

11 December 2012

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By Express Post

By email: adjudication@accc.gov.au

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission

GPO Box 3131
Canberra ACT 2601



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mathew.webster@nortonrose.com

Our Ref: 2683737

Dear Sir / Madam

Luxottica - Notification

Pursuant to section 93(1) of the *Competition and Consumer Act 2010 (Cth)* we **enclose** a Notification of Exclusive Dealing on behalf of Luxottica Franchising Australia in respect of its proposed approved supplier arrangements with franchisees together with a cheque for \$100 for the filing fee.

We look forward to hearing from you.

Yours faithfully

A handwritten signature in black ink, appearing to be "Mathew Webster".

Mathew Webster
Senior Associate
Norton Rose Australia
Direct line: 9330 8257
Email: mathew.webster@nortonrose.com

Encl

APAC-#16578122-v1

Norton Rose Australia is a law firm as defined in the Legal Profession Acts of the Australian states and territory in which it practises. Norton Rose Australia together with Norton Rose LLP and their affiliates constitute Norton Rose Group, an international legal practice with offices worldwide, details of which, with certain regulatory information, are at www.nortonrose.com

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, 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:**
(Refer to direction 2)

N96470 Luxottica Franchising Australia Pty Limited ABN 99 130 506 562 (**Franchisor** or **Luxottica**)

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

The Franchisor operates a full format franchise business and grants to franchisees the right to operate retail and optometry franchises under various brands, including OPSM, Laubman & Pank and Vision Plus (**Brands**).

The Franchisor offers franchises to various prospective franchisees, including independent optometrists and optometrists employed by the Luxottica group.

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

C/- Stephen Giles
Norton Rose Australia
Level 18, Grosvenor Place
225 George Street
Sydney NSW 2000

2. Notified arrangement

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

This Notice relates to the following goods and services:

- (i) services, including business management systems, online communication systems, point of sale information and retrieval systems, equipment, and fit out services necessary to establish and conduct a franchised business; and
- (ii) products to be offered for sale by the franchised stores, including frames, lenses and contact lenses.

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

This Notice relates to the requirement that franchisees purchase certain products and services from suppliers nominated and approved by the Franchisor where those suppliers are not a related body corporate of the Franchisor (**Conduct**).

The Conduct has been previously notified (Notification N93544) by Luxottica Retail Franchising Australia Pty Limited. However, as a consequence of an internal restructure the franchisor entity has or will be changed from Luxottica Retail Franchising Australia Pty Limited to the Franchisor (as defined in **paragraph 1(a)** above).

A copy of the relevant provisions of the current form of franchise agreement is set out at **Annexure B**.

(Refer to direction 4)

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)

Franchisees that are granted the right to conduct a Luxottica franchised business on the terms and conditions set out in the Luxottica franchise agreement.

(b) Number of those persons:

(i) At present time:

As at the date of this Notice there are:

12 full format retail optometry franchisees (it is anticipated that there will be 14 shortly after this Notice is filed)

(ii) Estimated within the next year:
(Refer to direction 6)

Estimates:

5 – 15 full format franchises.

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

Refer to **Annexure A**.

4. Public benefit claims

(a) Arguments in support of notification and
(b) Facts and evidence relied upon in support of these claims:
(Refer to direction 7)

The Luxottica group manufactures and distributes optical appliances and in Australia sells optical appliances under the Brands at the retail level.

Competition in the retail optical market has been very strong for a considerable period of time.

It is submitted that the Conduct will not substantially lessen competition in the relevant markets or detrimentally affect consumers in part due to the following:

- (i) *Low barriers to entry* - an imported cost-competitive product is available with the internet providing improved access by retailers to international wholesale markets. The speed and scale of entry of Specsavers highlights the low barriers to entry and competitiveness of the market.

