

9 February 2015

The Australian Competition and Consumer
Commission
PO Box 12241
George Street Post Shop
BRISBANE QLD 4003

Our ref
MMW:ANH:101288
Contact
Andrea Hetherington
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(07) 3221 0479
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Principal
Mark Woolley

Dear Sir/Madam

**EXCLUSIVE DEALING NOTIFICATION FOR THIRD LINE FORCING
FRANCISOR: STUDIO PILATES INTERNATIONAL AUSTRALIA PTY LTD**

We act for Studio Pilates International Australia Pty Ltd.

Our client is the Franchisor of a Franchise Network of Pilates Studios. As part of this Franchise, our client requires its franchisees to purchase products and services from its approved third party suppliers.

Please find **enclosed** a Form G – Notification of Exclusive Dealing completed pursuant to subsection 93(1) of the *Competition and Consumer Act 2010* (Cth), with respect to this proposed conduct.

Accompanying this form is a cheque for \$100 in payment of the required fee.

Should you require any additional information, please do not hesitate to contact Andrea Hetherington of this office on (07) 3014 6539 or Mark Woolley on (07) 3231 0653.

Yours faithfully
McInnes Wilson Lawyers



Mark Woolley
Principal

Enclosures:

1. Form G – Notification of Exclusive Dealing
2. Cheque

Paul Tully
John Hamilton
Matthew Lyons
Mylon Burns
Allison Langford
Scott Falvey
Patrick McGrath
Terry McCormick
Chris McManus
Christopher Davls
David Jesser
Glenn Calligaris
Brian Schech
Fred Smith
Mark Woolley
Paul McCowan
Alicia Hill
Emma Chapman
Neal Dallas
Jacqueline Eager
Carl Moseling
Trevor Gallienne
Andrew Mewing
Michael Batch
Trenton Schreurs
Pierce Carstensen
Clara Houston



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)

N98122 Studio Pilates International Australia Pty Ltd ACN 601 848 819 (**Studio Pilates**).

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

Studio Pilates is in the process of developing a franchise network of Pilates Studios, of which Studio Pilates is the Franchisor (**Studio Pilates Franchise**).

At the time of making this application, a related entity of Studio Pilates operates its own Studio Pilates business and Studio Pilates has three current franchisees.

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

C/- McInnes Wilson Lawyers

Attn: Mark Woolley

GPO Box 1089

Brisbane QLD 4001

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 pilates class services and home exercise products such as pilates DVDs, mats and other products (**Products and Services**), reformer exercise equipment (**Equipment**) and premises fit-out construction services (**Contracting Work**).

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

Products and Services

As a condition of granting a Franchise, Studio Pilates requires its franchisees to acquire the Products and Services (so far as they are applicable) from the relevant supplier/s approved by Studio Pilates from time to time.

Studio Pilates' current approved supplier for the Products is a related entity of the Franchisor. Studio Pilates currently requires its franchisees to obtain education and training Services from a related party of the Franchisor.

Equipment

As a condition of granting the Franchise, Studio Pilates requires its franchisees to acquire designated Equipment for the delivery of the Services provided by the franchised business to the franchisees' customers. The Equipment must be purchased from the Equipment Supplier approved by the Franchisor.

The Equipment which Studio Pilates currently requires its franchisees' to use in the Studio Pilates Franchise is imported into Australia by a related entity of Studio Pilates.

Construction Works

As a condition of granting the Franchise, Studio Pilates requires its franchisees to undertake a specific fitout, the design for which is undertaken by the Franchisor.

Each Franchisee must engage the Franchisor's approved contractor to carry out the Construction Works for the fit out.

(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)

The conduct will affect Studio Pilates Franchisees who operate or will be granted the right to operate a Studio Pilates Franchise.

- (b) Number of those persons:

- (i) At present time:

3

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

Studio Pilates estimates that there will be approximately an additional 6 – 15 new Studio Pilates Franchises opened within the next 12 months.

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

1. SB & SL Pty Ltd as trustee for the LB Inspire Unit Trust
Address: 2b/1231 Sandgate Road, Nundah QLD 4012
2. Exploring Experiences Holding Company Pty Ltd
Address: Level 1, 15 Harries Road, Coorparoo QLD 4151
3. AJ Pilates Qld Pty Ltd
Address: 174 Kennedy Terrace, Paddington QLD 4064

4. Public benefit claims

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

Studio Pilates has developed a franchise system involving a range of Products and pilates class services that have been developed to the standard required by Studio Pilates.

Studio Pilates maintains that the public benefit resulting from the notified conduct will outweigh any public detriment. Studio Pilates, as a specialist pilates provider is able to negotiate competitive prices with the approved suppliers in relation to the Products and Services, the Equipment and the Construction Work.

The specification of products, services and suppliers ensures that customers of each Franchise are provided with a consistent experience and consistently high quality exercise programs across the franchise system.

The purpose of the notified conduct is not to substantially lessen competition, but rather to:

1. Ensure consistent quality in services and products and a consistent customer experience throughout the Studio Pilates Franchise network;

In order for Studio Pilates to be able to promote a consistent program of pilates classes across all studios, it is necessary for Studio Pilates to be able to mandate the use of particular Products, Equipment and the provision of particular Services from approved suppliers.

