PO BOX 423 The Gap QLD 4061

Ms Susan Philp, Director Adjudication Branch, Australian Competition & Consumer Commission

Dear Ms Philp,

I refer to the Football QLD 3rd line forcing scheme and the various letters and submissions related to it. The objections I have raised formally with the Commission are yet to be finalised. Having recently become aware of FQ's letter of 14th October 2010, I wish to set out my ongoing concerns with FQ's restrictive scheme and their handling of this matter.

I have no objection to this letter being published by the ACCC.

Football QLD letter of 14 October 2010

The Football QLD (FQ) letter dated 14 October 2010 confirms that even after all that has transpired over nearly three years, they either fail to understand the requirements of the law in respect of anti-competitive behaviour and third line forcing, or simply believe the law doesn't apply to them.

Their letter advises that they contacted member association clubs and licensees and received only five responses. They then conclude that the absence of responses is proof of the support for their anti-competitive practices.

Their letter fails to address the key issues surrounding this matter, and is irrelevant to the criteria upon which this matter must be decided. Put simply, if every club agreed that this restriction of trade should occur, it does not make it legal.

I wish to make a brief comment about their letter. Firstly, to assert that the absence of responses is proof of support is absurd. I can think of many reasons for the poor response to the survey that have nothing to do with endorsement of the scheme, including a view by some in the football community that dissent and disagreement with administrators can be counterproductive.

Similarly, the fact that two out of five responses, those from clubs, opposed their restriction on trade does not lend itself to a conclusion that the scheme has support. Had just two more responses objected, a majority would have opposed the scheme. In that event, would FQ have concluded the scheme was unpopular, or perhaps concluded the survey was inadequate?

Whilst popularity of the scheme amongst players and officials is not directly relevant to third line forcing, I think that FQ's view about it should not go unchallenged. In an earlier letter I referred to views expressed on a football community website that is extensively used by the football community for all manner of issues. FQ's restriction on player clothes was a topic at that time. My March 2010 letter made comment on it.

'Football Community Views

The FQ policy has been the subject of debate amongst the wider football community. Some of this occurred in an online football forum in 2009¹. (a copy is attached to this letter as it was to the March 2010 letter). Typically contributors to this forum are players, parents, coaches or club officials. The views expressed in this exchange reflect some of the matters referred to in this letter.

Virtually every contributor expressed concern about the FQ policy. They also confirmed the inferior nature of licensed keeper clothing and frustration at being unable to wear the better quality, safer specialist keeper clothing. As the final comment noted;

'True G2, the LWR stuff is very limited and the material is not like the stuff you buy at Rebel etc. but they do make the teamwear range so you can pick the colours you want but the designs are all pretty standard. The keeper gear is nowhere near as good as the adidas gear you can get elsewhere. soccer.com has awesome gear but unfortunately you cant wear it because of the logo situation '

I have no idea who the author, Cables 62 is. With over 250 posts at that time though, this person is obviously very interested in and involved in football.

It is about fourteen months since I first raised detailed written objections with the ACCC about FQ's restrictions on trade and three years since I first raised concerns with FQ. Since then, FQ have advanced two core reasons to maintain their scheme. Firstly that it raises funds and secondly, most in the football community are happy with the restrictions. Neither is relevant to ACCC approval for third line enforcing

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¹ http://trsc-online.xphpbb.com/viewtopic.php?t=435&postdays=0&postorder=asc&start=0

Criteria / Issues

Given the passage of time, I think it would be useful if I again set out my key objections.

The ACCC originally provided FQ with legal immunity by letter in July 2008.

The issues relevant to a determination allowing restrictive 3rd line forcing were included in my March 2010 letter. They are:

In considering whether to grant immunity, the ACCC needs to be satisfied that the likely public detriment will not outweigh the likely public benefit from the conduct. Given all of the circumstances in this case it is difficult to see how such a conclusion could be made.

Determining public benefit involves consideration of the following;

- economic development, such as encouragement of research and capital investment
- 2. fostering business efficiency, particularly where it results in improved international competitiveness
- 3. industrial rationalisation, resulting in more efficient allocation of resources and in lower or contained unit production costs
- 4. expansion of employment or prevention of unemployment in efficient industries
- 5. employment growth in particular regions
- 6. industrial harmony
- 7. assistance to efficient small business, such as guidance on costing and pricing or marketing initiatives which promote competitiveness
- 8. improvement in the quality and safety of goods and services and expansion of consumer choice
- 9. supply of better information to consumers and businesses to permit informed choices in their dealings
- 10. promotion of equitable dealings in the market
- 11. promotion of industry cost savings, resulting in contained or lower prices at all levels in the supply chain
- 12. development of import replacements
- 13. growth in export markets, and
- 14. steps to protect the environment.

