844 | F: +61 2 9519 0866

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 conductor 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:

N95201 SECURITY365 PTY LTD (ABN 98 140 453 363) ("Security365")

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

Security365 is the Franchisor Company in Australia for the national network of Security365 Franchisees that operate a Security365 mobile dealership based business specialising in the quote, check measure and installation of physical and electronic security Goods and Services ("Authorised Goods and Services") including the supply of electronic monitoring of alarms and related Goods and Services from Approved Suppliers to residential and commercial Customers using the Marks and the Intellectual Property developed, owned and licensed by ATDC FRANCHISING PTY LTD (ACN 139 650 687) a related entity of the Franchisor.

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

Unit 5 / 1 Canal Road, St Peters, NSW, 2044

2. Notified arrangement

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

The notice relates to the Security365 Franchisees and/or managers of:

- (i) Goods: being the supply of security doors, physical barrier systems and alarm systems, including, without limitation, trellis doors, roller shutters, roller grilles, folding closures, security and safety film, wrought iron doors and grilles, balustrades, security plantation shutters, driveway gates, pedestrian gates, louvers, slat panels and fences, alarms, keypads, sensors.
- (ii) Services: being remote alarm monitoring services.

(b) Description of the conduct or proposed conduct:

Security365 Franchisees will be required to purchase certain products and services the kind referred to in 2(a) above from suppliers approved by Security365.

The entire franchisee product and service offering has been specified in detail in the Security365 group marketing and product collateral i.e. website, brochures, flyers etc. and this detail is based on the technical specifications of the products and services of each unique approved supplier.

New Franchisees will be required to sign a franchise agreement, which includes the clauses as set out in Annexure A, or substantially similar clauses as negotiated by the parties.

By having Approved Suppliers provide certain services or products and/or appointing Approved Suppliers, Security365 seeks to ensure:

- (i) Consistency in the Security365 system, for the overall benefit of the brand, the Franchisees and their Customers;
- (ii) Consistency in the product type(s) and technical specification(s) offered to the Franchisees ;
- (iii) Consistency in the product type(s) and technical specification(s) and the services provided to customers of the Franchisees ;
- (iv) That it is possible for the Franchisees to have one published product catalogue and website that is uniform in the product(s) and services and relevant technical specifications offered to their customers;
- (v) That customers do not purchase a franchisee's product(s) or services based on the false belief that they share the exact same technical specifications as those published in the Security365 product catalogue and website;
- (vi) Consistency in the high product quality offered to all Franchisees and by all Franchisees to their customers. This is assisted by having Approved Suppliers who are to have strict quality checks and quality control measures and comply with relevant Australian Standards in product manufacture;
- (vii) Confidence in compliance with Occupational Health & Safety Requirements by Approved Suppliers;
- (viii) Increased ability to deliver consistent products and competitive pricing for the Security365 Franchisees and customers for products and services.

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:

Security365's related entities, the Security365 Franchisees and/or Approved Suppliers.

(b) Number of those persons:

(i) At present time:

(A) Franchisees: 0

(B) Security365 related entities: 2 – These 2 entities are also Approved Suppliers

(C) Approved Suppliers: 6, excluding the 2 mentioned above

(ii) Estimated within the next year:

(A) Franchisees: 3

(B) Security365 related entities: At this stage it is not anticipated that there will be any changes to the number of related entities

(C) Approved Suppliers: It is anticipated that there will be minimal changes in the actual number of approved suppliers. However, the number of approved suppliers will also depend on what opportunities are available and would be regarded as benefitting Security365, its Franchisees or customers.

