



**Australian
Competition &
Consumer
Commission**

Our Ref: N91610
Contact Officer: Jason Byrne
Contact Number: 02 6243 1279

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12 January 2005

Mr Jim Xegas
Assistant Company Secretary
McWilliam's Wines Pty Ltd
68 Anzac St
CHULLORA NSW 2190

Dear Mr Xegas

Re: Third line forcing notification No. N91610 lodged by McWilliam's Wines

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 30 December 2004.

You have described the conduct as the offer by McWilliam's Wines of an item of mobile telephone downloadable content such as a ring-tone, wallpaper, logo or animation provided by the Tone Group at no charge when the consumer purchases a bottle of McWilliam's Sunstone Wine during the promotional period of 1 March 2005 to 31 May 2005 inclusive.

Legal immunity provided by the notification will commence on 13 January 2005.

On the basis of the information that you have provided, it is not intended that further action be taken in relation to this matter at this stage. However, I would like to bring to your attention several issues arising from your notification.

As indicated to you in our letter of 14 December 2004, notification has the effect of affording immunity to the person notifying the conduct and therefore the Tone Group may wish to consider whether it needs to lodge a separate notification. I note that you have taken steps to advise the Tone Group of this.

I should also point out that notification does not provide immunity for misleading or deceptive conduct. In this regard care needs to be exercised in the promotion of the offer the subject of the notification to ensure that consumers are fully informed in an appropriate manner of the costs they shall be liable for when redeeming the mobile telephone downloadable content.



As with any notification, please note that the ACCC may act to remove the immunity afforded by the notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Jason Byrne on 02 6243 1279.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a stylized flourish at the end.

Scott Gregson
a/g General Manager
Adjudication Branch