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**CAMATTA  
LEMPENS**  
PTY LTD LAWYERS

12 December 2013

**BY EXPRESS POST**

ABN 34 008 140 332

Australian Competition  
& Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Level 11  
345 King William St  
Adelaide SA 5000  
T: 08 8410 0211  
F: 08 8410 0566  
DX: 54202 Adelaide

Dear Sir/Madam

**Third Line Forcing Notification (Form G)**

We act for Bread Garden Franchising Pty Ltd, the Application the above matter.

We **enclose** the Third Line Forcing Notification (Form G) together with a cheque in the sum of \$100.00 for the lodgement fee.

Any existing franchisee will be notified by letter of the outcome if the notification is to stand.

Yours faithfully

**CAMATTA LEMPENS PTY LTD**

Per:

**CHRISTOPHER SAUNDERS**

Lawyer

[csaunders@camattalempens.com.au](mailto:csaunders@camattalempens.com.au)

Enc As Above

AUST. COMPETITION &  
CONSUMER COMMISSION

17 DEC 2013

CANBERRA

**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 44ZZW, 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)

N97154

**BREAD GARDEN FRANCHISING PTY LTD ACN 165 644 824 ("Bread Garden")**

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

The operation of a network of franchised specialist bakery, café and patisserie retail businesses under the name Bread Garden selling a range of food and beverages.

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

c/- Camatta Lempens Pty Ltd, Level 1, 345 King William Street, Adelaide SA 5000

**2. Notified arrangement**

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

See Annexure "A" (Part 1)

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

See Annexure "A" (Part 2)  
(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 of Bread Garden and Approved Suppliers

- b) Number of those persons:

(i) At present time: One (1) to be granted and one (1) company store

(ii) Estimated within the next year: Three (3)

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

- Bread Garden franchise to be granted to Kimmat Pty Ltd ACN 162 327 064 to trade from 221D Unley Road, Malvern SA 5061 as Bread Garden Unley (expected commencement date is 16<sup>th</sup> December 2013).

Address c/- Rinaldi & Co, 100 Greenhill Road, Unley SA 5061

- One (1) company store operated by Bokeum Kim at Shop 1, 474 Payneham Road, Glynde SA 5070. Bokeum Kim is one of the joint owners of the Bread Garden intellectual property, the sole director/secretary/shareholder of Bread Garden Franchising Pty Ltd.

**4. Public benefit claims**

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

See Annexure "A" (Part 3)

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

See Annexure "A" (Part 3)

**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" (Part 4)

**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" (Part 5)

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

See Annexure "A" (Part 5)

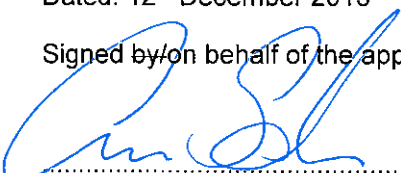
**7. Further information**

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

Mr Christopher Saunders  
Camatta Lempens Pty Ltd  
Level 1, 345 King William Street  
Adelaide SA 5000

Dated: 12<sup>th</sup> December 2013

Signed by/on behalf of the applicant



.....  
**CHRISTOPHER SAUNDERS**  
**LAWYER**  
**CAMATTA LEMPENS PTY LTD LAWYERS**

## 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"

### SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION REGARDING EXCLUSIVE DEALING NOTIFICATION

#### **PART 1 Description of the goods or services in relation to the supply or acquisition of which this notice relates**

1.1 This notification relates to the acquisition by Bread Garden franchisees of goods and services approved or nominated, or which may be approved or nominated by Bread Garden including:-

- certain consumable and food products (e.g. bread, cakes, buns, pastries and other bakery foods) including beverages such as bottled water, milk, juices, coffee, tea and soft drinks for resale ("**products**");
- ingredients mainly yeast, flour, smallgoods, eggs, spices, seasonings, oil, vegetables, sauces and dressings ("**ingredients**");
- boxes, cartons, containers cutlery, utensils, merchandise and promotional products and other items of packaging used in the Franchised Business ("**packaging**");
- machinery, vehicles, equipment, fixtures, fittings and finishes used in the conduct of the franchised business, including the preparation or display for sale of the foods products and beverages, computer and point of sale systems software, EFTPOS, retail and business management systems and other related information technology systems as nominated by Bread Garden from time to time ("**equipment**");
- training services provided by Bread Garden or its appointed suppliers ("**training**");
- uniforms, store design, shop fitting and refurbishment services, marketing material design, merchandising and branding services ("**design and marketing**");

(collectively called the "**Approved Goods and Services**") from specified third party suppliers which can include Bread Garden or associates of Bread Garden.

