

Robert James Lawyers

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20 December 2013

Our Ref: OS:RA:128555-1

Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Sir/Madam,

Notification - Exclusive Dealing

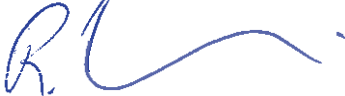
We act for SkinKandy Franchising Pty Ltd ("SkinKandy").

We enclose a notification under section 93(1) of the Competition and Consumer Act 2010 ("Act") in relation to conduct by SkinKandy which may breach section 47(6) of the Act.

We also enclose a cheque for \$100.00 being the relevant fee for lodging a notification by a proprietary company in relation to conduct under section 47(6) of the Act.

Please do not hesitate to contact us if you have any queries.

Yours faithfully,
ROBERT JAMES



Robert Alderuccio
Partner

Direct line: (03) 8628-2005
Email: robert@robertjames.com.au

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Enc.

OS-128555-1-31-V1

AUST. COMPETITION &
CONSUMER COMMISSION

24 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 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)

N97175 SkinKandy Franchising Pty Ltd ACN 161 712 152 (“SkinKandy”).

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

SkinKandy is in the business of granting to third parties (“SkinKandy Franchisees”) the right to operate a retail outlet of the SkinKandy business (“Franchised Business”) on such terms set out in a franchise agreement between the parties. The Franchised Business involves the provision of body piercing services and the sale of body piercing jewellery and other related products using a system and the “SkinKandy” name and logo.

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

C/- Robert Alderuccio, Robert James Lawyers, Level 10, 200 Queen 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 notification relates to the acquisition by SkinKandy Franchisees of goods and services approved or nominated, or which may be approved or nominated by SkinKandy including:

- body piercing jewellery, jewellery, body piercing equipment and tools, sterilisation equipment, piercing bed, electrical equipment, cleaning utensils and equipment, items used to package and present the products along with any equipment used in the conduct of the Franchised Business including the computer system and other equipment

nominated by SkinKandy from time to time (collectively referred to as the “Goods”); and

- such services as SkinKandy Franchisees are required to acquire from third party service providers including store fit-out and development services and information technology services (collectively referred to as the “Services”).

(b) Description of the conduct or proposed conduct:

Refer to Section 1 of attached Annexure A.

(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)

- SkinKandy Franchisees (or persons who will become SkinKandy Franchisees) who are granted the right to operate Franchised Businesses pursuant to a franchise agreement with SkinKandy; and
- Approved Suppliers.

(b) Number of those persons:

(i) At present time:

- Franchisees: 0
- Approved Suppliers: 6

(ii) Estimated within the next year:

(Refer to direction 6)

- Franchisees: 3
- Approved Suppliers: 6

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

Not applicable.

4. Public benefit claims

(a) Arguments in support of notification:

(Refer to direction 7)

Refer to Section 3 of attached Annexure A.

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

Refer to Section 3 of attached 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)

Refer to Section 4 of attached 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)

Refer to Section 5 of attached Annexure A.

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

Refer to Section 5 of attached Annexure A.

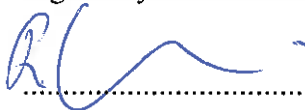
7. Further information

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

Robert Alderuccio
Robert James Lawyers
Level 10, 200 Queen Street
MELBOURNE VIC 3000

Dated: 20 / 12 / 2013

Signed by/on behalf of the applicant:



ROBERT ALDERUCCIO

PARTNER

ROBERT JAMES LAWYERS

ANNEXURE “A”

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

1 DESCRIPTION OF THE CONDUCT OR PROPOSED CONDUCT:

(Refer to paragraph 2(b) of Form G)

- 1.1 The conduct to which this notice relates is the requirement for SkinKandy Franchisees to acquire the Goods and Services described in paragraph 2(a) of Form G, from suppliers approved by SkinKandy (“Nominated Suppliers”).
- 1.2 SkinKandy Franchisees will be granted the right to operate Franchised Businesses on the condition, among other things, that they agree to:
 - 1.2.1 use certain Goods and Services nominated by SkinKandy from time to time in the conduct of the Franchised Business; and
 - 1.2.2 only acquire those Goods and Services from SkinKandy (or its associates) or the Nominated Suppliers.
- 1.3 Unless SkinKandy has specifically notified a SkinKandy Franchisee that a particular good or service must be acquired from a Nominated Supplier or from SkinKandy, the SkinKandy Franchisee may acquire that good or service from the supplier of its choice.
- 1.4 If a Good or Service cannot be provided by an Nominated Supplier or SkinKandy for whatever reason at any time, SkinKandy Franchisees may acquire the Good or Service from an alternative supplier of their choice until a Nominated Supplier or SkinKandy is able to provide the Good or Service.
- 1.5 SkinKandy Franchisees also have the ability to notify SkinKandy of alternate suppliers from which the SkinKandy Franchisee wishes to buy goods and services that are comparable with the Goods and Services (being suppliers other than the Nominated Suppliers) (“Alternate Suppliers”). SkinKandy will not unreasonably withhold its consent to a SkinKandy Franchisee buying goods and services from such Alternate Suppliers provided that, amongst other things, the SkinKandy Franchisee can demonstrate to SkinKandy that the Alternate Supplier has the capacity and ability to supply goods and services to all SkinKandy Franchisees at a quality and price which is comparable to the quality and price of the Goods and Services sold by SkinKandy and/or Nominated Suppliers.
- 1.6 Details of:
 - 1.6.1 the Goods and Services which SkinKandy Franchisees are required to acquire from a Nominated Supplier; and
 - 1.6.2 the Nominated Suppliers,