The ACCC has published a Guide to Exclusive Dealing Notifications.² According to the Guide:

The ACCC has accepted the following public benefits in assessing third line forcing notifications:

- fostering business efficiency,
- improving product quality, and
- promoting competition in relevant markets

Not one of these accepted guidelines is met by the immunity granted to FQ. Indeed, FQ's restriction on trade and competition directly contravenes a number of these considerations.

Comment on the criteria/guidelines

There is no research or capital investment created as a result of the immunity. FQ do not even claim that to be so.

There is no benefit to exports, import replacement, local employment, or improvement in international competitiveness. FQ do not even claim that to be so.

In fact FQ demonstrated a total lack of any knowledge much less understanding of the market when they asserted in their notification that "football apparel does not constitute a market in its own right".

This remarkable admission confirms that FQ have no comprehension of the impact of their measures. They don't even think there is a football apparel market to be taken into consideration. The many sports stores, including football specialist stores, along with suppliers to clubs, schools and the wider community know how important this market is – even if FQ don't know it exists.

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.'

They have no knowledge of employment in this market, or of the impact of their restrictive scheme.

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

Guide to Exclusive Dealing Notifications, viewed on 16 March 2010, http://www.accc.gov.au/content/item.phtml?itemId=776051&nodeId=2a38 0a216d0d6026cf2ef53979712ee0&fn=Guide%20to%20exclusive%20dealing%20notifications.pdf

assertions, that the licensing program ensures better quality and value for clubs.

For goalkeepers, the situation is even worse, as I noted in earlier submissions. Rather than provide improvement in the quality and safety of apparel or an expansion of consumer choice, for goalkeepers it forces consumers to buy inferior, less safe clothing with reduced choice.

FQ undertake no tests of garments to determine if they meet a particular standard. Indeed, FQ does not even have specifications that relate to safety. There are no minimum standards for garment quality.

In an earlier letter I drew the comparison with standards required for playing fields, change rooms, referee facilities and the like. In these matters there are actually standards for safety and the like. Yet FQ does not stipulate which contractors must be engaged to maintain these standards as they do with respect to apparel. They do not stipulate which supplier of turf must be used. Therein lies the difference between enforcing minimum standards as distinct from the restrictive practices of FQ's garment licensing arrangements.

The FQ licensing arrangements have nothing whatsoever to do with quality or safety standards.

The uncompetitive nature of the arrangement undermines any drive for efficiency or cost saving. Licensed providers are in a privileged, protected environment, provided they pay FQ a fee and obey FQ's requirements. If they keep FQ happy, they can sell their product in a closed market and face only restricted competition.

Without this restrictive scheme:

- ➤ An open market would ensure existing suppliers could market their product without having to make payments to FQ for the privilege,
- New suppliers could enter the market if they have competitive products,
- Regional sports suppliers would be able to enter the market,
- Specialist equipment suppliers such as goal keeper equipment suppliers would not be excluded or financially penalised, and
- Clubs would have the freedom to select from a larger more competitive market.

FQ's scheme gives it substantial hold over apparel suppliers. Being removed from the approved supplier list can have serious effects on a company. The exercise of these powers is ultimately only subject to scrutiny in a court, necessarily involving an affected supplier in substantial costs and delays. If clubs were free to seek apparel in the open market place from all suppliers, these risks would not apply. All suppliers would be free to market their goods in the usual manner.

Rather than promoting equitable dealings in the market, FQ's scheme directly imposes restrictions that disadvantage a number of sports clothes suppliers, clubs and players.

Licensed suppliers have no incentive to seek business efficiency. Nor is there any evidence that the immunity has produced it. Their only incentive is to seek recovery of their licensing costs by adding a charge on garments that they know must be bought by a captive market.

The FQ scheme in no way enhances market knowledge. FQ has not claimed it does.

There is not a single criterion that FQ's 3rd line enforcing scheme satisfactorily meets. It simply fails to meet the test to be granted immunity for its restrictive practices.

In the absence of any relevant evidence to support their exemption FQ rely on the two matters contained in their October 2010 letter referred to at the start of this letter.