1.2 Bread Garden has or will identify a number of suppliers who have been approved or nominated by Bread Garden ("**Approved Suppliers**") that can provide the Approved Goods and Services to the standards required by Bread Garden and at a reasonable cost.

#### **PART 2 Description of the Conduct or Proposed Conduct (refer to Section 2(b) of Form G)**

2.1 Bread Garden proposes to supply its services as franchisor to franchisees on the requirement that Bread Garden franchisees purchase the Approved Goods and Services from suppliers who have been approved by Bread Garden (Approved Suppliers).

2.2 Bread Garden franchises are or will be granted to Bread Garden franchisees on condition among other things that they agree to:-

2.2.1 only use and sell products and provide the delivery of other services in the franchised business which have been approved by Bread Garden;

- 2.2.2 only use ingredients, packaging and equipment which have been approved by Bread Garden; and
- 2.2.3 acquire those products, ingredients, packaging, equipment and services including services for design and marketing and training specified by Bread Garden from Approved Suppliers.
- 2.3 In addition Bread Garden may specify certain products and ingredients as Core Products and Ingredients that are to be acquired from Bread Garden or an associate of Bread Garden or an Approved Supplier in which Bread Garden or an associate of Bread Garden may have an ownership interest.
- 2.4 If Bread Garden franchisees wish to acquire products and ingredients from a supplier other than the franchisor or an Approved Supplier then they must:
  - 2.4.1 supply to Bread Garden the name and address of the proposed supplier;
  - 2.4.2 provide Bread Garden a list of all products and ingredients to be acquired and their quantities; and
  - 2.4.3 obtain Bread Garden's written approval.

If Bread Garden consider it necessary and appropriate, the Bread Garden franchisee must submit a sample for testing so Bread Garden can ensure that it meets Bread Garden's standards including those of quality, taste and performance (if relevant).

In making its decision Bread Garden is entitled to consider whether the proposed supplier has the capacity and facilities to supply the franchisee's needs in the required quantities and with the reliability and consistency necessary for the efficient conduct of the Franchised Business.

- 2.5 If a Bread Garden franchisee wishes to acquire equipment, packaging, training, design and marketing services from sources not approved by Bread Garden then that franchisee must submit details to Bread Garden to enable Bread Garden to decide if Bread Garden standards and image can be properly met.

Bread Garden must notify the franchisee of its decision within a reasonable time when deciding whether to grant approval.

- 2.6 Details of:-
  - 2.6.1 Products (including beverages), ingredients, packaging, equipment and services including training, design and marketing services which have been approved by Bread Garden;
  - 2.6.2 those products, ingredients, packaging, equipment and services which the Bread Garden franchisees are required to acquire from Bread Garden or Bread Garden Approved Suppliers; and
  - 2.6.3 the Approved Suppliers

are available or will be available from Bread Garden and will be provided by Bread Garden to Bread Garden franchisees (from time to time).

- 2.7 The purpose of the conduct or proposed conduct referred to above is not to lessen competition in the relevant market or markets but to:-
  - 2.7.1 ensure consistency and quality in the products, ingredients, packaging, equipment, training, design and marketing and services used and/or sold in the Franchised Business and to ensure that the products, ingredients, packaging, equipment and services used and/or sold in the Franchised

Business meet Bread Garden's standards as their quality can vary significantly depending on the source. It is important to the image of the Bread Garden system that the Approved Goods and Services meet Bread Garden's standards in the market place;

