

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:

N95238 The Hairhouse Warehouse Pty Ltd (ACN 079 509 738)

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

Hairhouse Warehouse is a leading retailer of hair and beauty product and services in Australia. It is a franchised business with over 120 franchisee business outlets throughout Australia.

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

Dean McNamara

General Counsel

The Hairhouse Warehouse Pty Ltd

Level 1

605 Doncaster Road

DONCASTER VIC 3108

2. Notified arrangement

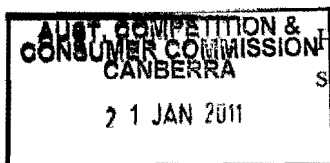
(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The Hairhouse Warehouse Pty Ltd (“HHWH”) intends to enter into exclusive supply arrangements in relation to (a) salon permanent hair extensions and (b) hair brushes for its franchise business in Australia.

(b) Description of the conduct or proposed conduct:

Salon permanent hair extensions

HHWH has invited its franchisees to put forward a list of their preferred suppliers of salon permanent hair extensions. HHWH will then shortlist a



number of these suppliers to invite them to tender for HHWH business in relation to the supply of salon permanent hair extensions.

The tender process will involve gathering information on how each supplier intends to assist HHWH in relation to:

- (a) training;
- (b) best quality of product;
- (c) marketing;
- (d) best price;
- (e) best “in store” service; and
- (f) best research and development for products.

HHWH will then form a view on which of the tendering suppliers can offer HHWH, its franchisees and customers the best quality product, the best price point and the best ongoing service for HHWH, its franchisees and customers.

A copy of the tender document is attached.

Under the terms of the Franchise Agreements, HHWH will require its franchisees to acquire its salon permanent hair extension products from the exclusive/preferred supplier (to be nominated by HHWH on the basis of the rigorous tender process) on the terms specified by HHWH.

This conduct falls within the definition of “exclusive dealing” under section 47 of the *Trade Practices Act 1974* (Cth) as HHWH:

- (a) supplies its services as franchisor on the condition that franchisees acquire; and
- (b) may refuse to supply its services as franchisor if franchisees do not acquire (or do not agree to acquire)

their salon permanent hair extensions from the exclusive/preferred supplier to be nominated by HHWH.

Brushes

HHWH has been working with a supplier to develop a range of brushes that will be exclusive to HHWH. The brushes to be supplied by the supplier are of the highest quality and at the lowest price point that HHWH has been able to negotiate with any brush supplier.

HHWH wants to be known for stocking the best professional brushes at which are competitively priced so that all HHWH franchisees can take advantage (equally) of being part of a renowned franchise group. HHWH customer will also benefit from being able to purchase professional quality brushes at the most competitive price.

HHWH will require its franchisees to acquire permanent hair salon extensions from its preferred/exclusive supplier, namely, Tress De Moda Pty Ltd.

Under the terms of the Franchise Agreements, HHWH will require its franchisees to acquire brushes from Tress De Moda Pty Ltd (the exclusive/preferred supplier nominated by HHWH) on the terms specified by HHWH.

This conduct falls within the definition of “exclusive dealing” under section 47 of the *Trade Practices Act 1974* (Cth) as HHWH:

- (c) supplies its services as franchisor on the condition that franchisees acquire; and
- (d) may refuse to supply its services as franchisor if franchisees do not acquire (or do not agree to acquire)

their brushes from the exclusive/preferred supplier nominated by HHWH, namely, Tress De Moda Pty Ltd.

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)

These arrangements may affect HHWH franchisees, customers and current suppliers of permanent hair extensions and brushes.

As outlined above, HHWH franchisees and interested suppliers have been given an opportunity to enter and/or discuss the competitive tendering process.

While the exclusive/preferred supplier arrangements may restrict the availability of some product ranges, these arrangements will result in the best quality and priced products negotiated by HHWH. Further, these arrangements do not prevent customers from being able to source their preferred product ranges from other retailers/suppliers. It also means that the preferred supplier will have sufficient business to justify investing in HHWH to promote the products, therefore offering a better price and/or added value to the consumer on an adhoc basis.

(b) Number of those persons:

(i) At present time:

There are currently 129 franchisee stores throughout Australia.

Approximately 100,000 customers purchase hair brushes from HHWH on annually (based on scan sales over the July-Sept 2010 quarter and multiplied by 4).

This represents approximately 1.05% of the total business. Approximately 7,000 customers (annually) had an in-salon hair extension service which equates to approximately 0.5% of the total business.