In the past, they have also referred to the need to protect their "Q" logo. FQ effectively argue 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, and finally that because of this, they should be given immunity from the usual laws that promote competition and open markets.

FQ have a monopoly hold on club football in the state. With the benefit of the immunity granted by the ACCC they have created a false market for the "Q" logo by demanding it is displayed on all garments. They then impose a fee to purchase the "Q" in order to comply with the requirement they just set for their false market and finally limit access to their "Q" apparel to only licenced suppliers who pay FQ a fee to have the right to sell the product.

It is hard to imagine a more contrived, artificial, anti-competitive, restricted and manipulated market.

Funding of FQ

FQ can and should generate its income through other legitimate means that do not require it to seek special exemptions from the normal laws and rules applying to any business.

Two of the three responses FQ received to their survey suggested that the current scheme be replaced by a small increase in player payments, something I raised in May 2010. FQ claimed in April 2010 that: "The registration costs levied by Football Queensland which include National Capitation fees, all Club insurances, and personal accident cover for eighteen and under is \$34. Replacing the proceeds of the marketing program by raising levies would have a significant impact on this amount."

An increase of between \$1 and \$2 per player per year would cover the revenue FQ receive from their third line forcing scheme. FQ would have us

believe such an increase would have a significant impact. This stated concern of FQ needs to be seen in the context of player fees and FQ's own actions.

Over the last four years FQ has restructured the top level of junior football, creating a new league known as 'Rebel', presumably due to sponsorship from the sports store chain of that name. I make no comment here about the wisdom of the rebel competition per se. The relevance of the competition is in relation to fees. Club player registrations fees for these 'rebel' teams is commonly more than \$1,000 per player. Some are in excess of \$1,300 per player.

The rebel competition has been created by FQ against the wishes of many clubs. It was the subject of disputes between FQ and its largest region, Brisbane. Yet FQ pressed ahead and now selects clubs to host teams for this top level junior competition. It has expressed no concerns about these \$1,000+ fees being charged by clubs but expects the ACCC and the football community to believe that it is concerned about an increase of less than \$2 in fees to replace its restrictive marketing scheme.

Other player registration fees are typically between \$350 and \$550. The increase in fees required to generate the same income as FQ's scheme represents an increase of less than 1% in registration fees.

The funding of FQ is an issue for FQ and the football community. It is not of itself a relevant consideration in determining whether FQ's anticompetitive scheme should be sanctioned by the ACCC. Even if it were, it is clear that FQ finances provide no justification for their restriction of trade.

Process

I believe these matters should have been sorted out in 2010, and certainly before FQ established a new panel of suppliers, effectively extending their restrictive scheme for another season with the intention of it running for some years.

As noted by the ACCC in its September 2010 letter, FQ gave an undertaking in April 2010 to lodge a further submission before the end of July 2010 if it intended to continue the scheme. FQ said, 'We expect that should the program continue in its current form, a submission will be lodged with the ACCC before the end of July, to allow a reasonable time for process prior to expiration of the current term.'

FQ did not honor that commitment.

Two months after that deadline the ACCC wrote to FQ seeking that information. The one page letter from FQ dated 14 October is its response. That letter is not a submission. There has been no process for consideration of this matter 'prior to expiration of the current term.' They have simply rolled over their old scheme and without notice.

FQ have not honored their own undertakings to the ACCC. Whatever their intention, FQ have demonstrated their disregard for this process and all those adversely affected by it.

FQ operate as a monopoly and exercise all of the powers of a monopoly in controlling the sport in Queensland. Perhaps they assume they have the same liberties in handling this issue. They do not.

Conclusion

In reviewing FQ's original application and all of their subsequent correspondence, it is difficult to identify any statements that justify the granting of immunity for their restrictive trade scheme. In fact, it is difficult to find any information they have supplied that even addresses the factors relevant to the granting of immunity.

There are substantial and compelling reasons for the ACCC to withdraw the immunity originally provided in 2008.

Moreover, in 2011 FQ has imposed their scheme without providing a fresh application and in direct contravention of their undertakings given to the ACCC in April 2010. It would send an inappropriate signal to the marketplace for the ACCC to accept such a practice. To do so here where the original grant of immunity was based on the most cursory of information and given all of the above concerns, would undermine the ACCC and the proper operation of our competition laws.

Justice delayed is justice denied.

