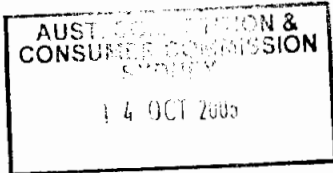


MALLESONS STEPHEN JAQUES



FILE No:
DOC:
MARS/PRISM:

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and
Consumer Commission
PO Box 1199
DICKSON ACT 2602

14 October 2005

Dear Mr Gregson

Form G - Exclusive Dealing Notifications for Lion Nathan entities

We act for Lion Nathan Limited. Our client, through four subsidiaries, proposes to make a short-term promotional offer to Coles Myer Liquor Group over the Christmas period from 1 November 2005 to 31 January 2006.

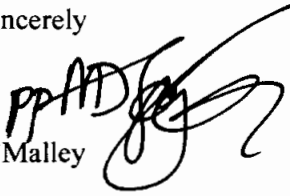
The offer will involve a rebate on wholesale supply where Coles Myer bundles Lion Nathan beer products with spirit and ready-to-drink products supplied by Diageo Australia Limited. A detailed description of the relevant conduct is set out in **Attachment A** to this letter.

Given the technical risk this arrangement could be construed as third line forcing, each of the four relevant Lion Nathan subsidiaries have prepared a Form G Exclusive Dealing Notification under section 93(1) of the Trade Practices Act 1974. The four notifications are attached with this letter.

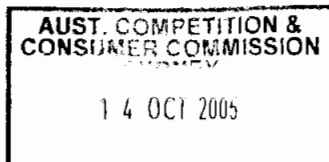
We enclose a cheque for \$400, as payment of the statutory fees.

Should you require any additional information please do not hesitate to contact us.

Yours sincerely


Tony O'Malley
Partner
Direct line +61 2 9296 2270
Email tony.o'malley@malleasons.com

Martyn Taylor
Senior Associate
Direct line +61 2 9296 2309
Email martyn.taylor@malleasons.com



FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 - Sub-section 93(1)

N.31475

**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(6) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) **Name of person giving notice**
The South Australian Brewing Company Pty Limited ACN 007 869 310 ("SAB")
- (b) **Short description of business carried on by that person**
SAB is a supplier of beer beverage products in Australia.
- (c) **Address in Australia for service of documents on that person**
C/- Tony O'Malley
Partner
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice refers**
This notification relates to the supply of the following beverage products:
 - SAB: Beer products as identified in Table A in Attachment A to the accompanying letter.
 - Diageo: Spirit and RTD products as identified in Attachment A to the accompanying letter.
- (b) **Description of the conduct or proposed conduct**
See Attachment A to the accompanying letter
3. (a) **Class or classes of persons to which the conduct relates**
Coles Myer Liquor Group
- (b) **Number of those persons**
 - (i) **At present time**

- (ii) Coles Myer Limited and its related bodies corporate.
Estimated within the next year

N/A

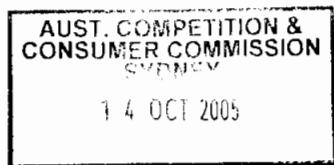
- (c) **Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses**

Coles Myer Limited ACN 004 089 936 and related bodies corporate
800 Toorak Rd
Glen Iris VIC 3146

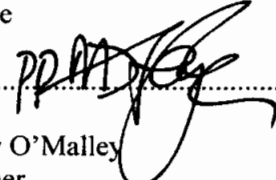
4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice**

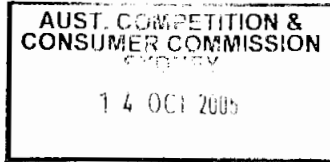
Tony O'Malley
Partner
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Dated 14 October 2005



Signed on behalf of the person giving this notice


Tony O'Malley
Partner



FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 - Sub-section 93(1)

N.31476

**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(6) of that Act in which the person giving notice engaged or proposes to engage.

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

The Swan Brewery Company Pty Limited ACN 009 065 267 ("Swan")

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

Swan is a supplier of beer beverage products in Australia.

