



KordaMentha

The Ultimate Group of Companies  
(In Liquidation)

Annual General Meeting of  
Creditors and Members

28 April 2008



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## 1 Introduction

I refer to the appointment of Mark Mentha and I as Voluntary Administrators on 19 February 2007 and to our subsequent appointment as Liquidators on 16 March 2007 of the following companies:

- UD (Aust) Pty Ltd (In Liquidation) (formerly Ultimate Distribution Australia Pty Ltd) (ACN 066 811 498) (“UDA”);
- UDI Pty Ltd (In Liquidation) (formerly Ultimate Distribution International Pty Ltd) (ACN 084 861 969) (“UDI”);
- UMV Pty Ltd (In Liquidation) (formerly Ultimate Manufacturing (Vic) Pty Ltd) (ACN 062 473 518) (“UMV”);
- UE (Aust) Pty Ltd (In Liquidation) (formerly Ultimate Engineering Australia Pty Ltd) (ACN 066 396 094) (“UEA”); and
- U (Aust) Pty Ltd (In Liquidation) (formerly Ultimate Australia Pty Ltd as Trustee for the Ultimate Australia Trust) (ACN 093 967 205) (“UAT”).

The above companies will be referred to collectively as “the Ultimate Group” throughout the remainder of this report.

Concurrent Annual General Meetings of the Ultimate Group have been convened and will be held on Monday, 12 May 2008 at **KordaMentha, Level 24, 333 Collins Street, Melbourne at 10:30am**.

The purpose of the meetings is for the Liquidators’ to:

- Provide creditors with an update on the progress and status of the liquidations of the Ultimate Group;
- Consider the Liquidators’ remuneration claim for the period between 7 May 2007 and 11 April 2008 for UDA (“Current Remuneration Claim Period”);
- Fix the Liquidators’ remuneration for UDA from 12 April 2008 to the cessation of the liquidation; and
- Consider any other matters which may properly be brought before the meeting in relation to the Ultimate Group.

## 2 Current Status of Major Liquidation Matters

Detailed below is an update on the status of the key issues which we have focused on since our appointment as Liquidators of the Ultimate Group at the second meetings of creditors on 16 March 2007.

### 2.1 Sale of Assets

On 10 April 2007, the Ultimate Group executed a Sale Agreement with Powerlight Manufacturing Pty Ltd (ACN 007 214 913) (“Powerlight”) for \$1.1 million (inclusive of GST). The business assets agreement consisted of the following:

- All UEA plant and equipment for consideration of \$440,000 (inclusive of GST);
- All UDA work in progress for consideration of \$165,000 (inclusive of GST);
- All UDA finished product with respect to wood and gas fire heaters for consideration of \$440,000 (inclusive of GST); and
- All UDA wood heating intellectual property for consideration for \$55,000 (inclusive of GST).

In addition to the above purchase of assets:

- Powerlight assumed responsibility for five property leases (being Dandenong, Epping, Lilydale, Ballarat and Blair Athol) and all operational costs associated with those stores from 5 April 2007.
- Powerlight assumed all plant and equipment leases.
- Powerlight received a two year non-exclusive use of the Ultimate Brand name and logo.
- Powerlight provided UDA with three months free rent to deal with the remaining containerised stock consisting of barbeques, parts, accessories and outdoor furniture.

On 11 August 2007, the residential property owned by UDA at 15 Heritage Way, Lysterfield was sold at auction by the Mortgagee for \$710,000 with all proceeds being paid to the Mortgagee.

On 22 October 2007, the Ultimate Group executed a second Sale Agreement with Powerlight for \$247,500 (inclusive of GST). The purchase price was in consideration for the following:

- Stock held in the remaining stores transferred to Powerlight at 10 April 2007 for \$220,000 (inclusive of GST).
- Intellectual Property including the Ultimate Group logos, licences, images, brochures, catalogues, manuals, design drawings, manufacturing specifications, model names and numbers, patents, methods and business names for \$13,750 (inclusive of GST).
- Five gas certificates and two gas certificates applications for \$13,750 (inclusive of GST).