The planning of many clubs and suppliers requires decisions about 2012 season apparel to be made in the few months ahead. FQ have already been able to extend their scheme by two years through the delays that have occurred. Their restrictive scheme should not be extended again by default.

I urge the ACCC to quickly remove the immunity provided to FQ in July 2008 and to conclude this matter as soon as possible.

I am happy to answer any questions you may have in relation to this.

Yours Sincerely

Hon Arch Bevis 19th May 2011

TRSCONLINE FORUM 2009

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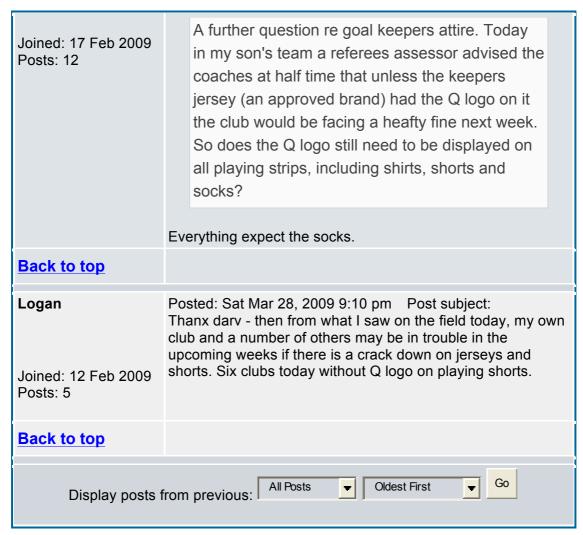
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Author	Message	
Joined: 12 Feb 2009 Posts: 10	Posted: Mon Mar 23, 2009 10:59 pm Post subject: Having to wear particular brands of clothing for goalkeepers Can someone please enlighten me as to why children (12years and up) who play goalkeeper have to wear particular brands of clothing (excluding EPL and the likes)??????	
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Joined: 23 Mar 2009 Posts: 3	Posted: Tue Mar 24, 2009 1:30 am Post subject: My son is a goalkeeper (for both club and rebel) and he does not have to wear a particular brand. (well not that I know of anyway). I have never heard of such a thing. Is it a club ruling?	
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NATO Joined: 14 Feb 2009 Posts: 5 Location: brisbane	Posted: Tue Mar 24, 2009 6:26 am Post subject: FB, QL etc are sponsored by a certain number of brands or rather they pay for the rights to make their brands available to the players. Every few years they bid to have their products one of the 'autherized' brands. This has been the case for as long as I can remember. at least 20 years. Goalkeepers have a tendancy to bring their own shirts which has caused a few problems over the years but they too are part of the overall 'dress code'. I suppose its a case of why should you wear brand ZZ if it does not contribute to the code as brand XX does by financially helping local football. Thats the argument anyway. Hope this helps.	

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maca	Posted: Tue Mar 24, 2009 9:59 am Post subject: As far as I know the only permitted brands for keepers are Adidas, Nike, uhlsport and attack Seems silly that football brisbane/qld wouldn't allow sells??
Joined: 15 Feb 2009 Posts: 8	
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auburn	Posted: Tue Mar 24, 2009 11:04 am Post subject: Re: Having to wear particular brands of clothing for goalkee teymad wrote:
Joined: 24 Mar 2009 Posts: 8	Can someone please enlighten me as to why children (12years and up) who play goalkeeper have to wear particular brands of clothing (excluding EPL and the likes)??????
	seams like a pretty bad idea to me.
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Sneaky	Posted: Tue Mar 24, 2009 11:15 am Post subject: Mitre, Covo, Attack, Hummel, adidas, Nike, SSI, Buffalo and Gorilla, Kombat, uhlsport
Joined: 13 Feb 2009 Posts: 93 Location: Brisbane or Akureyri	"I am a firm believer that if you score one goal the other team have to score two to win." - Howard Wilkinson
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auburn	Posted: Tue Mar 24, 2009 11:19 am Post subject: why is sells not included?
Joined: 24 Mar 2009 Posts: 8	
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gobblededock	Posted: Wed Mar 25, 2009 1:12 pm Post subject: Nato is correct, it's all about big bucks and sponsorship. All age groups are supposed to comply though, and not just competition teams. The approved brands include uhlsport,

