

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:

N99997 CWG Massage Pty Limited ACN 610 676 652 (CWGM)

(b) Short description of business carried on by that person:

CWGM has the master franchise rights in Australia to use the *Massage Envy*® system and to franchise its use to others (CWGM Franchisees) in Australia. The *Massage Envy* system is a system operating boutique massage, facials and related services locations using the *Massage Envy* intellectual property (including trademarks, designs and copyright) as well as certain methods, procedures, standards and other protocol (Franchised Business). The locations provide massage, facials, assisted stretch and related services to consumers or “members” who enter into a membership agreement for monthly services or to guests who pay a casual fee per service.

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

Attn: Imogen Johnson
Collective Wellness Group
Level 2, 71 Longueville Road
Lane Cove NSW 2066

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 the acquisition and usage by CWGM Franchisees of a specific employment and human resources software system and related services from an authorised supplier, designated by CWGM. The current authorised supplier is HR Assured Pty Limited.

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

The conduct specifically involves the grant of *Massage Envy* franchises to franchisees on the condition that the franchisees obtain and use the specific employment and human resources software and related services from the authorised supplier.

The *Massage Envy* franchise agreement requires franchisees to purchase and maintain products, equipment and supplies approved by CWGM as meeting its standards, quality, design, warranties, appearance, function and performance (“Standards”).

The specified authorised supplier meets CWGM Standards.

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:
- CWGM Franchisees; and
 - The relevant authorised supplier (HR Assured).
- (b) Number of those persons:
- (i) At present time:
- 4 *Massage Envy franchisees*; and
 - One authorised supplier (HR Assured).
- (ii) Estimated within the next year:
- 10 *Massage Envy franchisees*; and
 - One authorised supplier (HR Assured).
- (c) Where number of persons stated in item 3 (b)(i) is less than 50, their names and addresses:
- *Massage Envy franchisees*:
 - (i) ME Lane C Pty Ltd, C/- Trumans Chartered Accountants, Suite 302, 12 Help Street, Chatswood NSW 2067
 - (ii) Say Green with Envy Pty Ltd, C/- David C K Low & Co, Suite 17, 46-48 Urunga Parade, Miranda NSW 2228
 - (iii) Relaxation Holdings Pty Ltd, C/- Australian Accounting & Tax Services, Suite 303, 74 Pitt Street, Sydney NSW 2000
 - (iv) Global Massage Group Pty Ltd, 8 Duigan Street, Middleton Grange NSW 2171

- Authorised Supplier:
HR Assured Pty Limited (ACN 008 522 852)
Level 11, 83 Mount Street, North Sydney NSW 2060

4. Public benefit claims

- (a) Arguments in support of notification; and
- (b) Facts and evidence relied upon in support of these claims:

There are several benefits to franchisees and to consumers arising from the notified conduct, including the following:

Increased Compliance with Employment Laws:

The authorised supplier will provide ad-hoc, non-legal advice and support to franchisees to assist them in complying with employment laws relating to staff within their locations.

Compliance with applicable laws relating to employment and human resources is of critical importance and as such, the notified conduct will be highly beneficial to the public.

Quality, Control and Efficiency: The authorised supplier meets the Standards and has been assessed as the most suitable for *Massage Envy* locations. The authorised supplier has also agreed to certain key performance indicators and other controls to help manage quality, privacy and security, improve efficiency and provide franchisees with assurance that they are using trusted and tested systems and suppliers.

Protection of the *Massage Envy* Brand and Reputation: The approval of suppliers, equipment, goods and services that comply with certain standards and fulfil specific expectations helps to protect the *Massage Envy* brand and reputation. Such protection is critical for consumer confidence and to the ongoing success of the *Massage Envy* business.

Rationalisation of Suppliers: The notified conduct enables *Massage Envy* to rationalise the number of suppliers from whom franchisees may purchase services.