By July 2007 all remaining barbeques, barbeque parts, barbeque accessories, and outdoor furniture was containerised and moved to Grays Asset Services (“Grays”), where the containers were inspected for realisation. Between April 2007 and March 2008 Grays sold stock including barbeques and outdoor furniture through either through online sales, auctions or bulk sales (where all components were readily available) for \$156,508 (inclusive of GST). Grays’ detailed review of the remaining containerised stock revealed the following:

- Mismatch of barbeque parts and outdoor furniture;
- Damaged stock; and
- Stock requiring repacking.

As a result of the above issues, it was determined in consultation with Grays that the on line sales strategy was not a commercially viable option due to the high level of labour required to match barbeque components and, where appropriate, source missing components.

On 21 November 2007, the Ultimate Group executed a further sale of assets agreement with Powerlight for the remaining containerised stock, barbeque parts and accessories that was held in storage. Powerlight made an initial payment of \$104,783.04 (inclusive of GST) for one container on 14 December 2007.

After protracted discussions and disagreement with respect to the quality of the content of the remaining containers, Powerlight paid the balance of the purchase consideration of \$85,216.97 (inclusive of GST) on 28 April 2008.

The above sale of assets agreement with Powerlight concluded our realisation of stock, plant and equipment for the Ultimate Group.

## 2.2 Trading of the Ultimate Group & Liquidation Matters

The following provides a brief overview of the major tasks undertaken during the liquidation of the Ultimate Group since 19 February 2007.

- Traded and managed the eleven retail stores, warehouse and head office.
- Closed six stores (Taylors Lakes, Richmond, Moorabbin, Springwood, Noarlunga and Gawler), which required conducting a stocktake, logistical coordination of the transportation and storage of stock.
- Relocated head office from Frankston-Dandenong Highway to Greens Road, Dandenong.
- Resolved all 18 retention of title claims totalling \$671,716.
- Terminated sales staff at the time of the store closure, factory employees on 3 April 2007, and all remaining sales staff on 5 April 2007.
- Finalised and closed all trading accounts established for the ongoing trading of the Ultimate Group.
- Reported to the Committee of Creditors of UDA.
- Calculated priority employee entitlements for all employees of the Ultimate Group.
- Assisted employees of UDI and UMV with applications to GEERS.

- Completed all necessary obligations relating to GEERS.
- Finalised and made payment of UDA priority employee entitlements of \$101,865, UDI priority employee entitlements of \$63,692 and UMV priority employee entitlements of \$250,612.
- Negotiated with Knotjoy Pty Ltd (Epping property landlord) and Powerlight in relation to the return of the Epping property bank guarantee.
- Finalised and made payment of the outstanding superannuation guarantee charge liability of \$54,823 to the Australian Taxation Office.
- Prepared PAYG Payment Summaries for UDA, UDI and UMV employees in respect of wages for the voluntary administration and liquidation periods.
- Finalised all trade debtor accounts.
- Lodged monthly Business Activity Statements for the Ultimate Group.
- Maintained a daily cash flow and bank reconciliation for the Ultimate Group.
- Completed all necessary statutory obligations of the Ultimate Group.

## 2.3 Investigation

### 2.3.1 Report to ASIC Pursuant to Section 533

Pursuant to section 533 of the Corporations Act, if it appears to the liquidator of a company in the course of winding up of that company, that:

- a) A past or present officer...may be guilty of an offence...; or
- b) A person who has taken part in the administration, management...may have been guilty of any negligence, default, breach of duty...; or
- c) The company may be unable to pay its unsecured creditors more than 50 cents in the dollar.

The liquidator must as soon as practicable, lodge a report...as ASIC requires.

During our investigation of the Ultimate Group, we identified a number of contraventions including Section 286 of the Corporations Act (obligation to keep financial records). The absence of proper books and records gives rise to the presumption of insolvency pursuant to section 588E of the Corporations Act. This in turn facilitates action being taken against the director of a company for insolvent trading. These and other contraventions have been reported to ASIC pursuant to section 533. Our reports detailing our investigations into each company within the Ultimate Group was lodged with ASIC on 18 April 2007.

ASIC subsequently advised that they do not intend to commence an investigation into the matters raised in relation to UEA, UDI and UAT at this time, however ASIC has requested a supplementary report for UMV and UDA. We are continuing to collate supporting information and the supplementary report will be lodged in due course when we have concluded our further investigations.