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

C/- Tony O'Malley
Partner
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

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

This notification relates to the supply of the following beverage products:

- Swan: Beer products as identified in Table A in Attachment A to the accompanying letter.
- Diageo: Spirit and RTD products as identified in Attachment A to the accompanying letter.

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

See Attachment A to the accompanying letter

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

Coles Myer Liquor Group

(b) **Number of those persons**

(i) **At present time**

- (ii) Coles Myer Limited and its related bodies corporate.
Estimated within the next year

N/A

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

Coles Myer Limited ACN 004 089 936 and related bodies corporate
800 Toorak Rd
Glen Iris VIC 3146

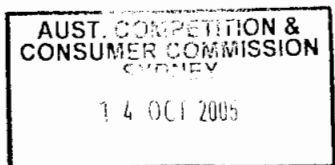
4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice**

Tony O'Malley
Partner
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Dated

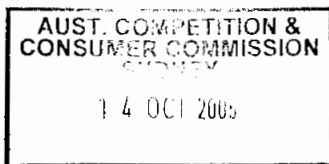
14

October 2005



Signed on behalf of the person giving this notice

Tony O'Malley
Partner



FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 - Sub-section 93(1)

N. 31477

**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(6) of that Act in which the person giving notice engaged or proposes to engage.

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

Castlemaine Perkins Pty Limited ACN 009 656 713 ("Castlemaine")

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

Castlemaine is a supplier of beer beverage products in Australia.

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

C/- Tony O'Malley
Partner
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

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

This notification relates to the supply of the following beverage products:

- Castlemaine: Beer products as identified in Table A in Attachment A to the accompanying letter.
- Diageo: Spirit and RTD products as identified in Attachment A to the accompanying letter.

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

See Attachment A to the accompanying letter

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

Coles Myer Liquor Group

(b) **Number of those persons**

(i) **At present time**

- (ii) Coles Myer Limited and its related bodies corporate.
Estimated within the next year

N/A

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

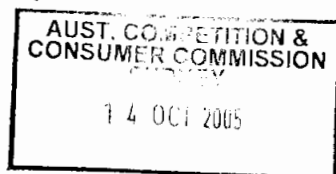
Coles Myer Limited ACN 004 089 936 and related bodies corporate
800 Toorak Rd
Glen Iris VIC 3146

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

Tony O'Malley
Partner
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Dated

14 October 2005



Signed on behalf of the person giving this notice

Tony O'Malley
Partner

14 OCT 2005

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING

NOTIFICATION

N. 31478

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(6) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) **Name of person giving notice**
Tooheys Pty Limited ACN 000 002 568 ("Tooheys")
- (b) **Short description of business carried on by that person**
Tooheys is a supplier of beer beverage products in Australia.
- (c) **Address in Australia for service of documents on that person**
C/- Tony O'Malley
Partner
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice refers**
This notification relates to the supply of the following beverage products:
 - Tooheys: Beer products as identified in Table A in Attachment A to the accompanying letter.
 - Diageo: Spirit and RTD products as identified in Attachment A to the accompanying letter.
- (b) **Description of the conduct or proposed conduct**
See Attachment A to the accompanying letter
3. (a) **Class or classes of persons to which the conduct relates**
Coles Myer Liquor Group
- (b) **Number of those persons**
 - (i) **At present time**

Coles Myer Limited and its related bodies corporate.

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

N/A

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

Coles Myer Limited ACN 004 089 936 and related bodies corporate
800 Toorak Rd
Glen Iris VIC 3146

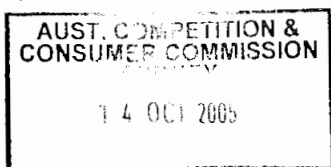
4. **Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice**

Tony O'Malley
Partner
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Dated

14

October 2005



Signed on behalf of the person giving this notice

.....
PP. AD. [Signature]

Tony O'Malley
Partner

ATTACHMENT A DESCRIPTION OF THE PROPOSED CONDUCT

1 THE PARTIES

1.1 *Diageo*

Diageo Australia Limited (**Diageo**) is the Australian subsidiary of Diageo plc and part of a worldwide group of companies that produce and distribute a range of branded alcoholic beverages.