Cost Reductions: Neither new nor experienced franchisees are likely to have extensive practice in negotiating agreements for the supply of employment and human resources related software services. CWGM is far better placed than individual franchisees to be able to negotiate on behalf of the CWGM network and obtain high quality products and services at favourable prices. Collective buying also helps franchisees by reducing the time and cost they would otherwise spend on getting quotes from different suppliers, assessing the quality and value of services and negotiating terms

and prices. Engaging a trusted employment and human resources software service supplier streamlines the process of engaging and retaining staff which ensures that franchisees are complying with all required laws and can run their business effectively and efficiently.

Competition: Having high quality, reliable and compliant employment and human resources software services that satisfy the Standards helps to distinguish *Massage Envy* locations from larger businesses in the competitive massage and beauty services market and other competitors. These services will assist CWGM Franchisees by obtaining and retaining the highest quality candidates. Such competition is beneficial for franchisees as well as consumers.

In addition, there are significant competitive pressures on CWGM to help increase the financial viability- by cost control- of individual franchisees as well as the franchise group as a whole. Such cost control is, in turn, likely to impact pricing of memberships for the benefit of consumers. The notified conduct helps to enhance effective competition.

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):

The market in which the goods and services described are supplied is the market for employment and human resources related software services, to spas and massage and beauty service providers.

CWGM believes this market is competitive and there are many suppliers and recipients of the goods and services within the relevant market.

Accordingly, other suppliers will only be marginally impacted (if impacted at all) by the notified conduct as there are many other spa and massage and beauty service providers.

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; and

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

Franchisees: Although the notified conduct will remove the opportunity for CWGM Franchisees to choose which supplier they purchase employment

and related human resources software services from, CWGM submits that the above benefits will significantly outweigh any disadvantage (if any exist at all). In addition, franchisees do not have to enter into franchise agreements with CWGM. There are several other options available- they may enter into agreements with other spas or may operate their own independent massage and beauty businesses.

Consumers (Members): CWGM does not consider that consumers will be detrimentally effected by the notified conduct.

Other Suppliers: The notified conduct will not allow other employment and human resources software services suppliers to compete for the business of CWGM Franchisees in the supply of employment and human resources related software services however, the detrimental impact on suppliers will be minimal given:

- the large number of competitors providing therapeutic massage and beauty services; and
- the fact that those suppliers are not restricted to supplying their services exclusively to massage, facials and related service providers. They can supply them to numerous other businesses and organisations.

Net Effect: CWGM submits that there are no public detriments that will result from the notified conduct.

7. Further information

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

Name: Imogen Johnson


E mail: imogen.johnson@collectivewellness.com.au

Phone: 0421 433 892

Address: Level 2, 71 Longueville Road, Lane Cove NSW 2066

Dated.....20 October 2017.....

Signed by/on behalf of the applicant

.....
(Signature)

Imogen Johnson.....
(Full Name)

..... CWG Massage Pty Limited
(Organisation)

..... Legal Counsel

(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.

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:

N99998 CWG OTF Pty Ltd ACN 614 111 410 (CWG OTF)

(b) Short description of business carried on by that person:

CWG OTF has the master franchise rights in Australia to use the **Orangetheory Fitness®** system and to franchise its use to others (CWG OTF Franchisees) in Australia. The **Orangetheory Fitness** system is a system of operating boutique group fitness studios and related services using the **Orangetheory Fitness** intellectual property (including trademarks, designs and copyright) as well as certain methods, procedures, standards and other protocol (**Franchised Business**). The studios provide group fitness classes and other related services to consumers or “members” who enter into a membership agreement or to guests who pay a casual fee or have been permitted to try out the facilities and services at a non-refundable cost.

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

Attn: Imogen Johnson
Collective Wellness Group
Level 2, 71 Longueville Road
Lane Cove NSW 2066

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 the acquisition and usage by CWG OTF Franchisees of a specific employment and human resources software system and related services from an authorised supplier, designated by CWG OTF. The current authorised supplier is HR Assured Pty Limited.

