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advertising and marketing lawyers

25 November 2005

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

By post and facsimile: 02 6243 1211

Dear Mr Gregson

FRANKLINS PTY LTD ("FRANKLINS") and MEGAPLAY AMUSEMENTS PTY LTD ("MEGAPLAY")

We act on behalf of both Franklins and Megaplay and lodge the attached notifications on their behalf in relation to arrangements they propose to enter into for the purpose of the conduct of a promotional offer. We enclose:

1. Notification under section 93(1) of the Trade Practices Act 1974 (Cth) ("**Act**") in the form of completed "Form G – Exclusive Dealing Notification" for both corporations; and
2. A cheque in the amount of \$200 being the requisite fee for such notifications.

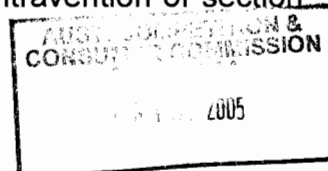
1. Background

1.1 Franklins is primarily a retailer of groceries. Megaplay is primarily a petrol retailer.

1.2 Franklins and Megaplay are proposing to enter into an arrangement to conduct a promotional activity whereby consumers will be offered the chance to receive 4 c a litre off the cost of their petrol at the service station run by Megaplay at Mayfield Newcastle on the proviso that they provide a receipt verifying that the consumer has spent \$30 on groceries at Franklins Mayfield (Proposed Offer).

2. Notified conduct

2.1 As parties to this Proposed Offer, Franklins and Megaplay are concerned that the Proposed Offer **may** constitute a contravention of section 47(6) of the Act.



Tony Anisimoff
Sarah Bradly
Heidi Bruce

Associates
Cecelia Henry
Kieran Gamble
James Barker
Julie Choi
Anita Brown
Cathy Hoyle

2.2 The notified conduct may be formulated as: Megaplay providing a discount to the consumer on their fuel on the condition that the consumer acquire or agree to acquire goods from the Franklins Store at Mayfield.

3. Competition issues

3.1 It is our submission that the ACCC should not serve a notice under section 93(3A) of the Act because:

- (a) the Proposed Offer will not adversely affect competition in the relevant market;
- (b) the Proposed Offer will result in public benefit; and
- (c) the Proposed Offer will not result in public detriment.

3.2 It is our view that the Proposed Offer will not adversely effect competition as this type of offer is already offered by many of the major supermarkets and petrol retailers nationally. This offer if anything provides a regional store and regional petrol outlet with the opportunity to conduct an offer which many of the large national grocery retailers and service stations are presently undertaking.

3.3 It is our view that the offer will result in public benefit and no public detriment, as it will offer the local Mayfield consumer a wider choice in so far as they can now deal with the local Mayfield Franklins and the local Mayfield service station and will not be compelled to buy their groceries and petrol from other national grocery and petrol retailers who conduct the same or similar offer.

3.5 In addition, the Proposed Offer is a one-off and is only being conducted for a limited duration.

3.6 Further to the above, there is no obligation imposed on the consumer to take up the Proposed Offer and they can decide whether to take up the offer.

3.7 Accordingly, we take the view that there is no public detriment associated with the Proposed Offer.

4. Conclusion

4.1 For the reasons discussed above, we believe that the overall public benefit for the Proposed Offer is significant and that it does not pose any anti-competitive threat or public detriment, particularly as the Proposed Offer is only for a limited duration.

4.2 Accordingly, we submit that it is appropriate for the ACCC not to serve a notice under section 93(3A) of the Act in respect of the Proposed Conduct.

4.3 We trust that sufficient information has been provided in order to allow the ACCC to consider the Proposed Conduct. However, if you have any queries or require any further information please contact James Barker on (02) 9460 6611.

Yours faithfully

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

James Barker
Anisimoff Legal

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 Megaplay Amusements Pty Ltd [ABN 64 001 965 091] of 286 Maitland Road, Mayfield NSW 2304

(See Direction 2 on the back of this form)

(b) Short description of business carried on by that person
 Petrol service station.

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

Anisimoff Legal, 61 Christie Street, St Leonards, NSW 2065. Attention: James Barker

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice elates
 Groceries at Franklins store at Mayfield, and petrol at participating service station (see below).

(b) Description of the conduct or proposed conduct

Franklins and the operator of the Caltex branded service station at 286 Maitland Road, Mayfield NSW 2304 (Megaplay Amusements Pty Ltd [ABN 64 001 965 091]) wish to jointly conduct an offer whereby the service station will provide 4c a litre off the cost of the petrol on the proviso that the consumer produces a receipt from Franklins store at Mayfield recording having spent \$30 in this store. Proposed conduct is that the organizations will jointly be conducting an offer whereby a consumer can obtain a discount on the proviso that it deals with the other (Third line forcing s. 47(6) – TPA).

(See Direction 4 on the back of this Form)

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

Consumers who purchase groceries from Franklins Mayfield and consumers who purchase petrol from the above mentioned service station.

(b) Number of those persons--

(i) At present time: With respect to service station -- estimated at approximately 200,000 persons per year.

(ii) Estimated within the next year: With respect to service station- approximately 260,000 persons per year.

(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.....

Anisimoff Legal, 61 Christie Street, St Leonards, NSW 2065. Attention: James Barker

Dated 24th November 2005

Signed by/on behalf of the applicant giving notice

(Signature)

(Full Name)

(Description)

James Barker
James Barker
Company Director

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.

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 Franklins Pty Ltd ABN 46 096 722 904 of Level 2, 21/25 King Street, Rockdale, 2216.

(See Direction 2 on the back of this form)

(b) Short description of business carried on by that person
Franklins store opening at Mayfield, Newcastle – retailer of groceries.

(c) Address in Australia for service of documents on that person
Anisimoff Legal, 61 Christie Street, St Leonards, NSW 2065. Attention: James Barker

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
Groceries at Franklins store at Mayfield, and petrol at participating service station (see below).

(b) Description of the conduct or proposed conduct
Franklins and the operator of the Caltex branded service station at 286 Maitland Road, Mayfield NSW 2304 (Megaplay Amusements Pty Ltd [ABN 64 001 965 091]) wish to jointly conduct an offer whereby the service station will provide 4c a litre off the cost of the petrol on the proviso that the consumer produces a receipt from Franklins store at Mayfield recording having spent \$30 in this store. Proposed conduct is that the organizations will jointly be conducting an offer whereby a consumer can obtain a discount on the proviso that it deals with the other (Third line forcing s. 47(6) – TPA).

(See Direction 4 on the back of this Form)

3. (a) Class or classes of persons to which the conduct relates
Consumers who purchase groceries from Franklins Mayfield and consumers who purchase petrol from the above mentioned service station.

(b) Number of those persons--

(i) At present time: With respect to Franklins Mayfield- not available as store yet to open.

(ii) Estimated within the next year: With respect to Franklins Mayfield- 520,000 persons per year.

(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.....
Anisimoff Legal, 61 Christie Street, St Leonards, NSW 2065. Attention: James Barker

Dated 25 November 2005

Signed by/on behalf of the applicant giving notice

.....
(Signature) **RONALD H. PERLOV**

.....
(Full Name) **DIRECTOR**

.....
(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.