are (or will be) set out in an operations manual which SkinKandy provides (or will provide) together with updates from time to time to all SkinKandy Franchisees.

2 PURPOSE OF THE CONDUCT OR PROPOSED CONDUCT:

- 2.1 The purpose of the proposed conduct referred to in clause 1.1 is not to lessen competition in the relevant market or markets but to:
 - 2.1.1 ensure consistency in the Goods and Services provided to SkinKandy Franchisees which in turn ensures consistency in customer experience regardless of which Franchised Business a customer attends;
 - 2.1.2 ensure a certain standard of quality of the Goods and Services provided to SkinKandy Franchisees;
 - 2.1.3 ensure confidence in compliance health and safety regulations as a result of the consistency in Goods and Services;
 - 2.1.4 ensure that Goods and Services provided to SkinKandy Franchisees meet SkinKandy's standards and specifications;
 - 2.1.5 protect the value, integrity and reputation of SkinKandy and the SkinKandy system through consistency and quality;
 - 2.1.6 ensure consistency in the nature and quality of the fit out and equipment used in the Franchised Business and the overall service delivery and business efficiency of the Franchised Business; and
 - 2.1.7 ensure that SkinKandy Franchisees are able to acquire the Goods and Services at competitive prices through the power of bulk buying, making SkinKandy Franchisees more competitive in the market and ensuring that SkinKandy Franchisees' potential profitability is maximised.

3 PUBLIC BENEFIT CLAIMS

(Refer to paragraph 4 of Form G)

- 3.1 SkinKandy submits that the proposed conduct will have public benefit.
- 3.2 The purpose of the proposed arrangement is not to substantially lessen competition.
- 3.3 The SkinKandy Franchisees operate in the competitive retail market. The notified arrangement will enhance the capacity of SkinKandy Franchisees, as small businesses, to compete with larger businesses and other competitors. The existence of the Franchised Businesses in the market place will increase competition and improve the likelihood of lower prices for end consumers.

- 3.4 Small independent businesses do not have access to the benefits of larger organisations such as buying power, market presence and group marketing. This puts them at a disadvantage.
- 3.5 SkinKandy Franchisees gain a number of benefits from being part of the SkinKandy system:

- 3.5.1 High Quality Services and Certainty of Supply

SkinKandy has the ability to source high quality Goods and Services at a more favourable price than if SkinKandy Franchisees individually sourced Goods and Services of comparable quality. Access to better buying prices enhances the SkinKandy Franchisees' likelihood of operating profitably. SkinKandy will approve only those suppliers who, based on SkinKandy's investigations, are able to provide the consistency of supply of the Goods and Services required by SkinKandy Franchisees to foster and improve their business efficiency.

- 3.5.2 Better Buying Power

SkinKandy Franchisees by themselves would have little or no ability to negotiate with Nominated Suppliers the types of prices for Goods and Services which SkinKandy is able (or will be able) to negotiate. If SkinKandy Franchisees negotiated independently with any of the Nominated Suppliers, they would in all likelihood have to pay a higher price for the Goods and Services. In some cases, it is possible that SkinKandy Franchisees may not be able to acquire Goods and Services at all from a particular supplier if they were to approach them independently.

- 3.5.3 Increased Sales

By being part of the SkinKandy system, SkinKandy Franchisees have market presence and group marketing power which they would otherwise not have. By all branding their businesses using SkinKandy's name and logo, the SkinKandy Franchisees increase customer awareness of the products and services that SkinKandy businesses provide. In addition, SkinKandy undertakes marketing and promotional activities on behalf of the SkinKandy group, increasing the profile of the Franchised Businesses within the relevant markets. By pooling funds, SkinKandy is able to undertake professional advertising, marketing and promotional campaigns at a fraction of the comparative (often prohibitive) cost of individual business initiatives. The branding of the Franchised Businesses and the group marketing will draw more customers to SkinKandy businesses than if they were independents, resulting in increased sales.