### 2.3.2 Director Declared Bankrupt

On 5 December 2007 Andrew John Gannell (“Gannell”), the sole director of each of the Ultimate Group entities, filed a debtors petition effectively confirming his own bankruptcy.

Whilst the absence of books and records gives rise to a presumption of insolvency and in turn facilitate action being taken against the director, the Bankruptcy of Gannell has put an end to any commercial recovery or compensation in this regard.

Any creditor who held a guarantee from Gannell should contact Ms Hunter from Draper Dillion on (03) 9679 2246, who is assisting the Trustee, Mr Stirling Horne.

### 2.3.3 Voidable Transactions

We are currently in the process of collating supporting documentation in relation to potential voidable transactions. Due to the commercially sensitive nature of the potential voidable transactions, specific details have not been included in this report. A detailed report will be provided to creditors once all voidable transaction matters are concluded.

### 3 Estimated Returns to Unsecured Creditors

Detailed below is an update on the potential returns available unsecured creditors in the liquidation of the Ultimate Group.

#### 3.1 Funds Available for Distribution to Unsecured Creditors

We anticipate that the only potential return to unsecured creditors of any of the companies in the Ultimate Group will come through surplus recoveries from voidable transactions.

## 4 Liquidators' Dealings for the Year Ended 18 February 2008

### 4.1 UD (Aust) Pty Ltd (in Liquidation)

#### 4.1.1 Creditor Claims

Class	No of Claims	Amount (\$)
Secured	1	10,840,250
Priority	40	156,689
Unsecured	153	2,085,654

#### 4.1.2 Creditor Payments Made

Class	No of Claims	Amount (\$)
Secured	1	565,000
Priority	40	156,689
ROT	0	0
Unsecured	153	0

#### 4.1.3 Receipts and Payments

		\$
<b>Receipts</b>		
	Trading Income	2,797,082
	Sale of Work In Progress	150,000
	Trade Debtors	146,394
	Sale of Intellectual Property	50,000
	Other	36,385
		<b>3,179,861</b>
<b>Payments</b>		
	Payment to Secured Creditor	565,000
	Liquidators' Remuneration	507,185
	Transport	248,740
	Priority Employee Entitlements	156,689
	Related Company Wages & Salaries <sup>#</sup>	241,357
	Property Rental	203,835
	Legal Fees	102,981
	Work In Progress Conversion	174,508
	Insurance	58,663
	Wages and Salaries	137,732
	Other	418,411
		<b>2,815,102</b>
<b>Net Cash Flows</b>		<b>364,759</b>

<sup>#</sup> note this was used to fund the trading of the Ultimate Group

\* all exclusive of GST

## 4.2 UDI Pty Ltd (In Liquidation)

### 4.2.1 Creditor Claims

Class	No of Claims	Amount (\$)
Secured	1	10,840,250
Priority	13	143,419
Unsecured	13	651,316

### 4.2.2 Creditor Payments Made

Payment	No of Claims	Amount (\$)
Secured	1	0
Priority	13	63,692
ROT	0	0
Unsecured	13	0

### 4.2.3 Receipts and Payments

		\$
<b>Receipts</b>		
	GEERS Receipts	63,692
	Related Company Funding for Wages & Salaries	39,183
	Other	2,339
		<b>105,214</b>
<b>Payments</b>		
	Priority Employee Entitlements	63,692
	Wages and Salaries	36,339
	Superannuation	3,403
	Other	1,785
		<b>105,220</b>
<b>Net Cash Flows</b>		<b>-6</b>

\* all exclusive of GST

## 4.3 UMV Pty Ltd (In Liquidation)

### 4.3.1 Creditor Claims

Class	No of Claims	Amount (\$)
Secured	1	10,840,250
Priority	51	554,366
Unsecured	14	3,128,374

### 4.3.2 Creditor Payments Made

Payment	No of Claims	Amount (\$)
Secured	1	0
Priority	51	250,612
ROT	0	0
Unsecured	14	0

