



HERBERT  
SMITH  
FREEHILLS

FILE No:
DOC:
MARS/PRISM:

Australian Competition & Consumer Commission  
Level 35, The Tower  
360 Elizabeth Street  
Melbourne Central  
Melbourne VIC 3000

19 August 2013  
Matter 82160955  
By hand

Dear Sir / Madam

**Brooks Brothers Group, Inc - third line forcing notification**

We act for Brooks Brothers Group, Inc.

We enclose a notification under section 93(1) of the *Competition and Consumer Act 2010* (Cth) in relation to conduct that may constitute third line forcing.

We also enclose a cheque for \$100, being the lodgement fee.

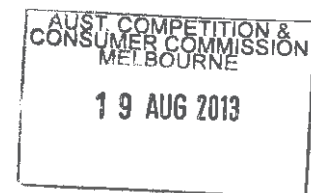
Please contact us if you require any further information.

Yours sincerely

**for Paul Hughes**  
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Doc 23771957.2

# 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)*

N96919

Brooks Brothers Group, Inc. (**Brooks Brothers Group**), a Delaware corporation, located at 346 Madison Avenue, New York, NY 10017, USA.

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

*(Refer to direction 3)*

*Brooks Brothers Group*

Brooks Brothers Group and its affiliates are engaged in the business of manufacturing, selling, promoting and licensing others the right to sell and promote high quality products bearing the 'Brooks Brothers' trademarks, including apparel, footwear, large leather goods, small leather goods and accessories.

'Brooks Brothers' is a very well-known premium brand. Founded in 1818 in Manhattan, New York, there are now over 200 Brooks Brothers stores in the USA, and over 200 stores in other countries, including in Europe, Asia and South America.

*Joint venture between Brooks Brothers Group and OrotonGroup*

Brooks Brothers Group (through its wholly owned subsidiary Brooks Brothers International, LLC (**Brooks Brothers International**)) and OrotonGroup Limited (**OrotonGroup**) have agreed to establish a joint venture company called Brooks Brothers Australia Pty Limited (**Brooks Brothers Australia**). Brooks Brothers International will own 49% of the joint venture company, and OrotonGroup will own the remaining 51%.

Brooks Brothers Australia will be engaged in the import, marketing, sale and distribution of high quality apparel, footwear, leather goods and accessories bearing the 'Brooks Brothers' trademarks.

To that end, Brooks Brothers Group and Brooks Brothers Australia propose to enter into a trademark license agreement pursuant to which Brooks Brothers Australia will be granted a license to use the 'Brooks Brothers' trademarks in the Territory (described below) in connection with the sale and promotion of products bearing the 'Brooks Brothers' trademarks in the following product categories (collectively, the **Products**):

- men's apparel, footwear, large leather goods, small leather goods, and accessories;

- women's apparel, footwear, large leather goods, small leather goods, and accessories;
- boys' apparel, footwear, large leather goods, small leather goods, and accessories; and
- girls' apparel, footwear, large leather goods, small leather goods, and accessories.

The 'Territory' is Australia, New Zealand, Fiji, Papua New Guinea and Tahiti. It may be extended to include other islands in the Pacific from time to time.

The conduct the subject of this notice arises in the context of the trademark license agreement between Brooks Brothers Group and Brooks Brothers Australia.

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

c/o Paul Hughes  
 Partner  
 Herbert Smith Freehills  
 ANZ Tower  
 161 Castlereagh 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 grant of a license to use the 'Brooks Brothers' trademarks; and
- the supply and acquisition of products bearing the 'Brooks Brothers' trademarks, including apparel, footwear, leather goods and accessories.

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

*(Refer to direction 4)*

Brooks Brothers Group proposes to grant a license to Brooks Brothers Australia to use the 'Brooks Brothers' trademarks within the Territory in connection with the sale and promotion of the Products on condition that Brooks Brothers Australia will acquire all Products solely from nominated suppliers, including:

- Brooks Brothers Group and its affiliates; and
- Brooks Brothers Group's authorised distributors, vendors, manufacturers or suppliers.

This notice relates to the requirement that Brooks Brothers Australia acquire Products from suppliers who are not related bodies corporate of Brooks Brothers Group. Conduct of this kind may constitute third line forcing under sections 47(6) and (7) of the *Competition and Consumer Act 2010* (Cth).

