



SportsLawyer

Our Ref: SL 1052

Your Ref:

Thursday, 5 May 2016

Mr Theo Kelly
Adjudication
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email: theo.kelly@acc.gov.au

Dear Madam/Sir,

Re: Tenpin Bowling Australia (TBA): Authorisation Application – Form E

We refer to our client's Authorisation Application and a recent discussion between Mr Theo Kelly of the ACCC, and Paul Horvath of this office. We advised that we request that the draft determination be amended to cover and apply to "all Registered Bowling Centres" as opposed to its current application which is only to the AMF Bowling Centres and Centres represented by the Australian Bowling Proprietors Association ("ABPA").

We note that if the determination were only to apply to the AMF and ABPA bowling centres, that would mean that any centre not an AMF centre and not a member of the ABPA would argue that they are not bound by the ACCC determination. They could then potentially take action against Tenpin Bowling Australia ("TBA") for alleged anti competitive conduct because of the rules requiring them to collect TBA membership fees.

If those non-affiliated centres did not want to collect TBA membership fees, and did not therefore reach membership fee collection minimum targets set by TBA, they would be likely deregistered by TBA. If that were to occur, those non-affiliated centres may well consider commencing legal proceedings alleging that TBA were engaging in anti-competitive conduct in breach of Australian consumer and competition laws.

In our submission, this situation would represent a highly undesirable anomaly inconsistent with the current Authorisation Application process.

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We note that TBA is only asking that coverage of the ACCC determination only be extended to bowling centres that are registered with TBA. Those centres enjoy the benefits provided by TBA to members and registered centres. Consistently with this Application, TBA seeks to ask for fair and we submit modest contributions of funds to enable them to provide benefits to all members.

If the current draft determination were not to be extended to "Registered Centres", this might also be a licence for any disaffected bowling centre to disaffiliate from say the ABPA, yet remain Registered with TBA. They could then challenge the fee collection arrangements approved by the ACCC on the basis that the decision does not then apply to them as the determination only applies to ABPA and AMF bowling centres. This would defeat the ACCC's purpose, as well as TBA, AMF and ABPA's purposes in granting and seeking the authorisation, respectively.

In our respectful submission, that would be an unintended outcome from the terminology of the determination. This could easily be remedied by extending the coverage of the determination to apply to "all AMF, ABPA and other Registered Centres". The fact that they are "Registered Centres" means they are Registered with TBA, which necessarily requires them to abide by TBA's Rules, Policies and Constitution. Therefore it is reasonable that if they don't want to receive the benefits of being Registered, they can terminate their registration.

Otherwise, if they wish to retain their membership, then they must – amongst other things – abide by the TBA sought determination on the collection of membership fees. If they do not abide by this, then they are liable to de-registration by TBA. Alternatively, they can terminate their own Registration with TBA.

In any event, the TBA Rules, including the collection of membership fees, needs to be uniformly applied to all Registered Bowling Centres. This can easily be achieved by altering the words of the draft determination to apply to "all AMF, ABPA and other Registered Centres".

We further note that no concerns have been raised whatsoever by any bowling industry participant by way of the making of written submissions to the ACCC by the deadline of 2nd May, 2016, and therefore that also gives support to this amendment being sought by TBA.

We ask that the ACCC give this submission favourable consideration.

Yours faithfully,



Paul Horvath
Principal
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