

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)

Doutmost Pty Ltd (ACN 155 875 077) (trading as Oliver Brown)

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

(Refer to direction 3)

Doutmost Pty Ltd is a Franchisor which owns and operates a franchise business and grants a franchisee the right to carry on “Oliver Brown Brand café”, which are food and beverage retail stores.

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

Strathfield Law (c/- Han Ko)

Shop 1, 320-338 Liverpool Road, Enfield NSW 2136

PO Box 557, Strathfield NSW 2135

Phone: 02 9745 6111

Fax: 02 9745 6244

Email: hanko@strathfieldlaw.com

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The franchisees of Oliver Brown café are required to purchase the following items from the franchisor or its approved suppliers;

- i) Food and beverage products including but not limited to, coffee beans, beverages, tea, biscuits, muffins, cakes, chocolate, syrups, pastries, savouries, meat and fish products, pre-packed or pre-manufactured products, sauces, beverage flavour powders, etc.
- ii) Point of Sale (POS) display material and computing software, audio system

- iii) Oliver Brown operational and/or associated items (in accordance with Oliver Brown System) such as cups, heat insulation cups, glass, paper bags, carry bags, cutlery, napkins, menu, posters, stickers, promotional materials and products, food containers, drink containers, lids, uniforms, aprons, etc.
 - iv) Certain products in respect of leasing, fitout, operation and maintenance of Oliver Brown franchised business
- (b) Description of the conduct or proposed conduct:

Oliver Brown franchisees are required to purchase certain products and services from the franchisor or its approved supplier as stated in the Franchise Agreement. The franchisees must not during the term of the Franchise Agreement, sell or advertise for sale or give away at the franchised business any coffee, beverage and foods other than coffee, beverage and foods approved in writing by the franchisor. By this conduct, the Applicant will ensure that it maintains consistency of goods and services provided to customers of Oliver Brown stores and consistency in the high quality products offered to Oliver Brown stores and consistency in Oliver Brown franchising system for the benefit of the brand, franchisees and customers.

(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)

All current and future Oliver Brown franchisees

- (b) Number of those persons:

- (i) At present time:

49 Franchisees

- (ii) Estimated within the next year:

(Refer to direction 6)

50 – 55 Franchisees

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

Refer to Annexure A

4. Public benefit claims

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

The Applicant submits that the proposed conducts will have the following benefits to the public;

- i) The customers can receive from the Oliver Brown franchised business a consistently high quality of goods and services at competitive prices;
- ii) The franchisor and franchisees manage to minimise the risk that unsafe, defective and/or poor products are used in or provided by Oliver Brown stores;
- iii) The customers can get uniform and consistent experience throughout all Oliver Brown stores;
- iv) The franchisor can assist the franchisees to satisfy and meet expectation of Oliver Brown customers;
- v) The franchisor can monitor the quality of products used and sold in the Oliver Brown stores;
- vi) The franchisees can save time and costs in obtaining quotes from different suppliers and in managing and selecting suppliers and as a result, can put more endeavours on their own business.

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

The Applicant has operated Oliver Brown franchising business since year 2010. Since its birth of Oliver Brown in 2010, Oliver Brown has been well known with its quality coffees, foods and courteous services. The Applicant appreciates that market for retail sale of coffee, café and restaurant is very competitive and in order to continue servicing high quality goods and services at competitive prices for Oliver Brown customers, it is fundamental that the Applicant should maintain a high quality products and ingredients and consumables and competitive pricing by direct negotiation with approved suppliers and continuous supervising and management of the suppliers.

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)

The Markets are likely affected by this proposed conducts include;

- i) Wholesale and retail sale of coffee, foods and beverages (café and restaurant style business)
- ii) Wholesale and retail market for provision of equipment, software support, packaging, promotional services, products and merchandising relating to café and restaurant business;

Having regard to size of café/restaurant markets in Australia, the market share of Oliver Brown franchised business is relevantly trivial and as such the impact of the proposed conduct on the relevant market will be negligible.

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)

The Applicants submits that there are no material public detriments from the proposed conducts.

