

# CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin

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24 February 2006

AUST. COMPETITION &  
CONSUMER COMMISSION  
24 FEB 2006

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## By Hand

Mr Scott Gregson  
General Manager - Adjudication  
Australian Competition & Consumer Commission  
Level 7, Angel Place  
123 Pitt Street  
SYDNEY NSW 2000

FILE No:
DOC:
MARG/PRIC11

Our reference: 187/12847/80021874

Dear Mr Gregson

### Third Line Forcing Notification: Universal Pictures (Australasia) Pty Ltd

We act for Universal Pictures (Australasia) Pty Ltd ("**Universal**") t/a Universal Pictures Video.

Please find enclosed a Form G Notification of conduct referred to in subsections 47(6) and (7) of the *Trade Practices Act 1974*, lodged by Universal, together with a cheque for \$100.

The Notification concerns a joint promotion between Universal and the Independent Distillers Group, which supplies Woodstock Bourbon.

The essence of this promotion is that Universal will supply \$5 (by cash or money-order) to people who send in a claim form from a special promotional 6-pack of Woodstock Bourbon and a receipt from their purchase of the forthcoming *King Kong* DVD. Fulfilment will be handled by a promotions agency on behalf of Universal.

Special promotional packs of Woodstock Bourbon will be available in over 3500 independent liquor outlets throughout Australia. The *King Kong* DVD will be available at numerous retail outlets throughout Australia including Woolworths, Coles, Big W, Kmart, Target, Myer, David Jones, Ezy DVD, Video Ezy, Blockbuster and numerous independent video shops.

The promotion will run from 10 April 2006 to 19 May 2006.

Universal does not believe that the promotion is caught by section 47(6) or 47(7) because a customer is free to choose from which outlets it will acquire the special promotional pack of Woodstock Bourbon and the *King Kong* DVD. However, Universal is lodging this Notification as a matter of caution because, on one reading of sections 47(6) and 47(7) of the TPA, it could be argued that it is engaging in third line forcing in supplying \$5 to customers, on the condition that the customer acquires a special pack of Woodstock Bourbon.

Universal submits that the public benefits of the promotion outweigh the public detriments which arise from any third line forcing conduct.

By giving \$5 cash-back, the joint promotion will permit consumers to make a financial saving on their *King Kong* DVD purchase. The promotion accordingly provides significant benefits to consumers in terms of

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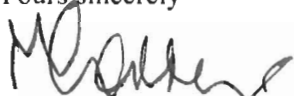
Mr Scott Gregson, Australian Competition & Consumer Commission

competition and consumer welfare. Consumers will have a genuine choice as to whether to purchase the *King Kong* DVD alone or to purchase it in conjunction with a 6-pack of Woodstock Bourbon, and vice versa.

Universal is of the view that promotions of this kind are a commonly-used marketing tool that deliver real benefits to consumers. The alleged third line forcing conduct will not impact on competition in any relevant market. Indeed, competition in the liquor industry and the DVD industry will be improved by the promotion which may lead to further competition on price and service.

Thank you for your consideration of this matter.

Yours sincerely



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FORM G

COMMONWEALTH OF AUSTRALIA

N31551

*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-sections 47 (6) and (7) of that Act in which the person giving notice engages or proposes to engage.

1. (a) Name of person giving notice

**Universal Pictures (Australasia) Pty Ltd ACN 087 513 620 t/a Universal Pictures Video ("Universal")**

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

**Supplier of DVDs and home videos**

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

**3 Munn Reserve, Millers Point NSW 2000**

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

**Supply of \$5 in cash or money-order**

(b) Description of the conduct or proposed conduct

**Offer and supply in the period from 10 April 2006 to 19 May 2006, of \$5 to customers on condition that they send in to Universal:**

- **a coupon from a special promotional "Woodstock bourbon" 6-pack available for sale at independent retail outlets throughout Australia; and**
- **a receipt for purchase of the movie "King Kong" from any retail outlet.**

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

**Any person who acquires a "King Kong" DVD and a special promotional 6-pack of Woodstock bourbon**

(b) Number of those persons:

(i) At present time

**Estimated as 4000**

- (ii) Estimated within the next year

**Estimated as 4000**

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

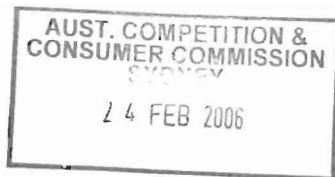
**Not applicable**

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

**Michael Corrigan  
Clayton Utz  
Levels 19-35  
No. 1 O'Connell Street  
SYDNEY NSW 2001**

Dated

24/2/06



Signed by/on behalf of the person giving this notice

*Michael Corrigan*  
(Signature)

MICHAEL THOMAS CORRIGAN

(Full Name)

PARTNER

(Title)

CLAYTON UTZ

(Organisation)

## 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 subsection 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 subsection 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 described for the purposes of subsection 93(7A) of the Act (the "**prescribed period**") unless the Commission gives a notice under subsection 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 subsection 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.