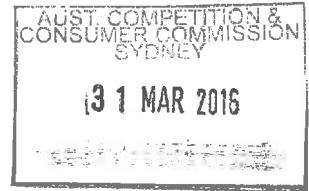


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Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

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)

N99008

Ultimate Franchising Group Pty Ltd (ACN 607 187 860) **(The Franchisor)**

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

Franchisor of the 'UFC Gym' chain of gymnasiums **(UFC Gyms)**

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

Chief Executive Officer
 Level 12, Plaza Building, Australia Square
 95 Pitt 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:

- gymnasium and exercise equipment;
- fit out services and related materials and furnishings;
- computer systems and software including point of sale, accounting, financial reporting, stock management and club management systems;
- payment systems;
- food, sports nutrition products and beverages;
- equipment for food and beverage preparation;
- UFC branded and other merchandise and marketing products and materials;
- uniforms;
- audio and video equipment and services (including music and video streaming or distribution services and associated software);
- cleaning supplies and chemicals;
- training services; and

- subscription television services (including associated equipment and software)

to be used in the operation of UFC Gyms (collectively referred to as **Products**).

(b) **Description of the conduct or proposed conduct:**
(Refer to direction 4)

As a condition of granting a franchise, the Franchisor may, from time to time, require Franchisees to acquire Products from suppliers approved by the Franchisor.

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)

UFC Gym franchisees (**Franchisees**)

(b) **Number of those persons:**

(i) **At present time:**

Nil

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

The Franchisor anticipates entering into between one and eight franchise agreements for the operation of franchised UFC Gyms within in the next 12 months.

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

Not yet known.

4. **Public benefit claims**

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

The Franchisor holds rights from UG Franchise Operations LLC (**Master Franchisor**) to operate the UFC Gym franchise system in Australia. Through experience and research, the Master Franchisor has developed a franchise system involving a range of approved processes and products that have been chosen to work efficiently and effectively to the standards required by the Master Franchisor at reasonable cost.

A key element of the UFC Gym franchise system is that UFC Gym members will have reciprocal rights at all UFC Gyms throughout Australia. This will provide consumers with significant benefits. To facilitate this, however, it is important that a range of systems (such as payment and access systems) are specified so as to be consistent across all UFC Gyms. The consumer benefit provided by these reciprocal membership rights will also be maximised by ensuring that each UFC Gym offers consistent services and equipment that operates in the same way from gym to gym, ensuring that consumers receive a consistent experience across all UFC Gyms.

The specification of a range of core Products and processes also provides substantial benefits to Franchisees, including by reducing the areas of risk associated with a franchised business and providing Franchisees with support in the operation of their businesses from the outset.

More specifically, by ensuring that Franchisees acquire Products from approved suppliers, the Franchisor is able to provide at least the following benefits:

- Gym equipment

A core element of the UFC Gym franchise system will be training, programs and techniques developed using UFC-exclusive gym equipment. Franchisees will be required to acquire this equipment from approved licensed suppliers to ensure that members can access the training programs and techniques that will be promoted across the UFC Gym franchise network.

The Franchisor may also require Franchisees to acquire other gym equipment from suppliers approved by the Franchisor in order to ensure that the equipment meet standards of quality and quality required protect the UFC Gym brand and reputation. This helps ensure that members can be assured of having access to equipment with consistent quality and operation across all UFC Gyms.

- Fit out, upgrade and construction services and associated fixtures and furnishings

The fit out of a UFC Gym and associated fixtures and furnishings are tailored to the programs, classes and specified equipment that are unique to the UFC Gym training experience. By requiring Franchisees to implement the fit out design using materials, fixtures and furnishings from approved suppliers, the Franchisor is better able to ensure consistency and quality in UFC Gyms throughout Australia.

By nominating approved contractors and materials to be used in the fit out of UFC Gyms the Franchisor is also better able to ensure a consistent customer experience and common "look and feel" at all UFC Gyms. Since approved contractors and materials will be reviewed by the Franchisor on an ongoing basis, this also helps ensure that Franchisees obtain a high quality fit out from reliable contractors at a competitive price.

- Computer systems and software including point of sale, accounting, financial reporting, stock and club management systems

As part of the UFC Gym franchise system, UFC Gyms may be required to use common point of sale and/or club management system software. This enables automatic reporting of franchise sales and other measures of business performance. This, in turn, simplifies franchisee reporting and enables the Franchisor to better monitor and improve the performance of the franchise system, including monitoring the success of various promotions and marketing initiatives as they are implemented across the UFC Gym franchise network. The Franchisor can most effectively support Franchisees in this way if Franchisees are using consistent point of sale, accounting, financial reporting and stock management systems that integrate properly with the Franchisor's own systems.