### 4.3.3 Receipts and Payments

		\$
<b>Receipts</b>		
	GEERS Receipts	250,612
	Related Company Funding for Wages & Salaries	204,032
	Other	10,310
		<b>464,954</b>
<b>Payments</b>		
	Priority Employee Entitlements	250,612
	Wages and Salaries	188,029
	Superannuation	20,039
	WorkCover Insurance	6,279
	Other	
		<b>464,959</b>
<b>Net Cash Flows</b>		<b>-5</b>

\* all exclusive of GST

## 4.4 UE (Aust) Pty Ltd (In Liquidation)

### 4.4.1 Creditor Claims

Class of Creditor	No of Claims	Amount (\$)
Secured	1	10,840,250
Priority	0	0
Unsecured	47	1,573,734

### 4.4.2 Creditor Payments Made

Payment	No of Claims	Amount (\$)
Secured	1	385,000
Priority	0	0
ROT	0	0
Unsecured	47	0

### 4.4.3 Receipts and Payments

		\$
<b>Receipts</b>		
	Sale of Assets	400,000
	Other	88
		<b>400,088</b>
<b>Payments</b>		
	Payment to Secured Creditor	385,000
	Liquidators' Remuneration	13,293
	Other	103
		<b>398,395</b>
<b>Net Cash Flows</b>		<b>1,693</b>

\* all exclusive of GST

## 4.5 U (Aust) Pty Ltd (In Liquidation)

### 4.5.1 Creditor Claims

Class of Creditor	No of Claims	Amount (\$)
Secured	1	10,840,250
Priority	0	0
Unsecured	2	1,276

### 4.5.2 Creditor Payments Made

Payment	No of Claims	Amount (\$)
Secured	1	0
Priority	0	0
ROT	0	0
Unsecured	2	0

### 4.5.3 Receipts and Payments

	\$
Receipts	Nil
Payments	Nil
Net Cash Flows	Nil

## 5 Resolution to be voted on by the Creditors of UDA

The Liquidators' remuneration claim for UD (Aust) Pty Ltd (formerly Ultimate Distribution Australia Pty Ltd) (In Liquidation) for the Current Remuneration Claim Period totals \$219,291.00 for the forty nine weeks between 7 May 2007 and 11 April 2007. Further details on the remuneration claim are set out in section six of this report.

The resolution proposed at the meeting of creditors of UDA is:

- “That the Creditors resolve to fix the Liquidators' remuneration for the period from 7 May 2007 to 11 April 2008 in an amount of \$219,291.00 (excluding GST) and disbursements in an amount of \$3,504.11 (excluding GST).”

In addition, we are seeking to have the Liquidators' remuneration fixed for the period from 12 April 2008 to the finalisation of the liquidation. Accordingly, the following resolution will be proposed to the creditors of UDA at the meeting:

- “That the Creditors resolve to fix the Liquidators' remuneration for the period 12 April 2008 to the finalisation of the liquidation in an amount of up to but not exceeding \$40,000.00 (excluding GST).”

Due to insufficient funds being available in the other four companies within the Ultimate Group, we are not seeking to fix our fees.

## 6 Collation of Time Charged on the UDA Liquidation

Summarised below is the hours worked on UDA between 7 May 2007 and 11 April 2008 by individual.

Name	Title	Hourly Rate \$	Total Hours	Total \$
Craig Shepard	Partner	490	72.4	35,476.00
Leanne Chesser	Partner	490	17.5	8,575.00
Kim Khor	IT Consultant	425	21.9	9,307.50
Kim Khor *	IT Consultant	400	3.0	1,200.00
Shaun Norden	IT Consultant	275	11.7	3,217.50
Joanna Lord	Manager	225	1.3	292.50
Scott Langdon	Manager	225	168.6	37,935.00
Duncan Parry	Manager	225	0.4	90.00
Nick Gill	Senior Executive Analyst	200	0.4	80.00
Jarrold Villani	Senior Executive Analyst	200	1.1	220.00
Glenn O'Kearney	Senior Executive Analyst	200	4.2	840.00
Andrew Knight	Senior Executive Analyst	200	88.7	17,740.00
Andrew Knight *	Senior Executive Analyst	170	116.0	19,720.00
Sam Johnston	Senior Executive Analyst	170	10.7	1,819.00
Belinda Cochrane	Senior Business Analyst	145	0.3	43.50
Hamish Harten	Senior Business Analyst	120	570.9	68,508.00
Luke Andrews	Senior Business Analyst	120	18.2	2,184.00
Jan Thompson	Senior Business Analyst	150	0.8	120.00
Bill Wind	Administration	110	16.0	1,760.00
Naomi Abela	Administration	110	1.8	198.00
Rachael Wilks	Administration	100	14.4	1,440.00
Sarah Wandmaker	Administration	110	15.0	1,650.00
Fiona Giles	Administration	110	1.0	110.00
Belinda Kneebone	Administration	110	46.0	5,060.00
Kate Leduc	Administration	110	13.5	1,485.00
Ryan Korda	Administration	110	0.3	33.00
Aiden Elbaz	Administration	110	1.7	187.00
			<b>1,217.8</b>	<b>219,291.00</b>