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

(B) Security365 related entities: 2 – These 2 entities are also Approved Suppliers

λ The Kaplan Family Australia Trust T/A The Australian Trellis Door Company Pty Ltd of 5/1 Canal Road, St Peters, NSW 2044

λ Kings Roller Grilles and Shutters Pty Ltd of 6/1 Canal Road St Peters, NSW 2044

(C) Approved Suppliers: 6, excluding the 2 mentioned above

λ Tyco Australia Pty Ltd (ABN 80 008 399 004) trading as ADT Security (ADT) of 38 South Street, Rydalmere, NSW 2116

λ Q Video Systems of 1/7 Millennium Court, Silverwater, NSW 2128

λ Eurotec Window Shutters (Benmel Pty Ltd) of 88-90 Derby Street, Pascoe Vale, VIC 3044

λ Prowler Proof (Gershwin Pty Ltd) of Address is 122 Buchanan Road, Banyo, QLD 4014

λ Film Pacific Pty Ltd – Address is 4/50 Rooks Rd, Nunawading, VIC 3131

λ Art of Stone / EZI Security Systems – Address is 15 Pemberton St, Botany, NSW 2019.

4. Public benefit claims

(a) Arguments in support of notification:

The conduct described in 2(b) above is a direct benefit to consumers and will be of public benefit because:

- (i) Product specifications and quality vary widely between security product manufacturers. It will enable customers to rely on the uniformity and accuracy in technical specifications of the Security365 product catalogue and website published for the group, and ensure that they do not get misled into purchasing a product with qualities different to which they expect;
 - (ii) It will assist Franchisees to satisfy and meet the expectations and demands of customers consistently in relation to the Security365 brand throughout Australia;
 - (iii) It will assist the Franchisees to provide high quality products and consistent service to customers throughout Australia;
 - (iv) It ensures customers will get a uniform and consistent standard of product quality and safety from all Franchisees ;
 - (v) It will minimise the risk that unsafe, defective, non-compliant (Australian Standards) and/or deficient products are sold by the Franchisees ;
 - (vi) It will help maintain the value and reputation across all Security365 Franchisees by ensuring that the products and services provided by all Franchisees are consistent with the standards and image of the Security365 system and brand;
 - (vii) It will ensure that the Franchisees are able to purchase products and services at lower prices and with less transaction costs. This will also allow the Franchisees to foster business efficiencies and reduce their initial and ongoing expenses. Furthermore, this should enable Franchisees to be more competitive and to offer more favourable prices to customers;
 - (i) It will promote consistency between the Franchisees' product offerings, which is necessary to ensure a uniform customer experience nation-wide, ensuring confidence in the brand is maintained. This is particularly relevant where one franchisee obtains a national contract to supply uniform security products and services to a national retail chain and relies on fellow Security365 Franchisees to facilitate those product supplies and installations outside of the original franchisee's territory;
 - (ii) It will assist Security365 to effectively monitor the quality of products and services sold so that the reputation of all Franchisees is preserved for the benefit of their franchises, customers and staff;
 - (iii) It will foster brand integrity by ensuring that all Franchisees are provided with product from reputable suppliers.
- (b) Facts and evidence relied upon in support of these claims:
- (i) Basic business, marketing, and product safety principles;
 - (ii) Basic principles underlying a franchise network, how it is to operate and the benefits of being part of or having franchise systems. (Reference should be made to general

business materials on this topic, Franchise Council of Australia's website, and studies conducted into the franchising industry, including those published studies completed by Griffith University).

- (iii) Further it should be noted that the market for the manufacture and supply of security products in Australia is widely fragmented and includes parties non-compliant with Australian Standards, OH&S Standards and general product safety. This is submitted as further evidence of the need for the proposed conduct so as to achieve the benefits previously detailed in this notice.
- (iv) Customers for home or business security products will commonly want static security measures, such as security doors, in addition to a monitored alarm. Currently such services are generally not offered as a bundle and therefore the customer must acquire each good/service separately from different suppliers and does not have any opportunity to access the benefits of acquiring these goods/services as part of a package via a single point of supply.

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 relevant markets are:

- (i) The national wholesale and retail markets for the supply and installation of security doors and barriers and alarms; and,
- (ii) The national wholesale and retail markets for supply of alarm monitoring services.

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:

Security365 Pty Ltd submits that there will be no detriment to the public from the conduct in question.