- 3.5.4 Increased Profitability

By being part of the SkinKandy system, SkinKandy Franchisees will be able to acquire Goods and Services at more competitive prices than if

they were independents. This improves the profitability of their businesses and helps them achieve the economies of scale normally associated with larger organisations.

3.5.5 Improved Management and Operating Skills

SkinKandy has experience in the retail industry in particular, in the provision of piercing services and the sale of body piercing products. By sharing its experience with SkinKandy Franchisees and providing them with systems and operating procedures to follow, SkinKandy provides SkinKandy Franchisees with significant advantages normally associated with big business management and operating techniques. This encourages more efficient retail practices within the Franchised Businesses, increasing their competitiveness within the relevant markets.

3.5.6 Improved Productivity through Reduction in Business Administration

SkinKandy will provide SkinKandy Franchisees with advice and guidance on the conduct of the Franchised Business, including administrative and general operating procedures for the proper conduct of the Franchised Business. This encourages more efficient business practices and increased productivity. By ensuring that SkinKandy Franchisees acquire the Services (i.e. fitout development services) from the Nominated Suppliers, SkinKandy ensures that the Franchised Businesses have consistent fit-out, equipment, operating procedures and appearance which results in an improved customer experience for consumers and improved business functionality for SkinKandy Franchisees.

- 3.6 SkinKandy submits that, as a consequence of the benefits provided by SkinKandy to SkinKandy Franchisees and the benefits of the proposed conduct, consumers in the relevant retail markets will benefit.
- 3.7 The increased competitiveness and viability of SkinKandy Franchisees enables them to compete with larger businesses, resulting in greater competition at the retail level and better prices and increased service levels for end consumers. If independent businesses such as those operated by SkinKandy Franchisees were to be pushed out of the marketplace, the major competitors would have greater market share enabling them to increase the prices of goods to the public.
- 3.8 There is also a high probability that the majority of profits earned by SkinKandy Franchisees are likely to be spent locally, resulting in greater demand for Goods and Services in the areas in which SkinKandy Franchisees operate and increasing competition in those areas.
- 3.9 There are also a number of benefits to be gained by the Nominated Suppliers from the proposed conduct. By being appointed as a Nominated Supplier, the supplier will have some degree of certainty as to frequency of supply of Goods and Services required by SkinKandy Franchisees. This will give them a greater ability to plan for their businesses and may encourage them to invest

in their businesses. The increased volumes will also result in greater economies of scale and efficiencies within the Nominated Suppliers' businesses. This in turn enables the Nominated Suppliers to provide Goods and Services to SkinKandy Franchisees at more competitive prices, increasing competition and resulting in lower prices to end consumers.

4 MARKET DEFINITION

(Refer to paragraph 5 of Form G)

- 4.1 SkinKandy submits that the relevant market is the retail and wholesale market for the provision of the Goods and Services in Australia.
- 4.2 Based on investigations made by SkinKandy, this market is highly competitive and there are many suppliers and recipients of the Goods and Services in the relevant market.
- 4.3 There are no restrictions including of a geographical or legal nature that affect the provision of the Goods and Services within the relevant market.

5 PUBLIC DETRIMENTS

(Refer to paragraph 6 of Form G)

- 5.1 SkinKandy submits that there is no public detriment that results from the proposed conduct.
- 5.2 SkinKandy submits that the proposed conduct will not lessen competition in the market and will have a positive impact on end-consumers' retail experience.
- 5.3 The proposed conduct will not prevent SkinKandy Franchisees from dealing with other suppliers of the Goods and Services:
 - 5.3.1 SkinKandy Franchisees are independent operators and except for those Goods and Services which SkinKandy specifies must be acquired from either SkinKandy or its Nominated Suppliers, SkinKandy Franchisees may acquire all other goods and services from the suppliers of their choice; and
 - 5.3.2 SkinKandy may appoint different suppliers as Nominated Suppliers from time to time (including any proposed Alternate Suppliers as may be nominated by SkinKandy Franchisees for approval by SkinKandy from time to time). In determining whether to appoint a supplier as a Nominated Supplier, SkinKandy will consider such things as the quality of their Goods and Services, ability to provide the frequency of supply of Goods and Services and price.
- 5.4 Nominated Suppliers will be able to contract with competitors of SkinKandy Franchisees (excluding Goods and Services which are proprietary to the Franchised Business).
- 5.5 SkinKandy will not be limited in its dealings with competitors of the Nominated Suppliers.

- 5.6 To the extent that the proposed conduct contravenes section 47 of the Act, SkinKandy submits that the public benefits resulting from the proposed conduct outweigh any public detriment caused by the proposed conduct.