- (ii) *The market is highly competitive and has a large number of participants - there are a large number of competitors in the optical market, including Specsavers, Optical Superstores "Vision Centres", Blink and many independent operators.*

The Conduct will and the intended purpose of the Conduct is to:

- (iii) help to maintain the key elements of the Brands, the franchise image and system which is important for helping to ensure the franchise model is able to provide, in a sustainable way:
- career development opportunities to commercially-minded optometrists employed by the Luxottica group; and
 - independent optometrists with access to strong retail brands and ongoing marketing investment;
- (iv) help to ensure the expectations and requirements of consumers are satisfied and a consistent range of products and services is provided to consumers relating to the Brands and that consumers get a uniform experience;
- (v) ensure appropriate standards of professionalism and quality in providing eye care services by use of appropriate training are provided irrespective of whether the outlet is a company owned or franchised outlet;
- (vi) ensure stores operating under the Brands have a consistent level of quality and a consistent layout, style and look which is essential to give consumers a uniform consumer experience and to maintain brand trust, standards, confidence and awareness;
- (vii) help to reduce franchisees' administration time and costs;
- (viii) give franchisees more time to focus on the core business of providing the authorised services (as defined in the Franchise Agreement) so that that they can satisfy the expectations and demands of consumers and provide a high quality and consistent service to consumers;
- (ix) help ensure that the financial reports generated by franchisees are in a consistent format;
- (x) assist franchisees to operate more efficiently;
- (xi) help minimise the risk that defective or deficient products are sold or used by a franchisees;
- (xii) maintain the value and reputation of the Luxottica stores and Brands by ensuring that the products at Luxottica stores are consistent with the standards and image of the franchise system;
- (xiii) ensure Luxottica can effectively monitor the quality of products used or sold by franchisees so that the reputation of Luxottica stores is preserved; and
- (xiv) help reduce average costs and improve the quality and consistency of products or services sold or used by franchisees so that they may receive the optimum benefit from the Luxottica brand and, therefore, be more competitive in their respective markets.

Third party suppliers are or will be selected on the basis of a range of factors, including quality and pricing. In some cases the Franchisor or a member of the Luxottica Group receives a rebate in connection with the supply of goods or services to franchisees and company owned outlets.

The above claims are supported by basic market principles.

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 relevant markets are set out below:

(i) Retail Optical Market

The retail optical market is highly competitive due to the large number of participants and has low barriers to entry.

There are a significant number of independent operators and branded retail network networks as well as domestic and international competitors and suppliers. The independents in the optical retail market are united by a strong professional association, the Optometrist Association of Australia, and provide vigorous competition at a local level.

Products can be acquired by retailers from large international suppliers and wholesale distributors in Australia and overseas and more recently, directly from manufacturers in emerging markets in Asia.

Medicare requirements include a requirement that all optometrists must give patients a written copy of prescriptions on request, allowing patients to shop around for optical appliances. Contact lenses, for health care reasons, must be fitted by an optometrist but once fitted can be supplied by third parties and are now commonly available over the internet.

(ii) Wholesale Optical Market

The wholesale optical market is international and save for meeting Australian product safety standards (for sunglasses) the barriers to entry are very low. It is a highly competitive market and it is submitted that the Conduct will not lessen competition in this market.

The Luxottica group operates a wholesale distribution company in Australia that carries on business separately from Luxottica's retail operation. The wholesale company independently imports Luxottica product and makes it available to competitors of the retail operation. The wholesale operation will continue to make product available to retailers.

(iii) Market for supply of various products and services

The markets for the supply of business management systems, online communication systems, point of sale information and retrieval systems, equipment, and fit out services. There are a number of participants in these markets.

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:

And

(b) Facts and evidence relevant to these detriments:
(Refer to direction 9)

It is submitted that there will be no material detriments to the public resulting or likely to result from the notified Conduct.

