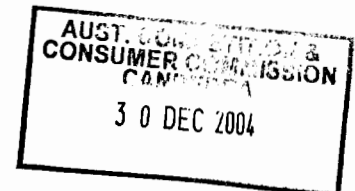


23 December 2004

Ms Joanne Palisi
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
Dickson ACT 2602

FILE No:
DOC:
MARS/PRISM:



Dear Joanne

Third Line Forcing Notification No. N91565

I refer to the above notification lodged with the Australian Competition and Consumer Commission (ACCC) on 2nd December 2004 and your subsequent letter dated 14th December 2004 advising us that legal immunity will commence on the 16th December 2004. In your letter you acknowledged our advice to you that since lodging the notification, the conduct covered by the notification also extends to the free offer of other mobile telephone features such as wallpapers, logos and animations etc in addition to free ring-tones. You stated that this does not raise any immediate concern for the ACCC but there maybe some legal doubt as to whether the additional offers are covered by the original notification.

In response to this I have attached a revised notification that now includes the offering of free mobile telephone wallpapers, logos and animations etc in addition to the offer of the free ring-tones. I have also attached a cheque for \$100 being the required lodgment fee and request that a tax invoice be forwarded to me at your convenience. Please also be advised that although the offered ring-tones or other content will be provided at no cost, participants in this offer will incur a nominal \$0.55 (GST included) mobile telephone SMS charge to redeem the ring tone or other content. This has been advised in the revised notification.

I also acknowledge your advice that The Tone Group, who are in fact providing the free mobile telephone content may be engaging in the Third Line Forcing Conduct and that we should advise them to consider whether they need to lodge a separate notification. I can confirm that we have taken steps to advise The Tone Group of your advice.

I thank you for your initial consideration of our notification, your subsequent granting of immunity and trust that the attached revised notification will meet with your approval. Please contact me on 02 9722 1216 if you have any questions. I wish you and your staff the compliments of The Season.

Yours sincerely
McWilliam's Wines Pty Limited

A handwritten signature in dark ink, appearing to read "Jim Xegas".

Jim Xegas
Assistant Company Secretary

MCWILLIAM'S WINES

MCWILLIAM'S WINES PTY LTD ACN 000 024 108
68 ANZAC STREET CHILLORA NSW 2190 PO BOX 80 GREENACRE NSW 2190 AUSTRALIA
TELEPHONE (02) 9722 1200 FACSIMILE (02) 9707 4408

A QUALITY ACCREDITED COMPANY ISO 9002

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.

1. (a) Name of person giving notice

McWilliam's Wines Pty Limited (ACN 000 024 108) ("McWilliam's"), is a proprietary company which specialises in winemaking and Australian distribution of various international alcohol beverages. McWilliam's head office is located at Chullora, NSW.

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

McWilliam's is a winemaking and distribution company in Australia.

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

Jim Xegas
Assistant Company Secretary
McWilliam's Wines Pty Limited
68 Anzac Street,
Chullora, NSW, 2190

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

McWilliam's produces and wholesales the "Sunstone" brand of wines. The Tone Group Pty Limited (ACN 108 733 179) trading as itxt4.com (The Tone Group) are providers of downloadable mobile telephone ring tones, screen graphics and related content.

(b) Description of the conduct or proposed conduct

McWilliam's proposes to enter into arrangements with The Tone Group under which McWilliam's proposes to:

- (i) offer an item of mobile telephone downloadable content such as a ring-tone, wallpaper, logo or animation etc provided by The Tone Group at no charge when the consumer purchases a bottle of McWilliam's Sunstone Wine. The conduct will occur as part of a promotion run from 1st March 2005 to 31st May 2005 inclusive.

The proposed conduct

McWilliam's proposes to offer the consumer their choice of an item of mobile telephone downloadable content such as a ring tone, wallpaper, logo or animation etc supplied by The Tone Group at no charge when the consumer purchases a bottle of McWilliam's Sunstone Wine during the promotional period of 1st March 2005 to 31st May 2005 inclusive. Participants will be required to SMS The Tone Group their choice of available mobile telephone downloadable content to redeem the content. The cost of the SMS will not exceed \$0.55 cents including GST.

An original notification of the conduct in respect of downloadable mobile telephone ring tones only was lodged on 2nd December 2004 and legal immunity relating to that conduct was provided on 16th December 2004 (ACCC Reference N91565). Subsequent to lodging the original notification the promotion was expanded to include the download of a choice of a ring tone, wallpaper, logo or animation etc. This notification details the updated proposed conduct.

The proposed conduct will be of benefit to the public as it will:

- promote competition amongst distributors involved in distributing alcohol beverages; and
- promote competition amongst retail operators involved in retailing alcohol beverages and downloadable mobile telephone content.

The proposed conduct will not lessen competition in the retail industry as:

- the Australian retail industries are very competitive;
- it is not unusual practice for a distributor of alcohol beverages to engage in promotions involving discounts or special offers on products from time to time;
- the proposed conduct is for a limited duration and the number of consumers who are potentially affected by the proposed conduct is negligible as consumers may obtain other added benefits/extras offered by other distributors of alcohol beverages and retail outlets and operators throughout Australia; and

McWilliam's believes that the benefits from the proposed conduct will outweigh any possible detriment that may arise from the conduct.

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

The public generally, though limited to persons age 18 and older.

(b) Number of those persons:

Not applicable.

(i) At present time

Not applicable.

(ii) Estimated within the next year

Not applicable.

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

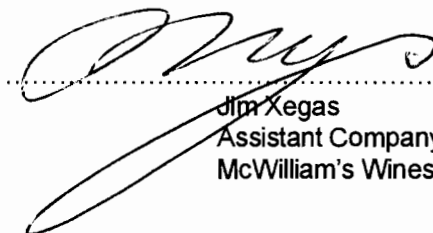
Not applicable.

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

Jim Xegas
Assistant Company Secretary
McWilliam's Wines Pty Limited
68 Anzac Street,
Chullora, NSW, 2190

Dated: 23 December 2004

Signed by/on behalf of the applicant giving notice



.....
Jim Xegas
Assistant Company Secretary
McWilliam's Wines Pty Limited

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 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.