A consistent customer experience benefits franchisees as part of the Franchise Network as a whole, by ensuring consistency in the reputation of the Franchise among consumers.

Studio Pilates conducts market research in relation to the types of reformer equipment on the market and has determined that the Equipment chosen by its approved Equipment Supplier is the best quality product for use in the pilates class services provided by the Franchisees.

In order for each Studio Pilates to have the same “look and feel”, and provide the same edge over its competitors, Studio Pilates requires each Studio Pilates Franchisee to use the same Equipment in providing their services to consumers.

To further ensure that each franchise has the same “look and feel”, Studio Pilates requires each Franchisee to engage its approved contractor to carry out the Construction Work for its fitout to ensure that the same type and quality of building materials are used for each Franchise studio.

2. Promote business efficiency

Studio Pilates is able to procure high levels of service from its approved suppliers and contractors and ensure the approved suppliers and contractors meet Studio Pilates’ stringent service levels.

As the Equipment meets Studio Pilates’ strict standards, it is expected that the incidence of equipment malfunctions or errors will be reduced, allowing Studio Pilates Franchisees to continue to operate their franchises without interruption or incident.

The quality and functionality of the Equipment is particularly important because customers of the Franchisees will use the Equipment to exercise during their pilates classes.

Studio Pilates Franchisees do not need to be concerned with managing the relationship with approved suppliers, as Studio Pilates will take on this responsibility. This will allow Studio Pilates Franchisees to focus on operating their business, and allows them to receive the benefits of Studio Pilates’ negotiating power.

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

Competitive Prices

By virtue of its size and experience in comparison to its individual franchisees, Studio Pilates has greater bargaining power than that of its

individual franchisees. Studio Pilates has a direct relationship with the Product suppliers and Equipment suppliers, being related entities of the Franchisor, which allows Studio Pilates to secure better prices than those which would be available to individual Studio Pilates Franchisees from a party unconcerned with the success of the Franchise network.

As Studio Pilates is able to negotiate and/or control to some extent the prices to be offered to the Studio Pilates network as a whole, it has access to discounts that suppliers are only willing to offer for supplies of high volume.

Studio Pilates Franchisees would be unable to use bulk-buying power as leverage in the same way.

Consistent Quality in Products and Customer Experience

Please refer to the comments at Item 1 at 4(a) above.

Promoting Business Efficiency

Please refer to the comments at Item 2 at 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)

Studio Pilates submits that the relevant markets include:

1. The wholesale and retail market for the supply of pilates DVDs, mats and other home exercise products;
2. The wholesale market for the supply of reformer equipment to the fitness industry; and
3. The construction market for retail shop fitouts.

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)

Studio Pilates believes that the public detriment resulting from the notified conduct is negligible. The affected markets and the detriments which may be experienced in those markets are identified as follows:

Studio Pilates Franchisees

1. Studio Pilates Franchisees will be unable to choose between suppliers for their retail sales of home exercise products such as DVDs, mats etc, or suppliers for their reformers to be used in the course of providing their exercise services to consumers;
2. Studio Pilates Franchisees will be unable to choose their own contractor to carry out their premises fit out, however the contractor approved by the Franchisor will have the necessary experience to provide quality and consistent service.

Non-Approved Suppliers

3. Suppliers of reformer equipment and home exercise products who are not approved suppliers of the Studio Pilates Franchise Network will be unable to supply their goods or services to Studio Pilates franchisees.
4. Contractors with experience in retail shopfits who are not approved suppliers of the Franchisor will be unable to supply their services to Studio Pilates franchisees.

(b) Facts and evidence relevant to these detriments:

Studio Pilates submits that there is little or no public detriment resulting from the notified conduct, and in any case, that the benefits of the notified conduct outweigh any public detriment.

Studio Pilates Franchisees will benefit from the terms negotiated between Studio Pilates and the approved suppliers, including enjoying competitive prices and assurance of consistency and quality in Products and Equipment.

Further, Studio Pilates franchisees will be able to focus on operating their Studio Pilates franchised businesses rather than investing time and money in negotiating directly with suppliers.

The notified conduct is unlikely to substantially lessen competition, particularly in relation to other suppliers, as the market for suppliers to fitness service providers in the fitness industry is highly competitive and in any case, Studio Pilates is a relatively new franchisor which does not as yet have a substantial degree of power in the relevant market.

Studio Pilates does not believe that there will be a public detriment to consumers, who will be largely unaffected by the notified conduct except to receive the benefits of the notified conduct by being able to expect and enjoy consistency of experience and a high degree of quality across the whole Studio Pilates franchise network.

7. **Further information**

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

Mark Woolley

McInnes Wilson Lawyers

GPO Box 1089

Brisbane QLD 4001

Dated 9/02/2015

Signed by/on behalf of the applicant

(Signature)

Mark Woolley

(Full Name)

McInnes Wilson Lawyers

(Organisation)

Principal

(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.