Diageo's product range includes scotch whisky (Johnnie Walker, J & B, Haig and Vat 69), dark rum (Bundaberg), gin (Gilbey's, Gordon's and Tanqueray), vodka (Smirnoff), liqueurs (Baileys), tequila, premium beers and ales (Guinness, Kilkenny and Harp) and a range of so-called ready to drink products or RTDs (Archers Aqua, Smirnoff Ice, Ruski, UDL and Bundaberg and Cola).

In the main but with some notable exceptions, such as Bundaberg Rum, Diageo is primarily an importer of product sourced from Diageo plc and several other of its overseas affiliates.

1.2 *LN Subsidiaries*

Lion Nathan Limited ("**Lion Nathan**") is an Australian-based alcoholic beverages company listed on the Australian Stock Exchange with operations in Australia and New Zealand. Lion Nathan relevantly supplies beer products to Coles Myer in Australia through the following four wholly-owned brewing subsidiaries ("**LN Subsidiaries**"):

- Tooheys Pty Limited ("**Tooheys**");
- Castlemaine Perkins Pty Limited ("**Castlemaine**");
- The South Australian Brewing Company Pty Limited ("**SAB**"); and
- The Swan Brewery Company Pty Limited ("**Swan**").

The beer brands supplied by each of the LN Subsidiaries for the purposes of the notification are identified in Table A below.

1.3 *Coles Myer*

The retailer acquiring beverage products from each of Diageo and the LN Subsidiaries will be Coles Myer Liquor Group ("**Coles Myer**"), which comprises five liquor chains that trade under the names: Liquorland; Vintage Cellars; 1st Choice Liquor Superstore; the Liquorland Hotel Group; and Theo's Liquor. Coles Myer is itself part of Coles Myer Limited, a listed public company with extensive retail operations in Australia and New Zealand.

2 THE PRODUCTS

The applicants propose that only certain products in their separate beverage portfolios will be bundled and therefore need to be considered for the purpose of this notification.

Diageo will supply certain of its spirits brands (e.g., Johnnie Walker Scotch Whisky, Gordon's Gin, Smirnoff Vodka, Bundaberg Rum, as full strength bottled spirits), a liqueur (Baileys) and several spirit-based RTDs (e.g., Bundaberg & Cola, Smirnoff Red Ice, Smirnoff Lime and Soda, Smirnoff Twists, UDL) to Coles Myer for the bundles.

The LN Subsidiaries will supply certain beer brands to Coles Myer for the bundles as set out in **Table A** below.

Table A: Beer brands supplied by the LN Subsidiaries for the notification

Beer brand	Tooheys	Castlemaine	SAB	Swan
XXXX		Yes		
XXXX Gold	Yes	Yes	Yes	Yes
Tooheys New	Yes	Yes	Yes	Yes
Tooheys Extra Dry	Yes	Yes	Yes	Yes
Hahn Premium	Yes	Yes	Yes	Yes
Hahn Premium Light	Yes	Yes	Yes	Yes
Ice Beer	Yes			
Heineken	Yes	Yes	Yes	Yes
Becks	Yes	Yes	Yes	Yes
Emu Bitter			Yes	
West End Draught				Yes

The bundling may involve various different permutations of these beer, spirit and RTD products in different packages (e.g., bottles, cases, packs).

The form of promotion (with some variations) will generally be as follows:

- "Buy a bottle of [Diageo spirit] and a case of [Lion Nathan beer] for \$X RSP"
- "Buy a case of [Lion Nathan beer] and a pack of [Diageo RTD] for \$Y RSP".

