



23 July 2009

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Mr Mike Kelly  
Executive Director  
Office of Liquor, Gaming and Racing  
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By E-Mail: [michael.kelly@racing.qld.gov.au](mailto:michael.kelly@racing.qld.gov.au)  
*Original by Post*

Dear Mike

**RE: PRODUCT AND PROGRAM AGREEMENT (PPA)**

Please find **attached** to this correspondence an opinion by Cooper Grace Ward (November 18, 2008) that deals with, amongst other things, whether UNITAB is entitled to deduct a Third Party Charge from the product fee payable to Queensland Race Product Co Ltd (Product Co).

By way of background, the attached opinion was initially provided to Product Co for consideration, however, after discussing the correspondence, it was determined that, as the correspondence was addressed to Queensland Racing Limited (QRL), QRL was the appropriate entity to consider the issues raised. At the QRL Board meeting on Friday, June 26, 2009, the Board agreed to refer the matter to the Queensland Government, so that a whole of Government response can be provided in relation to this matter.

In essence, the attached opinion, on page five at point three, outlines that the product fee payable under 10.1, *"will not be the subject of any offset or deduction under 10.2 (c) as and by way of a Third Party Charge in respect of monies paid to anyone else for the provision of Australian Racing Product..."*.

This opinion has been provided notwithstanding Clause 7.4 (f) of the PPA, which seems to clearly point out that, *"nothing in this Agreement prevents or restricts TABQ using or acquiring the rights to use the Queensland Racing Calendar, Queensland Racing Program, Australian Racing Product, Marketing Rights or any other information or Intellectual Property rights in respect of Racing from any other party in connection with any other business, product or service of TABQ other than the Race Wagering Business or Existing Purpose and TABQ shall have no liability to pay or*


*otherwise compensate any Queensland Control Body or Product Co for or in respect of such uses".*

As you are aware, with the introduction of Race Information (or Race Fields) Legislation by other States in Australia, UNITAB is incurring a charge for the use of interstate information and is currently deducting that charge from the product fee payable to Product Co under Clause 10.1 of the PPA. You will also be aware that at the time the PPA was entered into the so called "*Gentlemen's Agreement*" was intact, which provided for the free exchange of Australian racing information, enabling wagering operators to use that information, without incurring a charge.

To assist the Board of QRL in its consideration of this matter, a response from the Queensland Government is required, particularly in relation to the application of Clause 10.2 (c) (Third Party Charge) and whether it is the Government's view that the intention of the PPA was to ensure a commitment by Product Co to guarantee the provision of Australian racing information to UNITAB, for its use based on the "*Gentlemen's Agreement*" that existed intact at that time. Should it be the Government's view that as a result of the PPA, Product Co undertakes to provide Australian racing information to UNITAB for its use without charge, then it would appear to flow that in the event UNITAB incurs a charge for the use of Australian racing information, it is entitled to deduct that amount from the product fee payable under the provisions of 10.2 (c) of the PPA.

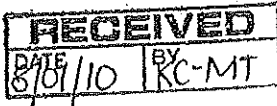
Your view in relation to this matter will be appreciated and should you require any further background regarding this, please do not hesitate to contact me on (07) 3869 9730.

Yours sincerely



**MALCOLM TUTTLE**  
*Chief Operations Manager*

Enc.



Queensland  
Government

Department of Employment, Economic Development  
and Innovation

Reference No: RAC/1032

6 January 2010

Mr Malcolm Tuttle  
Chief Operations Manager  
PO Box 63  
SANDGATE QLD 4017

Dear Mr Tuttle

I refer to your letter of 23 July 2009 regarding the Product and Program Agreement between UNITAB Limited, Queensland Race Product Co Ltd and the three racing industry control bodies.

Specifically, you seek a Government view in respect of an interpretation of the Agreement's provisions covering the determination of consideration for the supply of Australian racing product and Queensland racing program.

Unfortunately, I advise that this Office, following exhaustive searches of our records and enquiries of relevant Government agencies, including the Office of Liquor and Gaming, is unable to provide you with any definitive view in relation to this matter in addition to what we have already provided.

Yours sincerely



Mike Kelly  
Executive Director  
Office of Racing

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