\* change of charge out rate during the current remuneration claim period

## 7 Description of Major Tasks Completed By Person

Detailed below are summaries of the work performed by key staff who have worked on the UDA liquidation during the Current Remuneration Claim Period. The summaries are based on our Detailed Work in Progress report, which will be tabled at the meeting.

Craig Shepard (72.4 hours):

- Overall management of the UDA liquidation.
- Negotiated the sale of remaining assets to Powerlight.
- Supervised staff, signing of cheques and letters.
- Discussed the status of the liquidation with the secured creditor.
- Ongoing discussions with the Director, Andrew Gannell.

Leanne Chesser (17.5 hours):

- Managed the completion of all statutory requirements.
- Managed the investigations and voidable transaction review.
- Managed the GEERS payment procedure.

Kim Khor (24.9 hours)

- Rebuilt Exonet servers for recovery of documents relating to investigations and voidable transactions.
- Attended to various server maintenance matters.

Shaun Norden (11.7 hours)

- Recovered emails from server.
- Indexed the recovered emails for key word search in relation to investigations and voidable transactions.

Scott Langdon (168.6 hours):

- Reviewed the priority employee entitlements to former UDA employees.
- Assisted with negotiating the sale of remaining assets to Powerlight.
- Negotiated the return of the property rental bank guarantees.
- Reviewed lodgement of monthly Business Activity Statements.
- Reviewed lodgement of cash books.
- Reviewed daily bank reconciliation and cash flow.

Andrew Knight (204.7 hours):

- Attended to stakeholder queries in relation to warranties, lay-bys, creditors and employees.

- Prepared priority employee entitlement calculations and correspondence for employees of the Ultimate Group.
- Prepared distribution of priority employee entitlements.
- Prepared information and documentation in regard to investigations and voidable transitions.
- Prepared PAYG Payment Summaries.
- Collated the initial section 533 report to ASIC.
- Collated information for the supplementary Section 533 reports to ASIC.
- Prepared the security position of UDA.
- Drafted correspondence to various stakeholders.

Hamish Harten (570.9 hours):

- Prepared monthly Business Activity Statements for review.
- Prepared six monthly cash book reports.
- Attended to stakeholder queries in relation to warranties, lay-bys, creditors and employees.
- Finalised retention of title claims.
- Coordinated the debtor recovery actions.
- Prepared IPS receipt and IPS payment forms and updated the daily cash flow reconciliation.
- Assisted in the collation of information and documents relating to investigations and voidable transitions.
- Reviewed of asset sale results through Grays Online Auctions.
- Coordinated the payment of trading creditors.
- Drafted correspondence to various stakeholders.

Luke Andrews (18.2 hours)

- Prepared IPS receipt and IPS payment forms.
- Attended to stakeholder queries in relation to warranties, lay-bys, creditors and employees.
- Drafted correspondence to various stakeholders.

Belinda Kneebone (46.0 hours)

- Prepared cheques and deposited funds into the bank account.
- Prepared bank reconciliations.
- Prepared monthly Business Activity Statements.
- Prepared six monthly cash book reports.

## 8 Queries

If you have any queries in relation to the above, please contact Hamish Harten of this office on (03) 8623 3381 or Andrew Knight on (03) 8623 3371.



**CRAIG SHEPARD**  
Liquidator