- 2.7.2 ensure consistency in customer experience regardless of which Franchised Business they buy the products from or receive the services from. This gives customers certainty;
  - 2.7.3 protect the value and reputation of Bread Garden and the Bread Garden system through the use and sale of Approved Goods and Services in the Franchised Business which are consistent with Bread Garden's image and position in the relevant market or markets;
  - 2.7.4 do its best to ensure that Bread Garden franchisees are able to acquire the Approved Goods and Services at competitive prices through the power of bulk buying, making the Bread Garden franchisees more competitive in the market;
  - 2.7.5 ensure uniformity of the type, quality, compatibility and reliability of plant, machinery fixture and fittings and computer equipment used by Bread Garden franchisees;
  - 2.7.6 ensure uniformity of the Services provided to Bread Garden franchisees;
  - 2.7.7 ensure uniformity and full compliance with food and safety standards (including but not limited to food compliance with safety handling procedures regarding the distribution and warehousing of the products and ingredients).
- 2.8 Bread Garden will receive rebates or financial incentives from most of the suppliers to the Bread Garden Franchise network. The amount of the rebate or financial incentive will vary depending on the commercial arrangements. Bread Garden may in its absolute discretion retain such rebates and other financial incentives or benefits for Bread Garden's own use or benefit and may in its absolute discretion pay any rebates or financial incentives received or a proportion thereof to its advertising and marketing fund as Bread Garden deems fit in its absolute discretion.
- 2.9 An extract from Bread Garden's current Franchise Agreement relating to Approved Products, vehicles, fittings and equipment is attached as Annexure "B".

**PART 3 – Arguments in support of notification and facts and evidence relied upon in support of these claims**

**(refer to Sections 4(a) and 4(b) of Form G)**

- 3.1 The specialist bakery, café and patisserie food industry is highly competitive and densely populated. Bread Garden's range of products including its specialist products will reinforce Bread Garden's uniqueness and consistency in its range of products and services thereby strengthening the Bread Garden brand in the marketplace.
- 3.2 Bread Garden therefore submits that the conduct or proposed conduct has considerable public benefit.
- 3.3 Bread Garden franchised businesses in the marketplace will increase competition increasing the likelihood of lower prices for end consumers and better protect public health and safety through quality of product controls.

- 3.4 Small independent businesses operating alone do not have access to the benefits of large organisations such as buying power, market presence and group marketing putting them at a significant disadvantage.
- 3.5 Bread Garden franchisees gain a number of benefits from being part of the Bread Garden Franchise system:-
- high quality products, ingredients and certainty of supply
  - high quality core products
  - better pricing by negotiation
  - advertising and marketing
  - increased sales
  - increased profitability
  - better buying power
  - compliance with food, health and safety standards
- 3.6 As a consequence of the benefits accruing to Bread Garden franchisees and the benefits of the conduct or proposed conduct consumers in the relevant retail markets will benefit.
- 3.7 The increased competitiveness and viability of Bread Garden franchisees enables them to compete with and promote competition at the retail level.
- 3.8 Suppliers to the franchise benefit by having a greater measure of certainty as to volumes of sales and products giving them a greater ability to plan, expand and invest in their own business and to supply at more competitive prices increasing competition resulting in lower prices to end consumers.

**PART 4 Market Definition (refer to Section 5 of Form G)**

The market can reasonably be defined as the Australian market for sale predominantly by way of retail of bakery, patisserie and related products and beverages and cafes associated therewith.

Each of these markets are characterised by a large number of participants both at retail and wholesale level ranging from independent businesses to franchise chains and supermarkets.

**PART 5 Public Detriments (refer to Section 5 of Form G)**

- 5.1 The notified conduct may have the following effects:-
- prevents the franchises from selecting between suppliers on the normal commercialised basis of product or service price and quality;
  - suppliers that are not nominated, approved or licensed will not have access to Bread Garden's franchisees.
- 5.2 The notified conduct however is highly unlikely to have any detrimental effect on end consumers. Consumers are free to shop around and compare quality, consistency and price from other bakery and patisserie outlets or for alternate products and ingredients offerings.