(ii) Estimated within the next year:

Approximately 135-140 franchisee stores throughout Australia. 125,000 brushes and 10,000 hair extensions.

(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)

HHWH has undertaken an extensive research and tendering process to identify the supplier of brushes and permanent hair extensions who can provide the best price, service and quality of products to consumers.

Consumers will be able to access high quality products at the most competitive price point. Consumers will also benefit from the "in store" training and research and development into improving products, provided by the supplier. The new brushes range will display better in HHWH stores and make buying choices for consumers which will, in turn, increase sales and profits for the franchisee.

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

The professional hair market is a very fragmented industry with multiple players in both stores and suppliers. Each retail group aligns themselves with one or more suppliers of each product type. Where there are too many suppliers delivering into one product category for one retail group the economies of scale for that supplier become very poor and preclude them from further investing to drive sales, innovate and train the store teams in product knowledge and application. At present, HHWH has 471 brushes being supplied by 8 different suppliers. For the HHWH business, this market is worth approximately \$500,000 (at cost) on an annual basis this

means that each supplier has only a small section of the market and it is not sufficient business for them to consider lowering their costs or promoting the brushes. It also means that a franchisee is absorbing the cost of multiple deliveries and orders. By appointing the supplier who provides the best product (at a competitive price point with exceptional service), we can support them and allow them to have a large enough business to warrant investment in infrastructure, training and innovation. This will provide a superior product – ongoing to our customers and better sustainable margins for HHWH franchisees. The supplier of choice has developed a competitive range and we have an ongoing commitment to innovate and keep costs at a minimum. By ensuring we have consistency across stores we can also start to advertise to our customers that we have these brushes and that we help them find the right one for them.

The investment scenario is the same for permanent hair extension. No one supplier has enough of the business to enable them to invest in training, infrastructure, innovation or better pricing. To deliver the best service in this area the HHWH teams need to be trained as mis-use of hair extensions can result in baldness and hair damage. We need to align with a supplier who can ensure we provide this service safely, competently, competitively and for the franchisee profitably. All of these must also be sustainable and ongoing. In order for this to occur the nominated suppliers must have some certainty of ongoing business.

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)

Brushes:

These can be purchased by the consumer at any outlet offering beauty products such as supermarket, chemist, hair salon (not all offer brushes for sale), department stores and professional hair retailers such as Price Attack, HHWH and Petra. There is no dominant brand in the market place and there is little price discounting via special offers.

Suppliers have not offered us a better price for our franchisees and have not been proactive in offering consumer discounts. We have been negotiating

with a preferred supplier who is committed to the HHWH business and its customers in return for certainty of ongoing business.

Hair extensions is a service offered in hair salons by qualified hair dressers. It is a specialty service and can cause damage if not performed correctly. It is not a branded product as the customer buys a service that involves the placement of unpackaged and unbranded product. It is the quality of the product and the expertise of the hair dresser that combines to satisfy the customer. Currently there is little or no price competition for this product/ service and training from suppliers is limited. This may mean that consumer access to this service is limited and they are not necessarily getting optimal service irrespective of which salon they choose.

The aim of having one supplier for this product is they will be able to invest in product training for every store and will be able to market the service to consumers. We will also be able to leverage our buying power to ensure we get the best possible price for HHWH franchisees and consumers. This will increase competition overall in the market place and open up the market through “above the line” marketing.

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)

As outlined above, HHWH has undertaken a great deal of work to ensure that its supplier of brushes and permanent hair extensions provides the best quality product at the best price point for HHWH franchisees and customers.

We do not believe there would be any detrimental effects from this change. We would be able to offer a price competitive range, with discounted specials from time to time, innovation, best quality with better and more consistent margins for all stores. Any branded brushes HHWH do not stock can still be purchased from another retailer.

With regards to hair extensions, there would be no detrimental effects to the public. We will have better training, more open pricing (we will be able to market to the consumer) and easier access to the service.

- (b) Facts and evidence relevant to these detriments:
Not applicable.

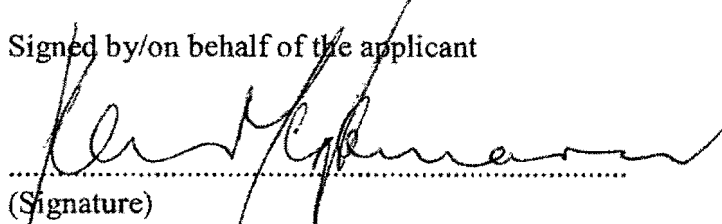
7. **Further information**

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

Dean McNamara
General Counsel
The Hairhouse Warehouse Pty Ltd
Level 1
605 Doncaster Road
DONCASTER VIC 3108

Dated 21 January 2011

Signed by/on behalf of the applicant



(Signature)

DEAN McNAMARA

(Full Name)

THE HAIRHOUSE WAREHOUSE PTY LTD

(Organisation)

GENERAL COUNSEL

(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 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.