Joined: 25 Mar 2009 hummel, nike, Kombat, gorrilla/buffallo, mitre, covo, attack Posts: 1 and ssi from memory. Football Qld can provide a list to you of Location: Australia licenced brands you can use. Rerferees are supposed to tell you to change into an approved shirt if you are wearing one that is not correct. You can actually get fined as well for not complying and the fines are not small, but realistically this doesn't happen very often. You can also be suspended for repeated offences. It's all very confusing isn't it!? I will add that Kombat do really nice goalie sets at a very competative price with your own colours on their many varied designs. Talk to Travis at Kombat or try their website out at http://www.kombat.com.au/ Those who say it cannot be done shouldn't interrupt the people doing it. Back to top **Ryan Stuart** Posted: Wed Mar 25, 2009 1:50 pm Post subject: Look at the "Marketing Program" menu item on this page. Joined: 12 Feb 2009 Posts: 41 Back to top G2Football Posted: Thu Mar 26, 2009 7:11 am Post subject: Not all keeper jerseys are the same. eg Some have better protection than others. For field players it makes no difference as long as the shirt fits. Joined: 15 Feb 2009 FQ try to restrict brands as part of a sponsorship deal. They Posts: 8 have a exemption from the ACCC for anti competitive Location: Brisbane behaviour ie it would be illegal for FQ to do this without that exemption. Problem for FQ is the exemption was provided based on limited and incomplete info. The smart thing is for common sense to prevail and not worry about what brand the keeper wears. If FQ push it they'll run in to a lawyer (and we all know there are plenty of them around) who'll challenge their ACCC exemption and they'll lose the lot, not just the keeper argument. It is about money for FQ. For keepers, its about safety, performance and their legal right of choice. For the law its about anti-competitive behaviour. Ask football in Victoria, they lost a case on this and had to drastically modify their arrangements. By the way, most states do not restrict team brands the way FQ does. Maybe FQ should think more about players than sponsorship deals. Back to top

Joined: 14 Feb 2009 Posts: 5 Location: brisbane	Posted: Fri Mar 27, 2009 6:44 am Post subject: G2football I dont think a lawyer will do any good, as I said this has been going on for at least 20 years. In another sponsorship angle Lions were once sponsored by Fosters. When they rejoined the brisbane XXXX league there were problems. They were told that Fosters could not be shown on their shirts or anywhere else because XXXX were the major sponsors. There were calls of restriction of trading then too. The end result after a battleLions dropped their sponsor. Rightly or wrongly remember that FBI etc are only representitive of the clubs themselves and that any money they get is actually the clubs money. On a personal note I would like to see a free for all because I have never seen that money flow on but I suppose there are a lot of expenses running a comp and without sponsors it would only get more expensive for clubs to join and play in such a comp.
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G2Football Joined: 15 Feb 2009 Posts: 8 Location: Brisbane	Posted: Fri Mar 27, 2009 7:15 am Post subject: NATO - In legal cases the only certain winners are the lawyers. Restrictions like the xxxx league are interesting but the direct comparison is Football Victoria. They were doing exactly what FQ are doing - and were in breach of anti competitive law. How do most states get by without this sort of sponsorship? If FQ can't do their job without this sort of sponsorship why do they have to include keeper shirts? FQ don't restrict the brand of boots players wear, but using their logic, they should be able to if they were paid enough money. If you believe they have the power to restrict the brand of shirt you wear, why not boots. Either they have the power or they don't. In fact they have the power on shirts only because they have been given special permission by the ACCC to restrict trade. Like I said, a bit of common sense please. Just let keepers wear the shirt they want - like most states.
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Logan Joined: 12 Feb 2009 Posts: 5	Posted: Sat Mar 28, 2009 2:08 pm Post subject: A further question re goal keepers attire. Today in my son's team a referees assessor advised the coaches at half time that unless the keepers jersey (an approved brand) had the Q logo on it the club would be facing a heafty fine next week. So does the Q logo still need to be displayed on all playing strips, including shirts, shorts and socks?
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darv	Posted: Sat Mar 28, 2009 3:36 pm Post subject: Logan wrote:



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Having to wear particular brands of clothing for goalkeepers