- 5.3 Bread Garden submits that there are no substantial detriments of the notified conduct. Any anti-competitive effects on suppliers of the Approved Goods and the Services will be minimal due to the number of potential purchasers of their products and services.
- 5.4 The Franchise Agreement provides scope for a franchisee to request that products or suppliers that are not part of the Approved Goods and Services or Approved Suppliers be approved by Bread Garden for use in the franchisee's business.
- 5.5 Consistency of product services, environment price and quality particular in regard to core products and ingredients will provide an overall benefit to franchisees. Franchisees benefit from the commercial viability of purchasing their goods from approved suppliers and through participating in a reliable consistent system thereby developing and maintaining a unique brand promoting the success of Bread Garden franchises businesses.
- 5.6 Bread Garden submits that the notified arrangements will have a negligible effect on competition within the relevant market and that the public benefits resulting from the notified conduct far outweigh any public detriment.

## ANNEXURE "B"

(refer Annexure "A" Part 2.9)

### 14. Products

#### 14.1 Product Availability

The Franchisor shall:-

- 14.1.1 endeavour at all times to arrange sufficient suppliers of the products so as to fulfil the needs of the Franchisee;
- 14.1.2 specify a list of products that are core products and ingredients. The Franchisor may at any time by written notice to the Franchisee add a product or ingredient or remove any product or ingredient from the list of core products and ingredients;
- 14.1.3 at the commencement of this agreement supply the Franchisee with a list of the products which are available for purchase from approved suppliers during the currency of this agreement and from time to time update this list.

#### 14.2 Purchase of Core Products and Ingredients

- 14.2.1 The Franchisee must purchase all core products and ingredients from the Franchisor or the approved supplier(s);
- 14.2.2 If the Franchisor or an approved supplier is unable to supply a particular core product or ingredient within a reasonable period of time of receiving the written order, the Franchisee may purchase that particular core product or ingredient from an alternative supplier in accordance with the procedure set out in clause 14.7 and provided the core product or ingredient to be supplied meets the quality criteria set out in clause 14.6 and only for so long as the Franchisor or the approved supplier is unable to supply that core product or ingredient.

#### 14.3 Purchase of other Approved Products

The Franchisor shall specify a list of products and ingredients that are approved products but are not core products and ingredients ("**other approved products**");

- 14.3.1 The Franchisor may at any time by written notice to the Franchisee add a product or ingredient to or remove and product or ingredient from the list of other approved products;
- 14.3.2 The Franchisee must obtain each other approved product only from an approved supplier unless the Franchisor first gives the Franchisee written approval to obtain any such product or ingredient from an alternative supplier in accordance with clause 14.7 and who meets the standards in clause 14.6;
- 14.3.3 Any non-approved product(s) which are subsequently approved by the Franchisor shall become an approved product unless and until withdrawn in accordance with clause 14.4;

#### 14.4 Withdrawal of Products

The Franchisor may at any time require the Franchisee to withdraw from supply in the franchised business, any approved products, which in the Franchisor's reasonable opinion:-

- 14.4.1 does not conform or no longer conforms with the standards, quality controls and specifications for products to be supplied in the Franchisor's franchise system; or
- 14.4.2 does not conform or no longer conforms with the range of products to be supplied in the Franchisor's franchise system; or
- 14.4.3 is, or may be, a health or safety risk.

AND the Franchisee must immediately withdraw any products from sale or supply when required to do so by the Franchisor in this clause 14.4.

#### 14.5 Products Level

Subject to the provisions of the Competition and Consumer Act the Franchisee shall use its best endeavours to maintain at all times during this agreement the level and type of approved products specified by the Franchisor from time to time as is necessary for the proper conduct of the franchised business.

#### 14.6 Standards

The Franchisor with the intention of maintaining the high level of products quality as is necessary for the success of its franchise system shall source all products for the franchised business from such appropriate suppliers (which may include the Franchisor or a related company to the Franchisor) that meet the standards for quality, reliability and products control as specified by the Franchisor from time to time or stated in this agreement and as shall be approved by the Franchisor as meeting its standards for quality, reliability and products control.

#### 14.7 Purchase of Products

The Franchisee shall purchase the products from the Franchisor or suppliers approved by the Franchisor ("**approved supplier(s)**") PROVIDED THAT:-

14.7.1 should the Franchisee wish to purchase any non-approved products then it must submit all necessary details and samples to the Franchisor for its approval;

14.7.2 should the Franchisee wish to purchase any approved products from any non-approved supplier then it must obtain the approval of the Franchisor;

AND subject to the requirements of sub-clause 14.2 any approval sought by the Franchisee pursuant to either of sub-clauses 14.7.1 or 14.7.2 shall not be unreasonably withheld.

