

BALDOCK STACY & NIVEN

SOLICITORS ATTORNEYS & NOTARIES

Established 1891

ABN 64 327 728 300

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FILE NO: DKC:FCH:24389
SOLICITOR: David King-Christopher
EMAIL: dkc@bsnlaw.com.au
ASSISTANT: Fiona Hall
YOUR REF: Ms C Kerr

Please reply to Orange Office

15 October 2003

Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

FAXED

FACSIMILE TRANSMISSION: 6243 1211

Dear Sir/Madam,

**FORM G - EXCLUSIVE DEALING NOTIFICATION
HAYES PETROLEUM AND
FRANKLINS LIMITED (ORANGE)
("FRANKLINS")**

We act on behalf of Hayes Petroleum and are instructed by its General Manager, Michael Hayes.

We enclose our client's Form G Exclusive Dealing Notification in respect of its arrangement with Franklins Limited (Orange) ("Franklins").

In addition, we enclose the filing fee in the sum of \$100.00.

Submission In Respect of the Exclusive Dealing Notification

We submit on behalf of our client the following matters:

1. Our client carries on the business of petroleum wholesaler and retailer of petroleum products. Our client proposes to enter into an arrangement (the Marketing Program) with Franklins to offer a discount on the pump price of fuel to petrol customers when they purchase petroleum products from its Caltex petrol station sites in Orange, New South Wales. Our client intends to, as part of the Marketing Program, offer a petrol customer a discount on the pump price of fuel on the condition the customer produces a sales receipt from Franklins and upon doing so will receive the following discounts in respect of their purchase of fuel:

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We also provide the services of:
Public Notary

ORANGE OFFICE
Cnr Summer & Hill Streets
Post Office Box 1070
Orange NSW 2800
Telephone (02) 6362 2022
Fax (02) 6363 1760
DX 3010 Orange

BLAYNEY OFFICE
115 Adelaide Street
Blayney NSW 2799
Telephone (02) 6368 4022
Fax (02) 6368 4508
DX 3010 Orange

PARRAMATTA OFFICE
Level 3, 96 Phillip Street
Post Office Box 145
Parramatta NSW 2124
Telephone (02) 9891 6444
Fax (02) 9891 6507
DX 28417 Parramatta

MOLONG OFFICE
6 Bank Street
Molong NSW 2866
Telephone (02) 6366 8492
Fax (02) 6363 1760
DX 3010 Orange

- (a) Purchase \$30.00 or more of groceries and receive 4 cents per litre discount on the pump price – limit of one (1) petrol discount docket per transaction, per vehicle for a maximum purchase of 150 litres of fuel.
2. We submit on behalf of our client that its Marketing Program is not dissimilar to other such programs currently operating in the market. Moreover, we understand that a number of other petroleum wholesalers and retailers of petroleum products have been permitted by the ACCC to engage in such conduct. Some of these are as follows:

Caltex Australia Petroleum Pty Ltd C2003/663 - N70630, **Mobil Littlehampton** C2003/525 - N91096, **Campdown Pty Ltd** C2003/ - N91089, **Julross Pty Ltd** C2003/348 - N91081, **Bowen Petroleum Services Pty Ltd** C2003/285 - N91075, **Pearl Day Pty Ltd** C2003/178 - N31214, **Strasburger Enterprises (Properties) Pty Ltd** C2003/832 - N91130, **Geraldton Fuel Company Pty Ltd t/as Caltex Sunset** C2003/1161 - N70370, **MK & MA Gibbs t/as Guichen Bay Motors** C2003/1143 - N91173, **Andrianopoulos Motors Pty Ltd** C2003/1107 - N91171, **Helburn Petroleum Pty Ltd** C2003/1105 - N91170, **Shell Company of Australia and Coles Myer Ltd** C2003/1068 - N91137, **Peter John Edwards** C2003/1028 - N91159, **New Success Pty Ltd** C2003/960 - N91153, **BP Broome Central Service Station** C2003/894 - N91138, **BP Australia Pty Ltd** C2003/900 - N91142, N91143, N91144, N91145, N91146, N91147 and **K&S Ampol** C2003/904 - N91149.