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Author	Message
darv Joined: 17 Feb 2009 Posts: 70	□ Posted: Sat Mar 28, 2009 11:11 pm Post subject: Logan wrote: Thanx darv - then from what I saw on the field today, my own club and a number of others may be in trouble in the upcoming weeks if there is a crack down on jerseys and shorts. Six clubs today without Q logo on playing shorts.
	I'm as unhappy as you. I have a Sells kit that's 100 times better/ safer than the crap I have that's licensed but it must stay on the training pitch I agree with others that the rules should be that same as for boots.
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G2Football Joined: 15 Feb 2009 Posts: 35 Location: Brisbane	□ Posted: Sun Mar 29, 2009 8:47 am Post subject: ☐ quote I agree with Darv. The Sells keeper kit is lightyears ahead of the licensed product - in quality and extent of padding and protection. I'll be polite and not say what I think of the licensed keeper kit. As a specialist keeper manufacturer, it would not be profitable for Sells to pay a license fee when they are only looking at one player per team likely to buy their product. Sells don't make team kits for field players. I doubt the licensed suppliers rely on the keeper jersey for their profit. If they did, most keepers would happily buy one to put in their bag then wear the jersey they want. If it makes FQ happy, we could buy their substandard jersey just don't try and make us wear it - how about that. Question???? What happens if the keeper does wear a non approved jersey? What happens to the player, their team the club??? Logan's post raises some other questions though. Sounds like it's not just keepers whose kit is not 'FQ approved'. Another question??? If a club pays for kit approved in 2009, what guarantee is there that particular brand will be approved next year or the year after??? Can you wear kit that used to be licensed but is not licensed this year??? Last edited by G2Football on Fri Apr 03, 2009 12:24 pm; edited 1 time in total
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RegentsRobbo



Deposted: Mon Mar 30, 2009 3:51 am Post subject: Quote The licencing program is just another money spinning program for Football QLD which forces sporting clothing manufacturers who want to sell football gear to Queenslanders to pay a licence fee and royalty on all sales. They say it's to maintain quality and all that crap but it's not. You would easily find at least another dozen world wide well reknown manufacturers around the world who's quality is much better than some of the crap stuff the Football QLD licencees make. It's all bullshit really.

Joined: 13 Feb 2009 Posts: 121

Location: Regents

Park

For example you would think that Adidas would be involved as a internationally approved brand but they are not Football QLD approved. I've never heard of the ACCC exemption before and in my opinion this marketing program of Football QLD is highly uncompetitive.

The only thing though is the ACCC doesn't investigate or do anything about anti-competitive practices such as this until they have a significant number of complaints or if it is against the public interest. It has been going on for years in QLD because of the apathy of people to complain. So the only way to do something about this anti-competitive practice is, as a group send in massive complaints to the ACCC.

Sorry but just as AKA says "My two bobs worth" lol

Care Factor 0%

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cables62



D Posted: Mon Mar 30, 2009 8:20 am Post subject: Q quote Robbo. You will find that both adidas and Nike have paid their Football Queensland Licence to supply playing kits. Its very strange that more clubs are not using adidas as they probably are really the number one football brand in the world. Perhaps its a price thing.

Joined: 02 Mar 2009

Posts: 251



Phantom

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Deposited: Mon Mar 30, 2009 9:01 am Post subject: Qquote Question?



What stops you using "Sells" or any other brand and covering logos with FQ aproved ones??

"Phantom has eyes and ears everywhere" (ojs)



"I am known by many names" (ojs)

Joined: 13 Feb 2009

Posts: 62

Location: Brisbane

Southside

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RegentsRobbo

□ Posted: Mon Mar 30, 2009 12:02 pm Post subject:





cables62 wrote:

Robbo. You will find that both adidas and Nike have paid their Football Queensland Licence to supply playing kits. Its very strange that more clubs are not using adidas as they probably are really the number one football brand in the world. Perhaps its a price thing.

Joined: 13 Feb 2009

Posts: 121

Location: Regents

Park

I wasn't aware of that Cables but that is great they are licenced now. Thanks for pointing that out. I remember one local Brisbane club being fined for using Adidas match balls. Funny thing they only got caught because a photographer sent in some shots of the game to the QSF for coverage on their website.

Care Factor 0%

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CFC 85

□ Posted: Mon Mar 30, 2009 12:52 pm Post subject:





I myself am a keeper and have a full adidas kit, as well as a nike jersy just in case my adidas kit clashes with the opposition. I have never had any drams thus far, neither jersey or pants have a Q logo on them. As for the jersey the club supplied, lets just say that sits at the bottom of our kit

Joined: 20 Feb 2009

Posts: 9

Location: Brisbane

Statistics are just like mini-skirts, they give you good ideas but hide the most important thing.



wear it because of the logo situation.

Joined: 02 Mar 2009
Posts: 251

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wear it because of the logo situation.