

Our Ref: 288558

1 November 2013

Australia Competition and Consumer Commission  
Adjudication  
Level 35, The Tower  
360 Elizabeth Street  
Melbourne Central  
MELBOURNE VIC 3000

**Email: adjudication@acc.gov.au**

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Dear Sir/ Madam

**Muzz Buzz Franchising Pty Ltd - Exclusive Dealing Notification**

On behalf of our above named client, **enclosed** is an Exclusive Dealing Notification.

The lodgement fee of \$100 has been paid and the lodgement receipt is also **enclosed**.

Yours faithfully  
**HWL Ebsworth**

**Peter van Rompaey**  
Partner

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Brisbane  
Canberra  
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Sydney

# 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)

N97065

Muzz Buzz Franchising Pty Ltd ACN 106 547 620 (“Muzz Buzz”)

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

Muzz Buzz is the franchisor of Muzz Buzz branded retail coffee outlets (“Muzz Buzz Stores”) throughout Australia. There are currently 50 drive through stores of which 47 are franchised (with a total of 41 franchisees) and 3 are owned by Muzz Buzz. There is also one sit down café which is franchised. Muzz Buzz stores sell a range of food and beverage stores. The main product sold is hot coffee but they also sell a range of other drinks including iced coffee, tea, hot chocolate, milkshakes, juices, fruitie blasts, a big buzz energy drink and bottled water, as well as a range of food products including turkish bread sandwiches, croissants, toasted sandwiches, savoury pies, sausage rolls, spinach and ricotta rolls, bacon and egg rolls, muffins, donuts, hot chips, biscuits, cakes, tarts and packaged icecreams and other products such as newspapers and Muzz Buzz branded merchandising including thermo mugs, baseball style caps, yoyo’s and lanyards.

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

c/- Peter van Rompaey, HWL Ebsworth Lawyers, Level 26, 530 Collins Street Melbourne Victoria 3000

## 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 that are to be used by Muzz Buzz Franchisees of:

- (i) a range of beverage products including roasted coffee beans for making espresso coffee, retail bags of roasted coffee beans, tea bags, powdered

drinking chocolate, powdered chai latte, syrups for adding to beverages and for making a big buzz energy drink, milk shakes and fruitie blasts, milk, bottled water and juices;

- (ii) a range of food products including chicken and pesto turkish bread sandwiches, vegetarian turkish bread sandwiches, toasted chicken sandwiches, toasted ham and cheese sandwiches, ham and cheese croissants, meat pies, chicken pies, sausage rolls, bacon and egg rolls, spinach and ricotta rolls, a variety of muffins, donuts, hot chips, biscuits, cakes, banana bread, chocolate bars, tarts and packaged icecreams;
- (iii) ancillary food products including tomato sauce saches, sugar, marshmallows, salt and pepper;
- (iv) other products such as newspapers and Muzz Buzz branded merchandising such as thermo mugs, baseball style caps, yoyo's and lanyards;
- (v) packaging including cups, lids, straws, paper napkins, bags, boxes, trays, straws, lid stickers, labels all of which are Muzz Buzz branded other than the straws and lid stickers;
- (vi) garbage bags, cleaning cloths, cleaning chemicals, detergent, sanitisers, toilet requisites, knives and other utensils, cooking trays, cooking mats, mops, buckets, hoses;
- (vii) training services;
- (viii) staff Muzz Buzz branded uniforms;
- (ix) building and equipment maintenance and painting services;
- (x) menu boards, point of sale promotional signs and posters, vouchers, flyers, wobble boards and loyalty cards;
- (xi) equipment including espresso coffee machines, coffee bean grinders, granita machines, blenders, convection ovens, microwaves, safes, computer and point of sale hardware, fax machine and printer, eftpos equipment;
- (xii) computer software including point of sale systems.

(b) Description of the conduct or proposed conduct:

Muzz Buzz Franchisees are required, as a condition for granting the franchise, to acquire from time to time the goods and services referred to in paragraph (a) above, or similar goods and services, from Muzz Buzz, or suppliers which have been approved by Muzz Buzz ("Approved Suppliers"). Approved Suppliers are either suppliers that have been

nominated by Muzz Buzz, or suppliers that have been nominated by a Muzz Buzz Franchisee. In the case of the latter there is a process specified in the Muzz Buzz Franchise Agreement which a Muzz Buzz Franchisee must follow in order for Muzz Buzz to consider approving the nominated supplier as an Approved Supplier.

The relevant clauses of Muzz Buzz's current standard franchise agreement which are relevant to the notified conduct are set out in Annexure "A" which is confidential.