- i) While the franchisees are required to purchase coffee and foods, supplies and materials (products) used and sold in Oliver Brown franchised business from the franchisor or its approved supplier, at the request and finding of the franchisee, the franchisor will not unreasonably refuse the franchisee's use of products from another supplier provided that the franchisor should be satisfied with such products in accordance with Oliver Brown system;
 - ii) Customers of Oliver Brown shops are not prevented from comparing prices and products offered and there are huge number of café and restaurant business available in the relevant retail markets in Australia;
 - iii) Having regard to comparison of size of retail café and restaurant markets in Australia to the market share of Oliver Brown franchised shops, the impact of the proposed conduct on suppliers are negligible.
- (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:

Han Young Ko
Strathfield Law
PO Box 557, Strathfield NSW 2135
Phone: 02 9745 6111
Fax: 029745 6244
Email: hanko@strathfieldlaw.com

Dated.....8 November 2018.....

Signed on behalf of the applicant


.....
(Signature)

Han Young Ko
(Full Name)

Strathfield Law
(Organisation)

Solicitor for Doughty Pty Ltd
(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

ANNEXURE A

	Shop	Franchisee	Address
1	Top Ryde City	A2Z ENTERTAINMENT PTY LTD	Shop C3000 Ground Floor Top Ryde City Shopping Centre 109-129 Blaxland Road Top Ryde NSW 2112
2	Chatswood Westfield	HOONABLE PTY LTD	Shop 212 Level 2 Westfield Shopping Centre 1 Anderson St Chatswood NSW 2067
3	Rhodes	BRANDMAX PTY LTD	Shop 51 Rhodes Waterside Shopping Centre 1 Rider Blvd Rhodes NSW 2138
4	Hornsby Westfield	COFFEEKONG SAM PTY LTD	Shop 2034 Hornsby Westfield Shopping Centre 236 Pacific Highway Hornsby NSW 2077
5	Rouse Hill	MR SNAIL PTY LTD	Shop GR074 Rouse Hill Town Centre Cnr Windsor Road & White Hart Drive Rouse Hill NSW 2155
6	World Square	THE AUSTRALIAN RETAIL COMPANY PTY LTD	Shop 10.68 World Square Shopping Centre 680 George Street Sydney NSW 2000
7	Mt Druitt	HAI BUNG PTY LTD	Shop 180 Mt Druitt Westfield Shopping Centre Cnr Carlisle Ave & Luxford Road Mt Druitt NSW 2770
8	Cherrybrook	ROCK PLANNER PTY LTD	Shop P2A Cherrybrook village 41-47 Shepherds Drive Cherrybrook NSW 2126
9	Bankstown Centro	NACHABE ENTERPRISES PTY LTD	Shop 180 Centro Bankstown Rickard Rd Bankstown NSW 2200
10	DFO Homebush	ZARA ENTERPRISES PTY LTD	Shop 3-046 Direct Factory Outlet Homebush 3-5 Underwood Road Homebush NSW 2140
11	Merrylands	ANA FIRST CHOICE PTY LTD	Shop 1065B Stockland Merrylands Shopping Centre McFarlane Street Merrylands NSW 2160
12	Eastwood	DIP & POURING PTY LTD	45 Rowe St Eastwood NSW 2122
13	Liverpool	S HAMMOUD INVESTMENTS PTY LTD	Shop 2016 Westfield Liverpool Macquarie Street Liverpool NSW 2170
14	Beverly Hills	TAHAN PTY LTD	544 King George Road Beverly Hills NSW 2209
15	Auburn	COFFEEKONG PTY LTD	Cnr Harrow Rd & Queen St Auburn Central Shopping Centre NSW
16	Strathfield	OB STRATHFIELD PTY LTD	Shop 32 Strathfield Plaza 11 The Boulevard Strathfield NSW 2135
17	Parramatta	MTSS ENTERPRISES PTY LTD	Shop 2 Eastbrook Centre 286-290 Church Street