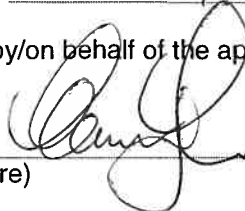
7. Further information

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

Dated

10/12/12

Signed by/on behalf of the applicant



(Signature)

Stephen Giles

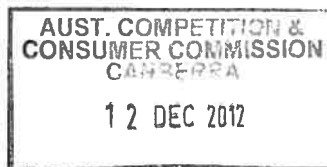
(Full Name)

Norton Rose Australia

(Organisation)

Partner

(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 *Competition and Consumer Act 2010* 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 – Full Format Franchisees (Paragraph 3(c))

| | Trading Name | Name of Franchisee | Address of Store |
|----|-----------------------------|---|---|
| | OPSM | | |
| 1 | OPSM Balwyn | MW Optical Pty Ltd (formerly OPSM Balwyn Pty Ltd ACN 139 539 030) | OPSM Balwyn, Ground and First Floors, 421 Whitehorse Road, Balwyn, Victoria, 3130 |
| 2 | OPSM Bendigo | Chiappazzo & Associates Pty Ltd ACN 110 509 861 (as trustee for the Ross Chiappazzo & Associates Unit Trust) | Shop 1, 23 Queen Street, Bendigo, Victoria 3550 |
| 3 | OPSM Croydon | Dioptramax Pty Ltd ACN 138 516 971 (as trustee for the Dioptramax Business Trust ABN 82 141 772 592) | OPSM, 100 Main Street, Croydon, VIC, 3136 |
| 4 | OPSM Fairfield | Helen M Lang Optometrist Pty Ltd ACN 151 908 280 as trustee for H Joosep Family Trust ABN 93 499 499 352 | Shop 6, Fairfield Gardens Shopping Centre, Corner Fairfield Road & Brougham Street, Fairfield QLD 4013 |
| 5 | OPSM Gateway Success | BPAR Pty Ltd ACN 134 979 856 (as trustee for the Russell Family Trust No. 3) ABN 63 707 505 133 | Shop No. 24, Cockburn Gateway Shopping Centre, Beeliar Drive Success WA 6164 |
| 6 | OPSM Kalamunda | Nathan Smith and Sharlene Stanley-Smith as trustee for The Stanley Smith Family Trust ABN 26 530 506 402 | Shop 33, Centro Kalamunda, 39 Railway Road, Kalamunda WA 6076 |
| 7 | OPSM Mona Vale | S.A. Mason Holdings Pty Ltd ABN 86 088 014 304 | 1/1775 Pittwater Road, Mona Vale, NSW 2103 (also known as Shop 2B Bungan Street, Mona Vale NSW 2103) |
| 8 | OPSM Mt Hawthorn | Shane Millington as trustee for the Miley Trust BPAR Pty Ltd as trustee for Russell Family Trust No 3 | Shop 22, The Mezz Shopping Centre, 146 Scarborough Beach Road, Mt Hawthorn WA 6016 |
| 9 | OPSM Pakenham | Theo Charalambous Pty Limited ACN 103 170 976 as trustee for Charalambous Family Trust | Shop 21, Village Lakeside, 18-36 Lakeside Boulevard, Pakenham VIC 3810 |
| 10 | OPSM Wendouree | Y & E Optical Pty Ltd ACN 116 390 286 (as trustee for Rajinder Uppal & Associates Family Trust ABN 93 280 463 844) | Shop 51, Stockland Wendouree Shopping Centre, Corner of Norman and Gillies Streets, Wendouree, VIC 3355 |
| | Laubman & Pank | | |
| 11 | Laubman & Pank Armadale | Szemter Pty Ltd ABN 47 120 189 380 | Shop 44, Level 2, Armadale Shopping City, Jull Street, Armadale WA 6112 |
| 12 | Laubman & Pank Clarkson | Vision Plus Perth Pty Ltd ABN 56 054 644 610 | Shop 21, Ocean Keys Shopping Centre, Clarkson WA 6030 |
| 13 | Laubman & Pank Forest Lakes | Ian Lester Savage and Joanne Lorraine Savage as trustee for the I & J Savage Family Trust and Tatum Renee Packham and Craig Antony Packham as trustee for the C & T Packham Family Trust ABN 94 162 644 758 | Shop 48 Forest Lakes Forum, Murdoch Drive, Thornlie WA 6108 |
| 14 | Laubman & Pank Riverton | Szemter Pty Ltd ABN 47 120 189 380 | Shop 18, Stockland Riverton, Cnr High Road and Willeri Drive Riverton, WA 6148 |