UFC Gym members have access to all UFC Gyms throughout Australia. In this context, it is important that members' information is accessible to each Franchisee. Such access is best facilitated by implementing consistent software, such as membership software, across the UFC Gym franchise network.

- Food, sports nutrition and beverages

The Franchisor may require Franchisees to order food, sports nutrition and beverages from an authorised supplier to ensure the availability of a consistent product range across UFC Gyms and ensure consistent quality. Some of these products are not 'standard' products and are tailored for use in UFC Gyms. For example, the Franchisor may commission approved suppliers to prepare protein shakes and juices with specific ingredients and methods to be sold exclusively in UFC Gyms.

- Food preparation equipment

In order to achieve consistency across the UFC Gym franchise network, the Franchisor may mandate the use of particular food preparation products and equipment in UFC Gyms.

- Merchandise.

As part of the UFC Gym franchise system, it is intended that Franchisees will be able to offer a range of UFC licensed merchandise. By its nature, this must be acquired from a nominated supplier. Further, by nominating approved suppliers of particular merchandise the Franchisor will be better able to ensure that the merchandise sold by Franchisees meets its specifications, is appropriate for the franchise operation and is consistent across the UFC Gym franchise network.

- Uniforms

By nominating uniform suppliers, the Franchisor is better able to establish and maintain a consistent look across all UFC Gyms and ensure that all uniforms meet the Franchisor's specifications and quality standards. Further, the Franchisor is able to negotiate competitive prices for Franchisees in relation to uniforms by negotiating on a group basis.

- Audio, video other electronic equipment (including associated music and video streaming services and software)

The quality of music and video broadcasts in UFC Gyms is an important part of the ambience and consumer experience in UFC Gyms. By requiring that Franchisees acquire relevant systems from approved suppliers and installers, the Franchisor can ensure that required standards are met and that the systems installed have the technical capabilities to manage such requirements as possible future music and video streaming arrangements.

- Cleaning supplies and chemicals

By their nature, gymnasiums present a range of cross-contamination risks due to the presence of sweat, risks of abrasions and multiple people using facilities and equipment. The ability to specify cleaning supplies and chemicals to be used by Franchisees will assist the Franchisor to best manage these risks to the benefit of all users and staff of UFC Gyms.

- Training services.

The Franchisor may engage external companies to provide elements of its training for Franchisees. This enables the Franchisor to provide Franchisees with high quality support in learning to operate and managing their UFC Gyms, even where those businesses may not be located close to the Franchisor.

- Subscription television services (including associated software)

It is a core part of the UFC Gym franchise system that Ultimate Fighting Championship events will be broadcast in UFC Gyms. This will necessitate Franchisees holding valid pay television or equivalent subscriptions (currently Foxtel Main Event).

More generally:

- By mandating the use of certain Products in the UFC Gym franchise network, the Franchisor is better able to ensure a consistent customer experience and common "look and feel" across all UFC Gyms. This not only benefits consumers, but strengthens the UFC Gym brand, enabling the Franchisor to promote Franchisees' businesses more effectively and increasing the ability of Franchisees to compete effectively in highly competitive gymnasium, personal fitness and health markets.
- As the UFC franchise system grows, the Franchisor intends to take advantage of group volumes to negotiate competitive purchase prices for Franchisees. These prices and the associated Products will be subject to regular review for competitiveness as each contract comes up for renewal.

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

Please refer to item 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)

It is likely that a range of separate product markets will exist for each of the different Products that may be acquired from suppliers approved by the Franchisor. These markets may be regional or national in scope.

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)

For the following reasons, the Franchisor does not believe that the notified conduct will give rise to any public detriments:

- The Franchisor intends to review all of the purchasing arrangements regularly and use its volume purchasing power to ensure that the arrangements provide Franchisees with high quality Products at competitive prices.
- The Franchisor and its Franchisees will not account for such a proportion of purchases in any of the various markets for Products that the notified conduct would be capable of generating any anti-competitive effects.

- Equipment supplied by the Franchisor's approved suppliers is subject to the Franchisor's strict requirements relating to quality, quantity, and health and safety standards. Ensuring that Franchisees acquire the Products from suppliers approved by the Franchisor better enables the Franchisor to achieve and promote consistent customer experience and care at UFC Gyms, benefiting not only consumers but also assisting Franchisees to compete more effectively in the highly competitive gymnasium sector.

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

Please refer to item 6(a) above.

7. **Further information**

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

Richard Westmoreland
HWL Ebsworth
Level 14, Australia Square
264-278 George Street
Sydney NSW 2000
Phone: (02) 9334 8717
Email: rwestmoreland@hwle.com.au

Dated: 31 March 2016

Signed on behalf of the applicant



Richard Westmoreland
Partner, HWL Ebsworth



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 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.