

BAKER & MCKENZIE

SOLICITORS AND ATTORNEYS

ABN 32 266 778 912

AMP CENTRE 50 BRIDGE STREET

SYDNEY 1223 AUSTRALIA

P.O. BOX R126 NSW 1223

TELEPHONE (61-2) 9225 0200

FACSIMILE (61-2) 9225 1595

DX 218 SYDNEY

<http://www.bakernet.com>

EUROPE
MIDDLE EAST

AMSTERDAM MADRID
BAHRAIN MILAN
BARCELONA MOSCOW
BERLIN MUNICH
BRUSSELS PARIS
BUDAPEST PRAGUE
CAIRO RIYADH
DUSSELDORF ROME
FRANKFURT ST. PETERSBURG
GENEVA STOCKHOLM
KYIV WARSAW
LONDON ZURICH

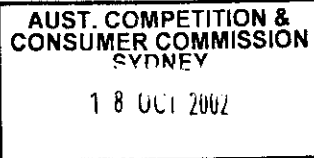
ASIA
PACIFIC

A. NATY
BAKU
BANGKOK
BEIJING
HANOI
HO CHI MINH CITY
HONG KONG
MANILA
MELBOURNE
SINGAPORE
SYDNEY
TAIPEI
TOKYO

NORTH AND
SOUTH AMERICA

BOGOTA
BRASILIA
BUENOS AIRES
CALGARY
CARACAS
CHICAGO
DALLAS
GUADALAJARA
HOUSTON
LIMARIZ
MEXICO CITY
MIAMI
MONTEBELLER
NEW YORK
PALO ALTO
PORTO ALICERRE
RIO DE JANEIRO
SAN DIEGO
SAN FRANCISCO
SANTAGO
SAO PAULO
TRUJANO
TORONTO
VALENCIA
WASHINGTON D.C.

Our ref: 539005-v01\W97\GS4\DVN



17 October 2002

Mr Tim Grimwade
General Manager
Adjudication Division
Australian Competition & Consumer Commission
PO Box 1199
Dickson ACT 2602

FILE No:
DOC:
MARS/PRISM:

Dear Mr Grimwade

Exclusive Dealing Notification – Harley-Davidson Motor Company, Inc

We act for Harley-Davidson Motor Company, Inc.

We enclose an exclusive dealing notification by Harley-Davidson Motor Company, Inc pursuant to section 93(1) of the *Trade Practices Act 1974*. This notification is lodged in respect of proposed conduct which may constitute exclusive dealing under sections 47(6) or 47(7) of the Act. This notification is given in the prescribed form and should not be taken as an admission that the proposed conduct would contravene the statutory prohibition.

We also enclose a cheque made payable to the Commission in the sum of \$1000.00, being the prescribed lodgement fee.

Please do not hesitate to contact me should you require any further information or if you have any questions regarding the notification.

Yours sincerely,


Lindsay Kyle
(02) 9225-0282

Encl

FORM G
COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 - subsection 93(1)
EXCLUSIVE DEALING
NOTIFICATION

NO 31199

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(6) or (7) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) **Name of person giving notice**

 Harley-Davidson Motor Company, Inc.

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

 Supply of motorcycles and associated parts, accessories and apparel.

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

 Baker & McKenzie
 Solicitors & Attorneys
 AMP Centre
 50 Bridge Street
 SYDNEY NSW 1223

 Telephone: (02) 9225-0200
 Facsimile: (02) 9225-1595
 Attention: Lindsay Kyle

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice refers**
 - (i) Harley-Davidson Motorcycles –all models;
 - (ii) Associated Parts – spark plugs, brake pads, clutch, oil filters, pistons, handgrips, etc;
 - (iii) Accessories – decorative covers, seats, luggage, locks, etc; and
 - (iv) Apparel – T-shirts, jackets, gloves, hats, rainsuits, helmets.

(b) **Description of the conduct or proposed conduct**

See Attachment A.

3. (a) **Class or classes of persons to which the conduct relates**

Harley-Davidson Authorised Rental Operators.

(b) **Number of those persons**

(i) **At present time**

There are currently no Rental Operators authorised by Harley-Davidson Motor Company, Inc. to rent Harley-Davidson Products to customers in Australia.

