

7 February 2012

BY EMAIL: adjudication@accc.gov.au

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

FILE No:

DOC:

MARS/PRISM:

Dear Sirs

Backcare & Seating Master Franchise Pty Ltd - Third line forcing notification

We act for Backcare & Seating Master Franchise Pty Ltd.

Please find enclosed:

- a completed *Form G*; and
- a cheque in the sum of \$100, being the applicable lodgement fee.

Because this notification is being lodged via email, we expect the cheque to be received by the Commission on Wednesday 8 February 2012.

If you have any questions, or require any further information, please do not hesitate to contact us.

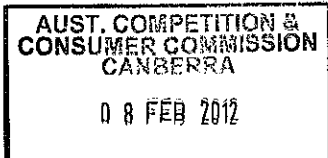
Yours faithfully

MINTER ELLISON



Josh Simons
Partner

Contact: Josh Simons
Direct Phone: +61 8 8233 5428
Email: josh.simons@minterellison.com
Our reference: 92082/2 | JJS | LJG | KYJ



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:
(Refer to direction 2)

N95715

Backcare & Seating Master Franchise Pty Ltd as trustee for the Backcare & Seating Master Franchise Unit Trust ACN 145608617 (**Backcare & Seating**).

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

Amongst other core operations, Backcare & Seating grants Backcare & Seating franchisees the right to operate Backcare & Seating business (**Franchised Business**). The Franchised Business involves the operation of a retail business that supplies ergonomic, preventative and specialist furniture and accessories.

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

Backcare & Seating Pty Ltd
4 Guilfoyle Avenue
Coburg North, Victoria, 3058

2. Notified arrangement

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

The notification relates to the:

- supply of preventative furniture, bedding, accessories and some operational things required to operate the Approved Business such as accounting and business management software (**Approved Goods**); and
- some services acquired by the Franchisee in the conduct of the Franchised Business and which relate to the supply of the Approved Goods (**Approved Services**),

that Backcare & Seating requires its franchisees to acquire as a term of their franchise agreement.

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

See Annexure 'A'.

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)

Persons who are granted the right to operate a Franchised Business.

- (b) Number of those persons:

- (i) At present time:

Four

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

Six

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

Backcare & Seating Brighton	501 Nepean Hwy Brighton VIC 3186	(03) 9591 6282
Backcare & Seating Carlton	503 Nicholson St Carlton North VIC 3058	(03) 9349 1757
Backcare & Seating Adelaide	Unit 2, 27 Anzac Hwy Keswick SA 5035	(08) 8293 5503
Backcare & Seating St Peters	78 Princes Hwy St Peters NSW 2044	(02) 9564 7600

4. Public benefit claims

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

See Annexure 'A'.

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

See Annexure 'A'.

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)

See Annexure 'A'.

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)

See Annexure 'A'.

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

See Annexure 'A'.

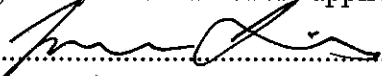
7. Further information

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

Josh Simons
Partner
Minter Ellison
25 Grenfell Street
Adelaide, SA 5000
Ph: +61 8 8233 5428

Dated 7/2/2012

Signed by/on behalf of the applicant


.....
(Signature)

JOSH SIMONS
.....
(Full Name)

MINTER ELLISON LAWYERS
.....
(Organisation)

PARTNER
.....
(Position in Organisation)

ANNEXURE A

BACKCARE & SEATING

FORCING NOTIFICATION – ADDITIONAL INFORMATION

1. Description of the conduct or proposed conduct

The conduct to which this notification relates is the requirement for Backcare & Seating franchisees to acquire and in most cases resupply Approved Goods and/or Approved Services from third party suppliers who have been approved by Backcare & Seating (**Nominated Suppliers**).

Backcare & Seating franchises are granted to franchisees on the condition, amongst other things, that they only market, advertise, promote, offer and sell Approved Goods and Approved Services acquired from Nominated Suppliers unless the prior written consent of Backcare & Seating is obtained.

Backcare & Seating franchisees can, at any time, seek consent from Backcare & Seating to use alternative suppliers. Backcare & Seating will not unreasonably withhold such consent provided the franchisee can demonstrate the requested supplier will be able to maintain continuity of supply and meet reasonable quality and safety requirements imposed by Backcare & Seating.

2. Purpose of the conduct or proposed conduct

The purpose of the conduct or proposed conduct described in section 1 of this annexure is not to lessen competition in any relevant market, but to ensure:

- quality, safety, uniformity and affordability in Approved Goods and Approved Services used and/or resold by Backcare & Seating franchisees; and
- the efficient operation of the Backcare & Seating franchised network, including by using common and compatible accounting and business management software systems.

3. Public benefit

Backcare & Seating submits the conduct or proposed conduct has considerable public benefit by increasing efficiency and reducing costs for franchisees as well as providing for consistent, quality and safe supply to consumers. Material public benefits include:

- Backcare & Seating franchisees are likely to have access to key business inputs at competitive prices and efficient supply terms due to the established relationships Backcare & Seating already has with suppliers and by reason of the increased business being delivered to Nominated Suppliers across the franchise network. In turn, franchisees may be able to offer more favourable pricing to consumers and an increased level of consistency and product understanding.

- Product quality can be closely monitored and controlled by Backcare & Seating both on behalf of and, in addition to, franchisees ensuring that consumers are ultimately provided with safe, reliable and consistent products that meet Backcare & Seating standards. Backcare & Seating can ensure that franchisees only deal with reputable suppliers who provide transparent safety information, offer product warranties and are in good financial standing.
- Supply chain risk will be minimised to franchisees, ultimately enabling a more efficient delivery to customers.
- In the unlikely event of product recall, the use of Nominated Suppliers for key business inputs will facilitate the rapid recall of goods from across the franchise network.
- Nominated Suppliers will be provided with increased certainty regarding likely orders, volume and turnaround times.

Backcare & Seating has given detailed consideration to the rationale for requiring franchisees to deal with Nominated Suppliers and has determined that it will deliver benefits to all franchisees, consumers and suppliers.

4. Market Definition

The material markets relevant to this notification are:

- the wholesale market for the sale of furniture and/or ergonomic furniture;
- the retail market for the sale of furniture and/or ergonomic furniture; and
- the market for the supply of software and/or business management software.

Each of the above markets is characterised by a large number of participants at both the wholesale and resale level.

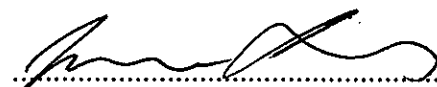
5. Public detriments

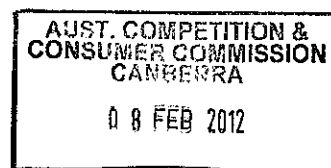
Backcare & Seating submits that no substantive public detriment will result from the proposed conduct.

In addition, the number of potential suppliers affected is minimal when compared to the number of suppliers in the market. Moreover, the franchise agreement enables franchisees to seek consent to use additional suppliers at any time.

Dated.....7/2/12.....

Signed by/on behalf of the applicant


.....
(Signature)



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.