The writer's understanding of the arrangements noted above involve the petrol retailer offering a discount to its customers on the pump price of fuel on the condition that the customer produce evidence of purchase from Franklins. We, therefore, submit that the ACCC should not adopt a different view when considering our client's application for immunity than that taken to the applications listed above.

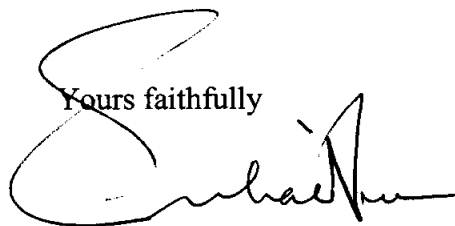
Public Benefits

Given that there are a number of other retailers of petroleum products which engage in marketing programs not dissimilar to that proposed by our client, we are of the view that there will be no prejudice to the retail market. Moreover, we take the view that our client's initiative in this regard will have a positive impact on the market.

Customers of retailers of petroleum products will benefit from the Marketing Program if they choose to follow its terms and conditions. Without such a program the customer would not have the option to purchase fuel at a discount.

We look forward to the ACCC's determination.

Yours faithfully



for **BALDOCK STACY & NIVEN**

Form G

Commonwealth of Australia
Trade Practices Act 1974 --- Sub-section 93(1)
**EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d) of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice

Marclef Pty Ltd t/as Hayes Petroleum

ACN 071 992 446, ABN 98 866 499 466

(See Direction 2 on the back of this form)

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

Retailer and wholesaler of petroleum products

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

c/- Baldock Stacy & Niven
Solicitors
68 Summer Street
ORANGE NSW 2800

PO Box 1070
ORANGE NSW 2800

Attention: David King-Christopher

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

Sale of petroleum, oil and fuel products

(b) Description of the conduct or proposed conduct

Hayes Petroleum operates service stations in Orange, New South Wales and its sites are branded in accordance with Caltex requirements. In return for the Caltex brand our client is a party to a supply agreement with Caltex through which they purchase fuel for retail sale. Our client operates petrol stations at sites listed in annexure "A".

Hayes Petroleum propose to enter into a Marketing Program ("the Marketing Program") with Franklins Limited Supermarket ("Franklins") in Orange (see Annexure "B"). In accordance with the Marketing Program our client wishes to offer customers of Franklins who purchase groceries from Franklins in excess of \$30.00 a discount on the pump price of fuel from its selected sites (listed in Annexure "A"). The Marketing Program permits a limit of one (1) docket per fuel purchase up to 150 litres per vehicle. Upon production by the customer of a receipt from Franklins which evidences a purchase of groceries in excess of \$30.00 the customer will be entitled to receive a discount of 4 cents per litre off the pump price of fuel.

We note that due to the fact that the discount is only available to customers of Franklins in Orange that the proposed conduct comes within the class of exclusive dealing prohibited by Section 42 sub-section (6) and (7) of the *Trade Practices Act 1974 (CTH)*.

(See Direction 4 on the back of this Form)

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

General public of Franklins listed in Annexure "B" who are provided with sale receipts from Franklins to the values described above.

(b) Number of those persons—

(i) At present time

Difficult to estimate at this early stage of the Marketing Agreement

(ii) Estimated within the next year

Difficult to estimate at this early stage of the Marketing Agreement

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

Not applicable

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

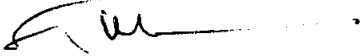
c/- Baldock Stacy & Niven
Solicitors
68 Summer Street
ORANGE NSW 2800

PO Box 1070
ORANGE NSW 2800

Attention: David King-Christopher

Dated 15 October 2003

Signed by/on behalf of the applicant giving notice


.....
(Signature)

MICHAEL JOHN HAYES
.....
(Full Name)

GENERAL MANAGER
.....
(Description)

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
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. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9) (d) of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7a) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

ANNEXURE "A"

ORANGE

Caltex Service Station
70 Summer Street
Orange NSW 2800

Telephone: 6361 1616

Caltex / Ampol Depot
174 Byng Street
Orange NSW 2800

Telephone: 6362 7655

Caltex Service Station
Peisley Street
Orange NSW 2800

ANNEXURE “B”

ORANGE

Franklins Limited
Summer Centre
102 Summer Street
Orange NSW 2800

Telephone: 6363 1277