(b) Description of the conduct or proposed conduct:

The conduct specifically involves the grant of *Orangetheory Fitness* franchises to franchisees on the condition that the franchisees obtain and use the specific employment and human resources software and related services from the authorised supplier.

The *Orangetheory Fitness* franchise agreement requires franchisees to purchase and maintain products, equipment and supplies approved by CWG OTF as meeting its standards, quality, design, warranties, appearance, function and performance (“Standards”).

The specified authorised supplier meets CWG OTF Standards.

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:

- CWG OTF Franchisees; and
- The relevant authorised supplier (HR Assured).

(b) Number of those persons:

(i) At present time:

- 46 *Orangetheory Fitness* franchisees; and
- One authorised supplier (HR Assured).

(ii) Estimated within the next year:

- 80 *Orangetheory Fitness* franchisees; and
- One authorised supplier (HR Assured).

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

- *Orangetheory Fitness* franchisees:

Franchisee	Address Details
New South Wales	
OO Danks Street Pty Ltd	17 Danks Street, Waterloo NSW 2017
OTF Bondi Pty Ltd	64 Bronte Road, Bondi Junction NSW 2022

Franchisee	Address Details
OO Zetland Pty Ltd	45 Burchmore Road, Manly Vale NSW 2093
OO CBD Pty Ltd	45 Burchmore Road, Manly Vale NSW 2093
Orange Fitness Revolution Pty Ltd	C/- CIB Accountants & Advisers, 'Dalma House' Suite 12, 308 High Street, Penrith NSW 2750
Orange Fitness Motivation Pty Ltd	C/- CIB Accountants & Advisers, 'Dalma House' Suite 12, 308 High Street, Penrith NSW 2750
Orange Fitness Innovation Pty Ltd	C/- CIB Accountants & Advisers, 'Dalma House' Suite 12, 308 High Street, Penrith NSW 2750
Orange Sydney 1 Pty Ltd	Unit 6, 34-36 Abbott Street, Cammeray NSW 2062
OT Balmain Pty Ltd	Suite 1 Level 1, 95-97 Grafton Street, Bondi Junction NSW 202
OTF Races Pty Ltd	C/- Trumans, Suite 302, 12 Help Street, Chatswood NSW 2067
OTF Beach Pty Ltd	C/- Trumans, Suite 302, 12 Help Street, Chatswood NSW 2067
OTF Glamarama Pty Ltd	C/- Trumans, Suite 302, 12 Help Street, Chatswood NSW 2067
OTF Bay Pty Ltd	C/- Trumans, Suite 302, 12 Help Street, Chatswood NSW 2067
OTF Cross Pty Ltd	C/- Trumans, Suite 302, 12 Help Street, Chatswood NSW 2067
AENL Fitness Pty Ltd	11 Woodward Avenue, Stanhope Gardens NSW 2768
OTF1 Pty Ltd	Shop 2, 33 Hibberson Street, Gungahlin ACT 291
OTF2 Pty Ltd	Shop 2, 33 Hibberson Street, Gungahlin ACT 291
OTF3 Pty Ltd	Shop 2, 33 Hibberson Street, Gungahlin ACT 291
AENP Fitness Pty Ltd	11 Woodward Avenue, Stanhope Gardens NSW 2768
AENCH Fitness Pty Ltd	11 Woodward Avenue, Stanhope Gardens NSW 2768
OTF4 Pty Ltd	T Shop 2, 33 Hibberson Street, Gungahlin ACT 291
Ana and Jake Pty Ltd	Suite 1 Level 1, 95-97 Grafton Street, Bondi Junction NSW 2022
AENBV Fitness Pty Ltd	11 Woodward Avenue, Stanhope Gardens NSW 2768
PN Fitness Pty Ltd	126 Cosgrove Road, Belfield NSW 2191
Casey Custodians Pty Ltd	2 Macquarie Avenue, Penrith NSW 2750
GH Lifestyle Group Pty Ltd	19 Shortland Place, Doonside NSW 2767
Orange Fitness Peak Performance Pty Ltd	C/- CIB Accountants & Advisers, 'Dalma House' Suite 12, 308 High Street, Penrith NSW 2750
Orange Fitness Health & Fitness Pty Ltd	C/- CIB Accountants & Advisers, 'Dalma House' Suite 12, 308 High Street, Penrith NSW 2750
Orange Theory Fitness Mascot Pty Ltd	C/- MAS Accountants, Level 3, 2A Defries Avenue, Zetland NSW 2017
TK T.E.A.M Pty Ltd	C/- PPF Accounting Services Pty Ltd, Suite 1, 30 Burwood Road, Burwood NSW 2134
OTF Cronulla Pty Ltd	HLB Mann Judd, Level 1, 65 Kembla Street, Wollongong NSW 2500