*(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)*

Muzz Buzz Franchising Pty Ltd

Approved Suppliers

Muzz Buzz Franchisees

- (b) Number of those persons:

- (i) At present time:

Approved Suppliers: 65

Franchisees: 41

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

Approved Suppliers: 72 (inclusive of existing Approved Suppliers)

Franchisees: 49 (inclusive of existing franchisees)

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

Approved Suppliers: As there are more than 50 this is not applicable and there details are not included.

Franchisees: These are listed in Annexure "B" and are confidential.

**4. Public benefit claims**

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

Muzz Buzz's purpose in relation to the notified arrangement is to provide consistency and quality products for Muzz Buzz customers.

By requiring Muzz Buzz Franchisees to acquire goods and services from Muzz Buzz and Approved Suppliers, Muzz Buzz seeks to:

- (i) maintain Muzz Buzz's unique identity and retail offering compared to market competitors;
- (ii) use its buying power to negotiate low prices on the goods and services;
- (iii) protect its Intellectual Property Rights particularly in relation to unique product recipes;
- (iv) ensure consistency in the type and quality of products sold, and the standard of services offered to, Muzz Buzz Stores, by carrying out strict quality checks on Approved Suppliers and ensuring they have appropriate quality control measures;
- (v) ensure consistency in the type and quality of products sold, and the standard of service offered by, Muzz Buzz Stores to consumers;
- (vi) ensure high food hygiene standards and compliance with relevant health regulations are maintained in Muzz Buzz Stores;
- (vii) ensure high occupational health standards are maintained in Muzz Buzz Stores;
- (viii) ensure good efficient business practices are maintained by Muzz Buzz Franchisees.
- (ix) ensure consistency in the appearance of Muzz Buzz Stores.
- (x) give Muzz Buzz more bargaining power when dealing with suppliers to get lower prices for Muzz Buzz and Muzz Buzz Franchisees which in turn can be passed on to customers;
- (xi) enable Muzz Buzz Stores to meet the expectations and needs of customers by providing a consistent range and high standard of products under the Muzz Buzz brand;
- (xii) ensure that customers of Muzz Buzz Stores have a consistent experience in relation to the quality of service and the presentation of products and the premises at which they are served;
- (xiii) minimise the risk of food hygiene issues occurring which could be detrimental to the health of customers and also minimise the risk of other unsafe products being sold to customers;
- (xiv) ensure that nutritional information on products sold is accurate so customers are aware of what they are consuming;

- (xv) ensure that cleaning chemicals used in the store are effective in maintaining food hygiene standards and store presentation;
- (xvi) maintain the value and reputation of Muzz Buzz Stores by virtue of the consistent branding of the Muzz Buzz Stores, point of sale signage and uniforms, and the consistent products and service provided;
- (xvii) ensure the full range of products offered by Muzz Buzz Stores are always available to be purchased by customers;
- (xviii) ensure that employees in Muzz Buzz stores work in a safe environment;
- (xix) ensure that equipment used in Muzz Buzz Stores is of high quality and is efficient and effective in preparing products for sale;
- (xx) ensure that Muzz Buzz Stores have efficient business systems and processes that enable them to compete more effectively with competitors;
- (xxi) Muzz Buzz is able to build good relationships with Approved Suppliers enabling them to assist Muzz Buzz Franchisees in resolving supply issues that arise from time to time;
- (xxii) ensure that the market positioning of Muzz Buzz Stores continues to grow.

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

Muzz Buzz submits that the public benefit claims made above are supported by the following:

- (i) Muzz Buzz Stores regularly receive great feedback from customers regarding the quality and consistency of their products and service;
- (ii) The increasing number of Muzz Buzz Stores that are being opened and the increasing number of customers attracted to Muzz Buzz Stores;
- (iii) The good standing Muzz Buzz Stores have with local government health councils;
- (iv) The minimal number of incidents involving employees of Muzz Buzz Stores or customers of Muzz Buzz Stores which have caused injury or illness, none of which have been serious;
- (v) Muzz Buzz ensures that all Approved Suppliers meet stringent health standards in relation to the preparation and delivery of products and have HACCP accreditation where appropriate;
- (vi) The strength of the Muzz Buzz brand, being one of the most recognised brands in Western Australia;
- (vii) The business efficiency enjoyed by Muzz Buzz Franchisees as they spend less time negotiating and transacting with various suppliers and carrying out due diligence on suppliers and products, allowing them to concentrate on the core business of selling products to customers;

- (viii) The enhancement of the value of Muzz Buzz Stores due to the consistency and high quality of products and services that each provides with no one Muzz Buzz Store being allowed to damage the Muzz Buzz brand;
- (ix) The quality, consistency and appropriateness of marketing material displayed by each Muzz Buzz Store.

**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:

- (a) wholesale and retail markets for coffee and other café and restaurant products and packaging and related merchandise in the geographic areas in which Muzz Buzz Stores are situated;
- (b) wholesale and retail markets for the provision of equipment, cleaning chemicals, software, uniforms and training relevant to the café and restaurant industries.