(ii) **Estimated within the next year**

It is estimated that there will be four (4) Rental Operators in total authorised by Harley-Davidson Motor Company, Inc. in Australia in the next year.

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

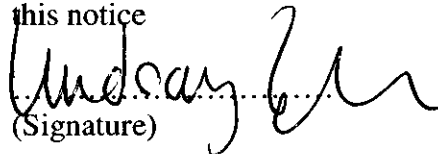
Not applicable.

4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice**

Lindsay Kyle, Senior Associate, Baker & McKenzie, AMP Centre, 50 Bridge Street, Sydney, New South Wales 1223.

Dated 18 Oct 2002

Signed by/on behalf of the person giving this notice


(Signature)

Lindsay Anne Kyle
(Full Name)

Senior Associate, Baker & McKenzie
(Description)

DESCRIPTION OF THE CONDUCT OF PUBLIC BENEFIT

1. Background

- 1.1 Harley-Davidson Motorcycle Company, Inc. ("Harley-Davidson") supplies motorcycles and associated parts, accessories and apparel under the "Harley-Davidson" brand ("Harley-Davidson Products").
- 1.2 In relation to Australia, Harley-Davidson focuses on the sale and marketing of Harley-Davidson Products rather than on the manufacture of Harley-Davidson Products. Harley-Davidson has licensed various companies located throughout the world to import products under the Harley-Davidson brand and on-sell them to appointed dealers.
- 1.3 Harley-Davidson has appointed Morgan & Wacker Pty Limited as an independent distributor in Australia ("Distributor"), and approved various existing authorised dealers ("Authorised Dealers"), for the sale and distribution of Harley-Davidson Products in Australia.
- 1.4 Harley-Davidson also proposes to appoint various rental operators (some of whom may already be an Authorised Dealer) ("Rental Operators") to operate rental businesses whereby Rental Operators make Harley-Davidson Products available for rental by end-user customers in Australia ("the Rental Business").
- 1.5 The Distributor and the Authorised Dealers will be authorised to sell Harley-Davidson Products to Rental Operators to enable Rental Operators to be sufficiently stocked with Harley-Davidson Products to carry on the Rental Business.
- 1.6 Harley-Davidson will grant to Rental Operators the right to use certain trade marks licensed to Harley-Davidson in connection with Rental Operators' operation of the Rental Business. In return, Rental Operators agree to operate the Rental Business in accordance with the standards and procedures specified by Harley-Davidson. The standards and procedures manual of Harley-Davidson provides guidance to Rental Operators on how to conduct the Rental Business in Australia.

2. Relevant conduct

- 2.1 As a condition of appointment as an authorised Rental Operator in Australia, Harley-Davidson proposes to require Rental Operators to purchase Harley-Davidson Products from the Distributor or from Authorised Dealers.
- 2.2 The relevant clause of the proposed agreement between Harley-Davidson and Rental Operator is:

"6.4. Purchase

If [Rental] Operator is not an authorized H-D dealer, [Rental] Operator shall purchase, lease or otherwise obtain all Motorcycles used in the Rental Business only from an authorized H-D dealer (or from authorized H-D dealers) in

Australia on terms and conditions negotiated between [Rental] Operator and such dealer (or dealers). If [Rental] Operator is an authorized H-D dealer, [Rental] Operator shall purchase all Motorcycles for use in the Rental Business only from another authorized H-D dealer in Australia or from Distributor. H-D acknowledges that it will not receive or accept any fee or payment on account of the sale, lease or other transfer of a Motorcycle to [Rental] Operator by Distributor or an authorized H-D dealer."

Further clause 7.4 of the same agreement provides:

"[Rental] Operator is not authorized under this Agreement to sell Harley-Davidson Motorcycle Parts and Accessories or Harley-Davidson General Merchandise, but may purchase (from authorized H-D dealers or, if [Rental] Operator is an authorized H-D dealer, from Distributor) Harley-Davidson-Motorcycle Parts and Accessories solely to maintain and accessorize Motorcycles and to rent to Motorcycle rental customers at the Authorized Location."