Franchisee	Address Details
Queensland	
Fitness Nominees (QLD) No 1 Pty Ltd	Aspley Homemaker City, 815 Zillmere Road, Aspley QLD 4034
Australian Capital Territory	
Orangetheory Fitness Kingston Pty Ltd	C/- Vivid Chartered Accountants, Level 2, 10 Rudd Street, Canberra ACT 2601
OTF Gungahlin Pty Ltd	10 Gribble Street, Gungahlin ACT 2912
Orangetheory Fitness Woden Pty Ltd	C/- Vivid Chartered Accountants, Level 2, 10 Rudd Street, Canberra ACT 2601
DCS Health & Fitness Pty Ltd	C/- Needhams CPA's, 'Lakeview House' Suite 4 Level 2, 236 Cowlshaw Street, GREENWAY ACT 2900
OTF Tuggeranong Pty Ltd	C/- HLB Mann Judd, Level 1, 65 Kembla Street, Wollongong NSW 2500
Victoria	
OTF Caulfield North Pty Ltd	C/- HLB Mann Judd, Level 1, 65 Kembla Street, Wollongong NSW 2500
OTF Caulfield South Pty Ltd	C/- HLB Mann Judd, Level 1, 65 Kembla Street, Wollongong NSW 2500
OTF Elwood Pty Ltd	C/- HLB Mann Judd, Level 1, 65 Kembla Street, Wollongong NSW 2500
OTF Brighton Pty Ltd	C/- HLB Mann Judd, Level 1, 65 Kembla Street, Wollongong NSW 2500
OTF Melbourne Pty Ltd	C/- HLB Mann Judd, Level 1, 65 Kembla Street, Wollongong NSW 2500
OTF Richmond Pty Ltd	C/- HLB Mann Judd, Level 1, 65 Kembla Street, Wollongong NSW 2500
OTF St Kilda Pty Ltd	C/- HLB Mann Judd, Level 1, 65 Kembla Street, Wollongong NSW 2500
Western Australia	
Exponent Fitness Pty Ltd	3 McKerracher Street, Mandurah WA 6210
South Australia	
3 X H Pty Ltd	202 Belair Road, Hawthorn SA 5169

- Authorised Supplier:
HR Assured Pty Limited (ACN 008 522 852)
Level 11, 83 Mount Street, North Sydney NSW 2060

4. Public benefit claims

- (a) Arguments in support of notification; and
- (b) Facts and evidence relied upon in support of these claims:

There are several benefits to franchisees and to consumers arising from the notified conduct, including the following:

Increased Compliance with Employment Laws:

The authorised supplier will provide ad-hoc, non-legal advice and support to franchisees to assist them in complying with employment laws relating to staff within their studios.

Compliance with applicable laws relating to employment and human resources is of critical importance and as such, the notified conduct will be highly beneficial to the public.