Each of these markets are characterised by a large number of participants at both the wholesale and retail levels.

**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)*

Muzz Buzz submits that there are no substantial public detriments however the following are potential public detriment of the proposed arrangement:

- (i) Franchisees

Franchisees are prevented from selecting between suppliers on a normal commercial basis of product or service, price and quality. However Franchisees can request a particular supplier be approved as an Approved Supplier based on Muzz Buzz's specifications being met, and Muzz Buzz has on a number of occasions approved such requests either temporarily or permanently. Also Muzz Buzz ensures that Approved Suppliers remain competitive in price with other suppliers having regard to quality, health standards and service. Accordingly the detriment to Muzz Buzz Franchisees is minimal.

- (ii) Consumers

Consumers are able to shop around and compare Muzz Buzz products and service with the numerous other competitors in the markets which

Muzz Buzz operates. Accordingly there is minimal if any effect on consumers.

(iii) Suppliers

Suppliers that are not Approved Suppliers will not have access to Muzz Buzz Stores. However as indicated in (i) above there is a process by which they may become Approved Suppliers. It is considered that the anti-competitive effect on suppliers is negligible because of the substantial number of retailers in the market in which Muzz Buzz operates that they can supply products or services to.

(b) Facts and evidence relevant to these detriments:

- (i) Muzz Buzz regularly nominates or approves new Approved Suppliers, and terminates Approved Suppliers who fail to remain competitive or maintain appropriate standards;
- (ii) The pricing at which Muzz Buzz Stores are able to acquire products and services is comparative to that of competitors of Muzz Buzz Stores;
- (iii) See other facts and evidence referred to in 4(b).

**7. Further information**

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

Peter van Rompaey

HWL Ebsworth Lawyers

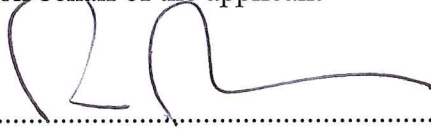
Level 26, 530 Collins Street

Melbourne Victoria 3000



Dated 31 October 2013

Signed by/on behalf of the applicant



.....  
(Signature)

PETER VAN ROMPAEY

~~Steven Leigh Pynt~~

(Full Name)

~~Muzz Buzz Franchising Pty Ltd~~

(Organisation)

~~Managing Director~~

(Position in Organisation)

Peter van Rompaey  
HWL Ebsworth Lawyers  
Level 26, 530 Collins Street, Melbourne  
An Australian Legal Practitioner  
(within the meaning of the  
Legal Profession Act 2004)

For

## 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"

This is the Annexure "A" of 6 pages referred to in the Form G Notification of Exclusive Dealing lodged by Muzz Buzz Franchising Pty Ltd

List of Muzz Buzz Franchisees as at the date of this Notification:

**Western Australia:**

Watertight Holdings Pty Ltd ACN 066 339 615

Business Address: 333 High Street, Fremantle WA 6160

Icemisty Pty Ltd ACN 115 553 154

Business Address: Malaga Markets, Beach Road, Malaga WA 6090

Combibo Pty Ltd ACN 112 303 394

Business Address: Cnr Albany Hwy and Kenwick Link, Cannington WA 6107

Makesure Pty Ltd ACN 113 664 627

Business Address: 232 Orrong Road, Carlisle WA 6101

Overstar Holding Pty Ltd ACN 114 108 468

Business Address: 189-197 High Road, Riverton WA 6148

PTP Automed Pty Ltd ACN 127 662 908

as Trustee for the Hope Family Trust

Business Address: 10-12 Magenta Tce, Mandurah WA 6210

MBDS Pty Ltd ACN 067 049 521

Business Address: 44 Wanneroo Road, Yokine WA 6060

Simon Andrew Bell and Rebecca Toni Bell as Trustees for The Muzz Buzz Albany Trust

Business Address: 367 Albany Highway, Albany WA 6330

Espresso Bean Pty Ltd ACN 156 561 858

Business Address: 412 -- 422 Beechboro Road, Beechboro WA 6063

Jarrahglen Investments Pty Ltd ACN 112 898 478

Business Address: Lakeside Joondalup Shopping Centre, Joondalup WA 6027

MBSP Pty Ltd ACN 125 934 367

Business Address: 77 Canning Highway, South Perth WA 6151

Il Caffè Bella Pty Ltd ACN 125 111 168

Business Address: 2532 Great Northern Highway, Bullsbrook WA 6084

Plaass Pinkerton Pty Ltd ACN 165 294 191 as Trustee for the Muzz Buzz Rockingham Unit Trust