2.3 Harley-Davidson proposes to outsource to Distributor and to Authorised Dealers the task of supplying Harley-Davidson Products to Rental Operators. This will enable orders placed by Rental Operators to be processed more efficiently and shorten the delivery time for the Harley-Davidson Products.

2.4 The requirement that Rental Operators purchase the Harley-Davidson Products from the Distributor or from Authorised Dealers may constitute third line forcing. However, there are significant public benefits which flow from this requirement and which are outlined below. In addition, clearly the only difference between Harley-Davidson supplying the Harley-Davidson Products itself and the arrangements described above is the identity of the source of the Harley-Davidson Products.

3. Public benefits

The conduct described in paragraph 2.1 is pro-competitive and to the overall benefit of Rental Operators and, in our submission, ultimately to the benefit of Australian consumers. In particular, the conduct gives rise to the following public benefits:

3.1 Product availability and business efficiency

The conduct will enable Rental Operators to place orders directly with the Distributor or with Authorised Dealers and achieve greater business efficiencies.

The time between the ordering and the delivery of the Harley-Davidson Products to Rental Operators will be significantly shorter if the Harley-Davidson Products are not sourced directly from Harley-Davidson, but rather from the Distributor or from Authorised Dealers given their wider geographic coverage. This in turn will ensure that the Distributor and Authorised Dealers are able to process and deliver Harley-Davidson Products to Rental Operators and, ultimately to Australian end-user consumers, more quickly.

As part of the outsourcing to the Distributor and Authorised Dealers of the supply of Harley-Davidson Products to Rental Operators, they will be required to maintain

sufficient inventory of Harley-Davidson Products to ensure prompt and satisfactory service for Rental Operators. They will also inform Rental Operators of stock availability, provide to Rental Operators an estimated time of arrival of stock, track and inform Rental Operators of the current status of orders and delivery to Rental Operators and invoice (and collect invoice payments from) Rental Operators. The ability to deal directly with either the Distributor or an Authorised Dealer will enable Rental Operators to achieve greater business efficiencies.

3.2 Product quality and consistency

The requirement that Rental Operators purchase all Harley-Davidson Products from either the Distributor or from Authorised Dealers assists Harley-Davidson to maintain consistently high standards of product quality and safety in Australia. Rental Operators and consumers can be confident that the Harley-Davidson Products sold by the Distributor and Authorised Dealers are genuine Harley-Davidson Products and meet the quality and safety standards expected of Harley-Davidson Products.

The Distributor and Authorised Dealers will also be required to inspect and repair Harley-Davidson Products and ensure that the products are in satisfactory and safe operating condition prior to delivery to Rental Operators. Any warranty claims of Rental Operators will be processed by either the Distributor or Authorised Dealers.

The Distributor will be required to support the Harley-Davidson rental operator program by assisting with the set-up of new Rental Operators, monitoring compliance of Rental Operators with the terms and conditions of the standards and procedures manual and with other Harley-Davidson policies in effect from time to time, and such other support services agreed upon between the Distributor and Harley-Davidson. These requirements will assist Harley-Davidson to ensure that the quality of Harley-Davidson Products supplied to consumers in Australia is consistently and efficiently maintained.

3.3 Effect on competition

Rather than Rental Operators being required to purchase the Harley-Davidson Products direct from Harley-Davidson, they are required to purchase those products from either a Distributor or from an Authorised Dealer. The "forced" Harley-Davidson Products are simply supplied through the Distributor or Authorised Dealers rather than from Harley-Davidson itself.

This conduct does not distort the demand for, or the supply of, Harley-Davidson Products by Rental Operators. As a result, the conduct is not likely to have an anti-competitive effect on the relevant market.

4. Conclusion

4.1 In our submission, the impact of Harley-Davidson's conduct is such that the likely benefit to the public would far outweigh any likely detriment. It simply involves the substitution of Harley-Davidson with the Distributor or Authorised Dealers for the processing, tracking and fulfilling of orders for Harley-Davidson Products placed by Rental Operators.

- 4.2 Overall, the conduct is pro-competitive in that it enables more efficient delivery of Harley-Davidson Products to Rental Operators, while guaranteeing consistency and high product quality. Customers of Rental Operators are also likely to benefit from the greater efficiencies associated with the supply of Harley-Davidson Products in terms of product quality and availability.