Beautiful hair every day!

Dear Trading Partner,

We wish to invite you to submit for In Salon - Private Label Permanent Hair Extensions

Please ensure completion of all the following sections and return to **Silvana Murray** by **31st January 2011** for your submission to be considered:

OFFERS CANNOT BE ACCEPTED WITHOUT ALL OF THE BELOW:

- Hairhouse Warehouse Sample Submission Specification document should be completed in full and sent by email to silvanam@hairhouewarehouse.com.au within the closing date.

Please ensure the following:

- For each sample submission, the Hairhouse Warehouse Product Specification document for each product must be provided.
 - The submission samples need to match with the Hairhouse Warehouse Specification Brief provided. It is important that you fully understand and meet all criteria specified by Hairhouse Warehouse.
 - **Submissions** are not able to be considered, unless they meet or exceed the quality outlined in the attached Hairhouse Warehouse Specification Brief.
- Once all the submissions have been received and reviewed you will be contacted to discuss your submission.
 - If you are successful for the next stage of the sample / specification approval process, you will be required to :
 - Submit **1** x samples only of EACH product (of equal to or better quality as outlined in the Hairhouse Warehouse Specification Briefs)
 - Sample submission labels must include Product Name / Brand / Type / Pack Size / Factory name / Supplier Name / Sample No. / Date
 - It's preferable to have samples which are the representative of actual production product, not handmade samples.
 - Samples must be labelled correctly



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- Address your Samples Submissions & forward to :
Silvana Murray
Category Buyer
Level 1, 605 Doncaster Rd
Doncaster, Vic 3108
- Please take note of the following:
If you do not wish to submit please notify Silvana Murray via email.



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Hairhouse Warehouse Private Label

Expressions of Interest Supplier Pack

Category:	IN SALON PERMANENT HAIR EXTENSIONS
Issue Date:	20th December 2011
Closing Date for Specification Submission by E-mail:	31ST January 2011
Closing Date for Price & Samples Submission:	14th February 2011
Term of Contract:	24 Months
Review Completion Date:	To be advised
Contract Commencement Date:	To be advised

Supplier Information:

(Please complete & return)

Company Name:		ABN:	
Contact Person:		Mobile:	
Phone:		Fax:	
Email:			
Postal Address:			



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Product Specification Details:

Product: In Salon Permanent Hair Extensions	
1. HAIR TYPE	100% HUMAN HAIR
2. COUNTRY OF ORIGIN	TO BE SPECIFIED WITH SUBMISSION
3. APPLICATION TYPE	TO BE SPECIFIED WITH SUBMISSION
4. LENGTHS REQUIRED	18", 20", 22"
5. GRAMS PER STRAND	TO BE SPECIFIED WITH SUBMISSION
6. COLOUR RANGE	TO BE SPECIFIED WITH SUBMISSION
7. COLOUR SWATCHES	TO BE PROVIDED WITH THE SUBMISSION



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Additional Items:

Product: In Salon Permanent Hair Extensions	
1. STAFF TRAINING	TO BE SPECIFIED WITH SUBMISSION
2. ONGOING INSTORE SUPPORT	TO BE SPECIFIED WITH SUBMISSION
3. PRODUCT DELIVERY	TO BE SPECIFIED WITH SUBMISSION
4. MARKETING	OVER & ABOVE SUPPORT REQUIRED AND TO BE SPECIFIED WITH SUBMISSION



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Supplier Submission Checklist

(Please complete & return)

Please note: Before submitting your Documents for this product review, please read through the below checklist, tick & sign at the bottom to confirm your understanding of the Tender Documents, you have completed.

- Product Specification Sheet

You have completed **ALL** details on this form. (If you are unsure of any details please contact Silvana Murray.

NOTE: Any Product Specification Forms, which are submitted incomplete or incorrect, cannot be accepted.

- Product Samples

You have sent 1 Sample of each product you wish to submit in this review, you have clearly labelled each sample, with Vendor name, and have addressed to the Category Buyer.

SIGNED by the Supplier

Name.....

Position.....

Date.....