Annexure B – Approved Supplier Provisions Full Format Franchises

Definitions

Authorised Products means the Core Products and other Optional Products specified in the Operations Manual, or otherwise approved or specified by the Franchisor;

Authorised Services means the doing or performing of any act, matter or thing that is within one or more of the following classes of acts, matters or things:

- (a) the examination of the eyes and measurement of their functions and powers, with the object of determining whether there is any, and if so, the nature or degree of any, abnormality or defect of sight;
- (b) the fitting of contact lenses;
- (c) the interpretation of prescriptions for Optical Appliances;
- (d) the taking of facial measurements for checking prescriptions;
- (e) prescribing of an Optical Appliance or orthoptic treatment, or prescribing therapeutic services or drugs pursuant to and when permitted under the relevant Optometric Legislation, for the correction, remedying and relieving of any abnormality or defect of sight;
- (f) other areas of testing relating to eye care as described in the Operations Manual;
- (g) any other services provided in the Operations Manual; and
- (h) the sale of the Authorised Products in accordance with this document;

Core Products means the eyewear, eyecare and other products which the Franchisor specifies in the Operations Manual or otherwise directs the Franchisee to sell from time to time, which products must be retailed by the Franchisee in carrying on the Business;

Nominated Supplier means the supplier(s) nominated by the Franchisor from time to time from whom the Franchisee is required to purchase the Authorised Products (as specified in the Operations Manual or as otherwise specified by the Franchisor);

Optional Products means products which are not Core Products which the Franchisor specifies to be sold by the Franchisee;

9C.1 Supply of Authorised Products & Authorised Services

The Franchisee:

- (i) must sell the Core Products and provide the Authorised Services;
- (ii) may sell the Optional Products depending on the demand for such products from the Premises;
- (iii) must purchase Authorised Products from the Nominated Supplier(s);
- (iv) must prior to the Commencement Date purchase the initial stock requirement from the Nominated Supplier(s) as directed by the Franchisor;
- (v) must ensure that all the Authorised Products and Authorised Services it displays for sale, delivers, or otherwise sells or offers meets the Franchisor's standards of quality, which standards are contained within the Operations Manual or as may otherwise be communicated by the Franchisor to the Franchisee from time to time; and

- (vi) must only operate the Business at the Premises and must not sell any Authorised Products or provide the Authorised Services outside of the Premises without the Franchisor's written consent.

10A. AUTHORISED PRODUCTS AND NOMINATED SUPPLIER(S)

- 10A.1 The Franchisor will determine the range of Authorised Products for sale in the Business and those Authorised Products which are Core Products. The Franchisor has the right at any time to delete or add Authorised Products to its range and to change the range of Core Products. In such circumstances the Franchisor will take reasonable measures to consult with the Franchisee.
- 10A.2 The Franchisor may negotiate with Nominated Supplier(s) for the supply of Authorised Products to the Franchisee. The Franchisee acknowledges that:
 - (a) the Franchisor is not responsible to ensure that the Nominated Suppliers can supply the Authorised Products to the Franchisee;
 - (b) the Nominated Supplier(s) cannot stock all products at all times; and
 - (c) the Franchisor and/or the Nominated Supplier(s) reserves the right to discontinue the sale of any type of the Authorised Products at any time.
- 10A.3 If the Franchisor introduces, requires, recommends or makes available to its Franchisees any new product/range, the Franchisor shall notify each Franchisee of the new product/range. The Franchisee must comply with the Franchisor's directions in relation to such stock.
- 10A.4 The Franchisor/Nominated Supplier reserves the right to withhold the supply of any supplies if the Franchisee owes any amounts to it for more than 14 days after the due date for the payment of such amounts or is in breach of this document.
- 10A.5 Where the Franchisor withdraws products from the list of Authorised Products the Franchisee must cease the supply of those products in consultation with the requirements of the Franchisor.