			Parramatta NSW 2150
18	The Quay	KONG SHING TRADING INTERNATIONAL PTY LTD	Shop 6 61-79 Quay Street Haymarket NSW 2000
19	Zetland	TING TING WU AS TRUSTEE FOR YU FAMILY TRUST	T.08 2-4 Defries Ave Zetland NSW 2017
20	Miranda Westfield	SHIVJI ENTERPRISES PTY LTD	Shop 3200 (Miranda Westfield) 600 Kingsway Miranda NSW 2228
21	Burwood Westfield	N & R PTY LTD	Shop CM01 100 Burwood RD Burwood NSW 2134
22	Burwood Railway	RUDRAKSHA PTY LTD	1 Railway Parade Burwood NSW 2134
23	Top Ryde Terrace	AHN FAMILY ENTERPRISES PTY LTD	shop 4004 Top Ryde Shopping Centre 109-129 Blaxland Road Top Ryde NSW 2112
24	Penrith Panthers	MF & CO ENTERPRISE PTY LTD	83 Mulgoa Rd Penrith NSW 2750
25	Wetherill Park	KAANAV PTY LTD	Shop 229 581-583 Polding St Wetherill Park NSW 2164
26	The Ponds	SJ WATERSIDE GROUP PTY LTD	Shop No. T08, The Ponds Shopping Centre, corner of the Ponds Boulevard & Riverbank Drive, The Ponds NSW 2769
27	Casula Mall	AACN PTY LTD	Shop 1B, Casula Mall Shopping Centre NSW
28	Canley Heights	TANG FU AUSTRALIA PTY LTD	Shop1, 235 Canley Vale Road, Canley Heights NSW
29	Westfield Hurstville	PADCHEMA PTY LTD	Roof Top Pavilion C, Westfield Hurstville, Park Road, Hurstville NSW 2220
30	Lane Cove	WJS (AUSTRALIA) PTY LTD	Shops T15 & T16, Lane Cove Market Square, The Plaza, 24-28 Burns Bay Road, Lane Cove NSW 2066
31	Lidcombe Shopping Centre	OB CHOCOLATIER PTY LTD	Shops 29 & 30 (G-030), Lidcombe Shopping Centre, 92 Parramatta Road, Lidcombe NSW 2141
32	Little Saigon Plaza Bankstown	OBLIS PTY LTD	Shop G.21, Little Saigon Plaza, 462 Chapel Road, Bankstown NSW 2200
33	Sydney International Airport	GOLDEN AUTUMN LEAVES PTY LTD	Suites 2-1680 & 2-1680L, T1 International Terminal, Sydney (Kingsford Smith) Airport, Mascot NSW 2020
34	UWS (Parramatta South Campus)	S.TNA PTY LTD	Building EG, Western Sydney University, Parramatta South Campus, Parramatta NSW 2150
35	Mascot (Mascot Central)	CSR MASCOT PTY LTD	Shop 1, 19-33 Kent Road, Mascot NSW 2020 (Mascot Central)
36	Crows Nest	AMBROSIA AUSTRALIA PTY LTD	Shop 3, 36-48 Falcon Street, Crows Nest NSW
37	UWS	COFFEEKONG DUL	Room BA.1.G.03 &04, Building 1,

	(Bankstown Campus)	PTY LTD	University of Western Sydney Bankstown Campus
38	Carlingford Court Shopping Centre	AVALLE FOODS PTY LTD	Shop SP112, Level 1 Carlingford Court Shopping Centre
39	Macarthur Square	THE OPULENCE GROUP PTY LTD	Shop U156, Level 3, Macarthur Square
40	Guildford	OLIVER BROWN GUILDFORD PTY LTD	271 Guildford Road, Guildford
41	Green Hills Stockland	HOONABLE PTY LTD	Shop T2079, Stockland Green Hills
42	Bunda Canberra Civic	OB CANBERRA PTY LTD	Shop 2 88-96 Bunda St Canberra City ACT 2600
43	Dickson	OB DICKSON PTY LTD	shop6/28 Challis St Dickson ACT 2602
44	Manuka	LE CAFÉ PROVENCE PTY LTD	6a/1-13 Flinders Way, Manuka ACT 2603
45	Gungahlin Market Place Shopping Centre	EEA-PY PTY LTD	Shop H 45, Gungahlin Market Place Shopping Centre
46	Kawana Shopping World	IKONKAR SATNAAM PTY LTD	Shop 405, Kawana Shopping World 119 Point Cartwright Drive, Buddina QLD
47	Westfield Garden City	SKRG ONE PTY LTD	Shop 2330, Westfield Garden City, Logan Road & Kessels Road, Upper Mount Gravatt QLD 4122
48	Townsville	JMM HOLDINGS PTY LTD	62 The Strand North Ward Townsville QLD 4810
49	Eastland Shopping Centre	OLIVER BROWN VICTORIA PTY LTD	Shop 1123 (Eastland Shopping Centre), 171-175 Maroondah Highway, Ringwood VIC 3134

Declaration by notifying party

Authorised persons of the notifying party must complete the following declaration.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

solicitor for Doughty Pty Ltd

Office held

Han Young Ko

(Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

08/11/2018

Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.