**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)*

Entities licensed to use the 'Brooks Brothers' trademarks within the Territory in connection with the sale and promotion of the Products.

**(b) Number of those persons:**

**(i) At present time:**

One.

**(ii) Estimated within the next year:**

*(Refer to direction 6)*

One.

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

Brooks Brothers Australia  
Level 2, 409 George Street  
Waterloo NSW 2017

**4. Public benefit claims**

**(a) Arguments in support of notification:**

*(Refer to direction 7)*

Brooks Brothers Group submits that the notified conduct will result in a number of public benefits.

As noted above, Brooks Brothers is a very well-known supplier of premium apparel, footwear, leather goods and accessories. In licensing the 'Brooks Brothers' trademarks to Brooks Brothers Australia, the preservation of the quality, value and integrity of the trademarks is of paramount importance to Brooks Brothers Group.

Brooks Brothers Group selects suppliers based on their ability to make high quality products consistently, and to do so at competitive prices. Brooks Brothers Group also looks for suppliers that can provide it with innovative products.

The notified conduct is designed to ensure that the Products sold by Brooks Brothers Australia are:

- of the high standard and quality associated with the 'Brooks Brothers' name and brand; and
- consistent, in terms of standard and quality, with the products sold at Brooks Brothers retail outlets in other territories.

Brooks Brothers Group submits that, by ensuring the products sold by Brooks Brothers Australia are of a high standard and quality, the notified conduct will give rise to a significant public benefit.

In addition, the notified conduct will:

- foster business efficiency within Brooks Brothers Australia. As the owner and licensor of the 'Brooks Brothers' trademarks, Brooks Brothers Group has considerable experience in sourcing high quality products for sale under those marks. The requirement for Brooks Brothers Australia to purchase Products from nominated suppliers will allow Brooks Brothers Australia to benefit from Brooks Brothers Group's long-standing experience in this area, rather than expending considerable time and resources independently sourcing products and determining whether they are of an appropriate standard and quality;
- allow Brooks Brothers Australia to obtain Products at cheaper wholesale prices. For example, Brooks Brothers Group's 'authorised distributors, vendors, manufacturers and suppliers' already supply products to existing

Brooks Brothers retail outlets operating in other countries. In these circumstances, it is likely that Brooks Brothers Australia will be able to obtain Products at cheaper wholesale prices than it would if it sourced the Products independently – that is, Brooks Brothers Australia will benefit from the economies of scale associated with the wider Brooks Brothers business; and

- allow Brooks Brothers Australia to compete effectively against existing suppliers of premium apparel, footwear, leather goods and accessories.

Brooks Brothers Group submits that each of the points listed above constitutes an additional public benefit likely to arise from the notified conduct.

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

Please refer to 4(a) above.

**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)*

Relevant markets include the wholesale and retail supply of premium apparel, footwear, leather goods and accessories. These markets are highly competitive, with a number of participants, including the following:

- Gant;
- Hackett;
- Henry Bucks;
- Herringbone;
- Ralph Lauren;
- Rhodes & Beckett; and
- Tommy Hilfiger.

**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)*

Brooks Brothers Group submits that the notified conduct is not likely to result in any public detriment. In particular:

- the relevant markets identified in 5 above are, and will remain, competitive;
- at the wholesale level, the arrangements between Brooks Brothers Group and its authorised distributors, vendors, manufacturers and suppliers are reviewed and updated on a regular basis; and
- at the retail level, consumers will remain free to acquire premium apparel, footwear, leather goods and accessories from a wide range of suppliers, including those listed in 5 above.

In these circumstances, Brooks Brothers Group submits that the benefit to the public from the notified conduct will outweigh any detriment to the public from the notified conduct.

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

Please refer to 6(a) above.

**7. Further information**

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

c/o Paul Hughes  
Partner  
Herbert Smith Freehills  
ANZ Tower  
161 Castlereagh Street  
Sydney NSW 2000  
T: +61 9225 5697

Dated: 19 August 2013

Signed on behalf of the applicant



Paul Hughes  
Partner  
Herbert Smith Freehills

## 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.