#### 14.8 Products of the Approved Supplier

14.8.1 the Franchisee shall ensure that all payments for the purchase of the products from any approved suppliers shall be paid in accordance with the approved supplier's current written terms and conditions of payment or in accordance with any special arrangement which the Franchisor may from time to time make with any approved supplier and in this respect time shall be of the essence in relation to any such payment or payments;

14.8.2 the Franchisee authorises the Franchisor to obtain such information and/or documentation (including but no limited to statements, invoices and computer print outs) as the Franchisor may require in respect of any

dealings of the Franchisee with any supplier of the products including but not limited to the time of payment by the Franchisee to such supplier for the products and in this respect the Franchisee shall execute such further documentation as the Franchisor may from time to time request;

14.8.3 The Franchisee must comply with all directions given by the Franchisor in relation to purchases from third party suppliers including but not limited to directions relating to rebates referred to in clause 19 whether received by the Franchisor or the Franchisee or both.

#### 14.9 Storage of the Products

The products including ingredients must be stored at the premises by the Franchisee in such a manner that they continue to meet the standards and specifications as to quality, health and hygiene as prescribed by the Franchisor.

#### 14.10 Acknowledgement by Franchisee

The Franchisee acknowledges that:-

14.10.1 the provisions of this clause 14 are reasonable and are necessary to maintain strict quality control in respect of the supply of all products to all of the Franchisees of the Franchisor who sell or use the products;

14.10.2 it is of essential importance that the Franchisee purchases approved products only from approved suppliers especially as there are at times benefits to the Franchisee and other franchisees such as discounts because of bulk buying and maintaining good quality products for sale or use in the franchised business.

#### 14.11 Default by Franchisee

If the Franchisee is in default of the Franchisee's obligations under this agreement or any related agreement and that default entitles the Franchisor to terminate this agreement the Franchisor may:-

14.11.1 refuse to supply; or

14.11.2 supply only on cash or delivery terms;

any core products and ingredients and any other products or services the Franchisor or a related company usually supplies to the Franchisee and if this occurs nothing in this agreement entitles the Franchisee to obtain substitute products from another supplier.

## **15. Vehicles, fittings and equipment**

15.1 The Franchisee at the cost of the Franchisee in all things shall ensure that the premises are fit out, laid out and equipped strictly to the specification of Franchisor, with all prescribed fixtures, fittings and equipment and maintain the franchised business throughout this agreement and vehicles in accordance with the image and standards of the Franchisor as instructed from time to time by the Franchisor and amongst other things to:

15.1.1 repair and replace where necessary any worn out or obsolete equipment, vehicles and other assets used by the Franchisee in connection with the franchised business;

15.1.2 keep all vehicles, signs and displays used in the franchised business clean and tidy.

15.2 The Franchisee shall ensure that all fixtures, fittings and equipment are of the requisite quality, and capacity and have all appropriate features.

15.3 The Franchisee shall pay to Franchisor or the relevant third party any rental, hire purchase, lease or other charge relating to the premises.

15.4 The Franchisee shall at all times ensure that the premises, vehicles and all equipment used by the Franchisee in the franchised business comply with the image and the system and are clean, in proper undamaged condition and full working order.

15.5 The Franchisee shall ensure that the premises, vehicles and all fixtures, fittings and equipment comply with any safety or other reasonable requirements of the Franchisor in this respect, including any requirements in order to maintain the professional standards of the Franchisor.

15.6 In order to maintain the standards and the professional image of the network and to continue to deliver to customers a prompt efficient service the Franchisee shall re-

refurbish the premises to the current format every five years unless otherwise agreed by the Franchisor in writing.

15.7 The Franchisee shall acquire, maintain and upgrade computer hardware and software suitable for use in the franchised business that complies with Franchisor's specifications from time to time and is fully compatible with any other relevant part of Franchisor's computer system.

15.8 The Franchisee must establish and maintain the following minimum number of telecommunication lines at all times:-

15.8.1 1 telephone line for voice communication;

15.8.2 1 telephone line for facsimile communication; and

15.8.3 a broadband internet connection of the point of sale machine.