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

- (i) The arrangement will not prevent competitors from competing effectively;
- (ii) The arrangement will increase consumer choice, potentially reduce the cost of acquiring the bundle of security products and thereby increase competition in each relevant market;

- (iii) Consumers are not prohibited from comparing price and products, and the above conduct may indeed enable a more competitive price to be offered. Therefore, the anti-competitive effect on the end consumer is negligible;
- (iv) Security365 will not unreasonably refuse a franchisee's request to use a product from another supplier if the product conforms to Security365's specifications. In addition, Franchisees may purchase products from suppliers that are not Approved Suppliers provided that the franchisee receives written approval from the Franchisor to use such a supplier. Consequently the detriment to Franchisees will be minimal.
- (v) Any anti-competitive effect on suppliers who do not have access to the Security365 franchise network should be insignificant, given the large number of security retailers in Australia to which suppliers may sell their products and services. Furthermore suppliers have the ability to approach Security365 to be added onto the approved suppliers list. A franchisee can also approach Security365 for a supplier to be added onto the approved list where certain criteria are met.

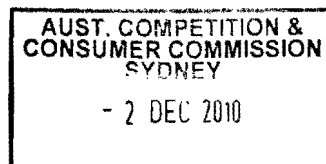
7. Further information

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

Richard Kaplan
 Security365 Pty Ltd
 5/1 Canal Road, St Peters NSW 2044
 T: (02) 9519-0844

Dated 30/11/2010

Signed by/on behalf of the applicant

.....
 (Signature)

RICHARD KAPLAN

 (Full Name)

SECURITY365 Pty Ltd

 (Organisation)

CEO

 (Position in Organisation)

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 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.

Annexure A

1. INTERPRETATION

1.1 Definitions

Approved Supplier means any supplier approved by the Franchisor in the Manuals or otherwise in writing to supply goods and services to the Franchisee;

Authorised Goods and Services means those specified in Schedule 24;

Business means a mobile dealership based business specialising in the quote, assessment, check, measure and installation of physical and electronic security goods and services including the supply of electronic monitoring of alarms and related services from Approved Suppliers to residential and commercial Customers using the Marks and the Intellectual Property;

Customer means any Customer or potential Customer of the Franchised Business;

Equipment means all equipment including the franchise vehicle, machinery, products, materials and stationery used in the Franchised Operation by the Franchisee;

Franchise means the rights granted under a **SECURITY365** Franchise Agreement to operate the Business;

Franchised Operation means the Business to be conducted by the Franchisee pursuant to this Agreement;

Goods and Services means where applicable the Authorised Goods and Services;

Intellectual Property means:-

- (a) all copyright, trademark rights, patent rights or any other intellectual property subsisting in the Marks, System, Image, Manuals and/or created during the development of the System, and Manuals including software, source and object codes, scripts, records, documents, specifications, plans, program listings, calculations or drawings;
- (b) any advertising and promotional materials provided to the Franchisee; and
- (c) any Confidential Information and/or know how necessary for the administration, operation and marketing of the Franchised Operation;

Image means the distinctive image, reputation and presentation of Businesses within the market;

Manual means any manual and/or audio visual presentation and/or other relevant material which may be issued by the Franchisor relating to the Business and the conduct of the Franchised Operation from time to time including any amendments made to such manual, audio visual presentation or material from time to time by the Franchisor;

Marks means the names, logos and/or trademarks set out ... and any other names, logos and/or trademarks used in association with the Business including but not limited to the Approved Suppliers of Authorised Goods and Services;

5. OPERATION OF FRANCHISED OPERATION

The Franchisee must during the Term:

...