Quality, Control and Efficiency: The authorised supplier meets the Standards and has been assessed as the most suitable for *Orangetheory Fitness* studios. The authorised supplier has also agreed to certain key performance indicators and other controls to help manage quality, privacy and security, improve efficiency and provide franchisees with assurance that they are using trusted and tested systems and suppliers.

Protection of the *Orangetheory Fitness* Brand and Reputation: The approval of suppliers, equipment, goods and services that comply with certain standards and fulfil specific expectations helps to protect the *Orangetheory Fitness* brand and reputation. Such protection is critical for consumer confidence and to the ongoing success of the *Orangetheory Fitness* business.

Rationalisation of Suppliers: The notified conduct enables *Orangetheory Fitness* to rationalise the number of suppliers from whom franchisees may purchase services.

Cost Reductions: Neither new nor experienced franchisees are likely to have extensive practice in negotiating agreements for the supply of employment and human resources related software services. CWG OTF is far better placed than individual franchisees to be able to negotiate on behalf of the CWG OTF network and obtain high quality products and services at favourable prices. Collective buying also helps franchisees by reducing the time and cost they would otherwise spend on getting quotes from different suppliers, assessing the quality and value of services and negotiating terms and prices. Engaging a trusted employment and human resources software service supplier streamlines the process of engaging and

retaining staff which ensures that franchisees are complying with all required laws and can run their business effectively and efficiently.

Competition: Having high quality, reliable and compliant employment and human resources software services that satisfy the Standards helps to distinguish *Orangetheory Fitness* studios from other fitness studios by assisting franchisees to obtain and retain the highest quality employees. Such competition is beneficial for franchisees as well as consumers.

In addition, there are significant competitive pressures on CWG OTF to help increase the financial viability by cost control of individual franchisees as well as the franchise group as a whole. Such cost control is, in turn, likely to impact pricing of memberships for the benefit of consumers. The notified conduct helps to enhance effective competition.

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):

The market in which the goods and services described are supplied is the market for employment and human resources related software services, to fitness studios and centres.

Orangetheory Fitness believes other suppliers will only be marginally impacted (if impacted at all) by the notified conduct as there are many other fitness studios and centres that other suppliers could target for supply of their services.

Some current other fitness brands include:

- Fitness First
- Good Life Health Clubs
- F45
- Fernwood Fitness
- Genesis Fitness
- Curves
- Virgin Active

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; and

(b) Facts and evidence relevant to these detriments:

Franchisees: Although the notified conduct will remove the opportunity for franchisees to choose which supplier they purchase employment and related human resources software services from, CWG OTF submits that the above benefits will significantly outweigh any disadvantage (if any exist at all). In addition, franchisees do not have to enter into franchise agreements with CWG OTF. There are several other options available- they may enter into agreements with other fitness brands or may operate their own independent business.

Consumers (Members): CWG OTF does not consider that consumers will be detrimentally effected by the notified conduct.

Other Suppliers: The notified conduct will not allow other employment and human resources software services suppliers to compete for the business of CWG OTF Franchisees in the supply of employment and human resources related software services however, the detrimental impact on suppliers will be minimal given:

- the large number of competitors operating fitness studios and centres; and
- the fact that those suppliers are not restricted to supplying their services exclusively to fitness studios and centres. They can supply them to numerous other businesses and organisations.

Net Effect: CWG OTF submits that there are no public detriments that will result from the notified conduct.

7. Further information

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

Name: Imogen Johnson

E mail: imogen.johnson@collectivewellness.com.au

Phone: 0421 433 892

Address: Level 2, 71 Longueville Road, Lane Cove NSW 2066

Dated.....20 October 2017.....

Signed by/on behalf of the applicant

H Johnson
.....
(Signature)

Imogen Johnson
.....
(Full Name)

CWA OTF Pty Ltd
.....
(Organisation)

Legal Counsel
.....
(Position in Organisation)

DIRECTIONS

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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.