Business Address: 1-9 Enterprise Way Rockingham WA 6168

Jac n John Pty Ltd ACN 130 787 763 as Trustee for the Steve Family Trust

Business Address: Corfield Shopping Centre, 288-292 Corfield St, Gosnells WA 6110

Jambaroo Holdings Pty Ltd ACN 116 311 025 as Trustee for the Subiaco Trust and  
Diveron Pty Ltd ACN 116 586 059 as Trustee for the DVH Family Trust

Business Address: Home Base Subiaco, 55 Salvado Road, Subiaco WA 6008

Chardikla Pty Ltd ACN 156 194 160 as Trustee for the Sunner Family Trust No. 5

Business Address: Newpark Shopping Centre, 64 Maranagroo Dr, Girrawheen WA  
6064

Gordon Mark Hardie as trustee for the Hardie Family Trust

Business Address: 494 Kalumunda Road, High Wycombe WA 6057

Patfield Pty Ltd ACN 136 617 779 & Darren Peter Morgan

Business Address: Lot 8 Shallcross Street, Yangebup WA 6164

Adam George Kelly and Brian Kelly as trustees for the Adam Kelly Family Trust

Business Address: Northlands Plaza Shopping Centre 201 Amelia St, Balcatta WA  
6021

Nicole D'Angelo as trustee of the Hamilton Hill Investment Trust

Business Address: 43 Rockingham Road, Hamilton Hill WA 6163

Foehn Investments Pty Ltd ACN 085 878 208 as trustee for the Stickland Property  
Trust

Business Address: 579 Stirling Hwy, Mosman Park WA 6012

Laketch Pty Ltd ACN 142 816 831

Business Address: 235 Welshpool Rd, Queens Park WA 6107

Hot Beans Pty Ltd ACN 140 799 917

Business Address: Whitfords Shopping Centre, Hillarys WA 6025

Pinedale Holdings Pty Ltd ACN 112 100 446 as Trustee for the Meredith Family Trust No. 3

Business Address: 497 Guildford Road, Bayswater WA 6053

Middlebay Nominees Pty Ltd ACN 140 640 446

Business Address: 43 Attfield Street, Maddington WA 6109

Indian View Pty Ltd ACN 116 784 582

Business Address: 46 Oswald Street, Innaloo WA 6018

SST Family Trading Pty Ltd ACN 147 702 145

Business Address: 12 Barber Street, Kalamunda WA 6076

Geographe Petroleum Pty Ltd ACN 145 005 072

Business Address: 259 Bussell Highway, Busselton WA 6280

Nicvira Nominees Pty Ltd ACN 121 772 905

Business Address: Bentley Centre, 1140 Albany Hwy, Bentley WA 6102

William Leeuwrik Casson and Tania Nicola Lisa Fuller as trustees for the Casson Family Trust

Business Address: 61 Key Largo Drive, Clarkson WA 6030

Lozcon Pty Ltd ACN 160 861 432

Business Address: Lot 760, Cnr Berrigan Drive & South Lake Drive, South Lakes  
WA 6164

Bigthing Investments Pty Ltd ACN 1261 536 410

Business Address: 41 Eagle Drive, Jandakot Airport, WA 6164

## Victoria

Harmez Enterprises Pty Ltd ACN 129 535 548 (in the process of selling and  
assigning to Ryrick Enterprises Pty Ltd ACN 165 587 600 as trustee for the Ryrick  
Unit Trust

Business Address: 252-258 Clyde Road (Cnr Homestead Road), Berwick, Victoria

Laser Bean Pty Ltd ACN 163 334 441

Business Address: 260 Centre Dandenong Road, Moorabbin, Victoria

Phocused Investments Pty Ltd ACN 129 091 532

Business Address: 2B Malcolm Court (Cnr Sunshine Ave), Kealba, Victoria

C & J Goddard Investments Pty Ltd ACN 006 035 776 as Trustee for the Goddard  
Family Trust and Neuchatel Pty Ltd ACN 129 907 893 as Trustee for the Goddard  
Investment Trust

Business Address: 404-408 Shannon Ave, Newtown VIC 3220

Rodriguez Canache Investments Proprietary Limited ACN 162 491 054

Business Address: Cnr Stud Road and Bergins Road, Rowville, Victoria

Naben Pty Ltd ACN 145 744 332

Business Address: Melton Hwy, Cnr Federation Drive, Melton VIC 3337

Remme Pty Ltd ACN 154 710 666

Business Address: 29-35 Louis Street, Airport West VIC 3042

Surfcoast Holdings Pty Ltd ACN 111 753 452 as trustee for the PKTP Unit Trust

Business Address: 22A Albert Street, Sebastopol VIC 3356

### Queensland

Jakane Investments Pty Ltd ACN 134 593 990

Business Address: Cnr Koch and Alfred Streets, Marunda, QLD 4870