

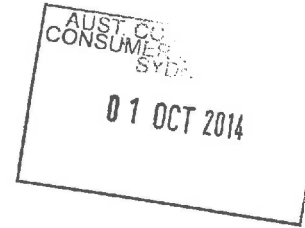
Partner
Writer
Direct line
Email
Our reference

Paul McLachlan
Kiran Bath
02 9270 8661
kbath@mccullough.com.au
KZB:PDM:160272 -00020

Lawyers | **McCullough
Robertson**

1 October 2014

FILE No:
DOC:
MARS/PRISM:



The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
Level 20
175 Pitt Street
Sydney NSW 2000

Deliver

Dear Sir/Madam

Absolute Board Co. Pty Ltd – Notification of third line forcing exclusive dealing

We **attach** for lodgement an exclusive dealing notification on behalf of Absolute Board Co. Pty Ltd together with a cheque for the applicable lodgement fees of \$100.

Please contact us if you have any queries or comments.

Yours faithfully

Paul McLachlan
Partner

attachment



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)

N97882

Absolute Board Co. Pty Ltd (**Absolute Board Co.**)

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

Absolute Board Co. manufactures and distributes skating and men's grooming products to retailers in over sixty countries. It has offices and production facilities in Australia, UK, USA, China, and Taiwan.

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

Paul McLachlan
Partner
McCullough Robertson
55 Hunter 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:

- i. skateboards manufactured by Absolute Board Co. known as the Penny Skateboard Complete 22" and the Penny Skateboard Complete 27" by Absolute Board Co. (**Penny Skateboard Products**); and
- ii. the benefit of entry in a competition whereby the winner will:
 1. be flown to Huntington Beach, California to attend the 2015 Vans US Open of Surfing (**Event**);
 2. meet the skateboarding legend Christian Honsoi;

3. be given Penny Skateboards merchandise; and
4. be given USD\$1000 spending money,

(Competition Service).

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

(Refer to direction 4)

Absolute Board Co. proposes that eligibility for the Competition Service be limited to entrants who have purchased a Penny Skateboard Product from a City Beach retail or online store during the promotion period (15 October 2014 to 30 November 2014).

Absolute Board Co. proposes to refuse to provide the Competition Service to anyone who has not purchased a Penny Skateboard Product from a City Beach retail or online store during that promotion period.

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)

City Beach customers who purchase the Penny Skateboard Products.

- (b) Number of those persons:

- (i) At present time:

Unable to ascertain. Expected to be more than 50 persons.

- (ii) Estimated within the next year:

(Refer to direction 6)

Unable to ascertain. Expected to be more than 50 persons. (Only relevant for the promotion period from 15 October 2014 to 30 November 2014.)

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:

(Refer to direction 7)

An important part of attracting domestic consumers to locally manufactured and owned skating goods is to provide special offers and “money can’t buy” experiences. The Competition Service provides a public benefit by promoting a local product and offering customers who would otherwise be

deterred from attending the Event due to the travel costs, a chance to attend and meet with a skateboarding legend.

In addition, the proposed conduct will promote competition in the markets in which the City Beach Products are supplied as it will encourage competitors of Absolute Board Co. to procure similar benefits for their customers.

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

The proposed conduct offers benefits to City Beach customers by giving them a chance to attend a high demand international sporting event which may otherwise be unaffordable to experience as the attendance requires many associated travel costs such as airfare, accommodation and daily expenditures.

Members of the public who wish to attend the Event are still able to do so without being a City Beach customer, as Absolute Board Co. simply offers a chance to win a trip to attend the Event and access to the Event will also be available at the conclusion of the Competition Service.

Further, the skateboard product market faces fierce competition from a multitude of local and foreign competitors within the \$769 million skateboarding industry. The proposed conduct promotes an Australian product and seeks to attract consumers to a local product.

A competitor of Absolute Board Co. could profitably provide a similar benefit to the Competition Service to the public. The proposed conduct may encourage them to do so, thereby increasing competition in the skateboard product market.

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)

For the purposes of this notification only, it is relevant to consider the markets in which Absolute Board Co. provides the Penny Skateboard Products broadly as being the distribution market for skateboards in Australia. The market is highly competitive with many foreign competitors (as mentioned in 4(b) above) competing with Australian products.

The market in which City Beach provides the Penny Skateboard Products is the retail market for skateboards in Australia. There is also substantial

competition among retailers that stock competing skateboard products such as City Beach, Surf Dive 'n Ski, Ozmosis and Surfstitch.

There may or may not be a separate market for the provision of entry into competitions. Absolute Board Co. submits that it is more likely that the Competition Service is part of the skateboard product markets as it is only provided as a bundle with a Penny Skateboard Product and should be considered as a feature of that product in any market analysis. Absolute Board Co. submits that the ACCC need not form a final view on market definition in order to form a view on the public benefits and detriments of the proposed conduct.

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)

It is submitted that there are no public detriments.

There is no lessening of competition as a result of the proposed conduct. There is no obligation on City Beach customers to acquire the Competition Service (City Beach customers who acquire the relevant Penny Skateboards can choose not to enter the competition). Nor is there any obligation on members of the public who wish to attend the Event to acquire any of the City Beach Products (they may instead make their own arrangements to attend the Event).

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

The proposed conduct will not lessen competition in the markets in which Absolute Board Co. or City Beach operates.

The proposed conduct is merely an additional benefit to consumers who are City Beach customers and have an interest in attending the Event.

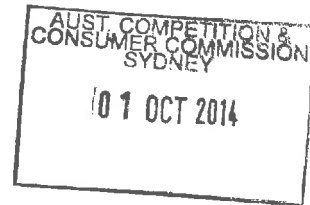
City Beach customers are free to choose whether or not they wish to take advantage of the Competition Service by purchasing the City Beach Products.

The promotion only runs for a short period of 45 days).

7. Further information

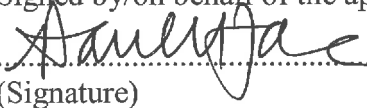
- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Paul McLachlan
Partner
McCullough Robertson
55 Hunter Street
SYDNEY NSW 2000



Dated..... 1 October 2014

Signed by/on behalf of the applicant


.....
(Signature)

Paul Desmond McLachlan
.....
(Full Name)

McCullough Robertson
.....
(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.