* RSP or "Recommended Selling Price"

3 THE PROPOSED CONDUCT

3.1 *The Proposed Condition*

Each of the LN Subsidiaries proposes to offer to provide a rebate to Coles Myer for specified beer products on the condition that Coles Myer sells the specified beer product in conjunction with specified spirit or RTD products from Diageo. Diageo proposes to do likewise for its relevant spirit and RTD products.

Rebates will be calculated after sales have occurred based on actual bundled sales and a reconciliation will independently occur between Coles Myer and the relevant LN Subsidiary and between Coles Myer and Diageo.

The provision of a discount on these terms could, on one construction, technically raise issues under sub-sections 47(1) and (6) of the *Trade Practices Act* absent notification or an authorisation. No admission is made as to breach of these provisions and this application for notification should be regarded as precautionary only.

In particular, the applicants note that there is arguably no forcing of product as:

- (a) essentially there are two interdependent parallel supplies of products only for the purposes of putting together specific bundles; and
- (b) Coles Myer remains free to purchase each product in single lines and is not obliged to offer the bundled products at retail (although it has incentives to do so).

3.2 *The Scheme in Operation*

The parties intend that the bundling proposal will run until the end of January 2006.

The bundling proposal will be limited to "complementary" products. In particular, Diageo's premium beer range will not be included in any bundle, nor will wine form part of any proposed bundle.

It is proposed that the parties recommend a "recommended selling price" or "RSP" for each bundle. That price will necessarily be less than the retail price which could be offered to consumers if the two product lines in each bundle were sourced separately; nevertheless the retailer always be free to set its own retail price for each bundle.

Each of the applicants will maintain its separate trading relationship with Coles Myer, selling product on its own terms and subject to a discount which will be negotiated by each of Diageo and the LN Subsidiaries with Coles Myer and not disclosed to the other. Invoicing will remain separate and there will be no communication between Diageo and the LN Subsidiaries on price (including applicable discounts, margins, rebates etc) save for the recommended selling price for a particular bundle.

4 PUBLIC BENEFITS WITH NO PUBLIC DETRIMENT

4.1 *Public Benefits*

Savings automatically passed on to consumers:

- The discount offered to Coles Myer will only be available if a consumer purchases a bundled offering at the recommended sale price or less. As a consequence, Coles Myer will have clear incentives to pass on the savings provided by the applicants to retail customers.

Enhanced consumer choice:

- Consumers will have enhanced product choice as a consequence of this proposal.
- Currently, only the Foster's Group is in a position to offer bundles of the kind described in this submission. Lion Nathan and Diageo are responding to the competitive trend towards greater bundling in the market, as initiated by Foster's. Lion Nathan and Diageo, in seeking to compete with Foster's, will be delivering more choice to consumers.
- There is no intention to disturb retailers' and consumers' freedom and ability to choose single line products for purchase. Rather, the object is to introduce a new line of "product" which competes directly with Foster's while offering greater choice across several product categories.

Increased price competition with Foster's:

- Price competition will be enhanced in line with the promotion of the proposed bundles in competition with likely Foster's Group bundles available in the market over the Christmas period.
- Foster's product portfolio includes beers (Foster's Lager, Crown Lager, Carlton Cold, Sterling, Carlton Draught, Cascade Premium), spirits (Cougar Bourbon, Cougar Rum, The Black Douglas, Karloff Vodka), cider (Strongbow Cider), RTDs (Cougar Bourbon & Cola, Cougar Rum & Cola, Black Douglas & Cola, Capri Cocktails, Sky Blue) as well as an extensive wine portfolio.
- Foster's is likely to utilise bundling conduct in the market over the relevant period consistent with Foster's historic conduct. Examples of recent bundles offered to consumers by Foster's include "give-aways" such as bonus cans of Cascade Premium and Cougar Bourbon & Cola, packaged and sold with bottles of The Black Douglas.

4.2 *No Public Detriment*

The applicants are not aware of any detriments to the public which are likely to flow from the proposed conduct, particularly as Coles Myer is already purchasing the relevant beverage products from the LN Subsidiaries and Diageo and is not subject to any restrictions on its continued ability to do so.