- (q) provide only the Goods and Services, and such additional Goods and Services as may be approved by the Franchisor from time to time and which the Franchisee is qualified/licensed to provide;
- (r) acknowledge and agree that the Goods and Services will evolve and change accordingly to the requirements of Customers and the market place generally. Accordingly, the Franchisee acknowledges and agrees that the Franchisor shall be entitled at any time during the Term to modify any aspect of the Goods and Services. Such changes will be discussed with the Franchisee or a representative of all Franchisees and will be documented in the Manual, which the Franchisor shall have full power to amend provided any change is not contrary to any express provision of this Agreement. The changes may alter some of the responsibilities and duties of the Franchisee in connection with the Goods and Services. The Franchisee agrees to strictly comply with such amendments to the System, the Image, the Manual, and the Goods and Services immediately they are made;

6. EQUIPMENT, GOODS AND SERVICES

6.1 Approved Equipment, Goods and Services Only

The Franchisee acknowledges that it is material to the Franchised Operation and the quality and integrity of the System that only approved Equipment, Goods and Services from the Franchisor and/or Approved Suppliers are used by the Franchisee. Accordingly, the Franchisee covenants that it will:-

- (a) use only Equipment which has been approved in writing by the Franchisor; and
- (b) obtain all Equipment only from suppliers approved in writing by the Franchisor from time to time (the 'Approved Suppliers').
- (c) commence with the purchase of an initial level of Equipment ...
- (d) only offer the Authorised Goods and Services for sale in the conduct of the Franchise Operation. If the Franchisee wishes to sell any other Goods and Services or Goods and Services which are not permitted to be sold under this Agreement it may do so only with the prior written consent of the Franchisor.
- (e) obtain all Goods and Services only from suppliers approved in writing by the Franchisor (the Approved Suppliers) as may be amended from time to time.

...

6.2 Acquisition from Alternative Suppliers

If the Franchisee wishes to purchase Goods and Services from a supplier that is not an Approved Supplier, the Franchisee must obtain the Franchisor's prior written consent. The Franchisor will not unreasonably withhold or delay consent if the Franchisee:

- (a) provides the Franchisor with all information regarding the alternative supplier;
- (b) where applicable, provides the Franchisor with a sample;
- (c) provides the Franchisor with the alternative supplier's terms of supply; and,
- (d) satisfies the Franchisor that the supplier can maintain continuity of supply and the Equipment, Goods and/or Services meets the Franchisor's quality control criteria.

6.3 Review

The Franchisor may from time to time review the quality of the Equipment, Goods and Services produced or supplied by Approved Suppliers against its current quality control criteria. On the basis of its review the Franchisor may remove any Approved Suppliers from the list of Approved Suppliers if they fail to maintain continuity of supply and the Equipment fails to meet the Franchisor's quality control criteria. In such event the Franchisor will promptly advise the Franchisee of such action.

6.4 Inability to supply Equipment, Goods and Services

- (a) If from time to time the Approved Suppliers are unable to supply the Equipment, Goods and Services, the Franchisee may, subject to clause 6.2, engage an alternative supplier with the Franchisor's written approval.
- (b) The Franchisor shall in no circumstances be held liable to the Franchisee for any delay or failure to supply all or any Goods and Services to the Franchisee including without limitation where an Approved Supplier delays or fails to supply any Equipment, Goods and Services to the Franchisee.
- (c) In the event the Franchisor's negotiated supplier agreement ends or is terminated for any reason, the Franchisor shall endeavour to source and engage an alternative or replacement Approved Supplier however, the Franchisor shall not be liable nor make any guarantees as to the success of the engagement of an alternative or replacement Approved Supplier including as to how long it will take.

SCHEDULE 24 – AUTHORISED GOODS AND SERVICES

- (a) The Franchisee must in the conduct of the Franchise only use those Goods and Services specified or approved by the Franchisor, and sell the Goods and Services through the Franchise at the Franchisor's recommended sale price as determined by the Franchisor from time to time and only use such Goods and Services which are approved from time to time by the Franchisor.
- (b) The Franchisee must not use any non approved Goods and Services without the prior written consent of the Franchisor, which will not be unreasonably withheld.
- (c) The Franchisor shall notify the Franchisee of any addition or amendment to (a) during the Term.