

Our ref: TVE:NIB352/509

PO Box 812  
Newcastle NSW 2300

19 December 2006

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DX 7829 Newcastle

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

[www.sparke.com.au](http://www.sparke.com.au)

**By mail**

FILE No:	
DOC:	
MARS/PRISM:	

Dear Scott

**Notifications**

We act for The Athlete's Foot Australia Pty Limited (**The Athlete's Foot**) and NIB Health Funds Limited (**NIB**).

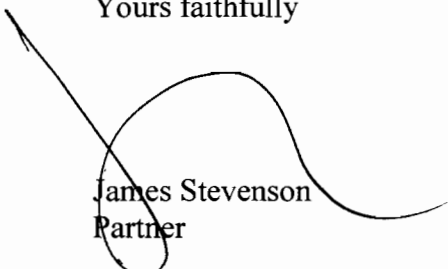
**We enclose:**

- A notification under section 93(1) of the *Trade Practices Act 1974* (Cth) on behalf of The Athlete's Foot; and
- A related notification under section 93(1) of the *Trade Practices Act 1974* (Cth) on behalf of NIB.

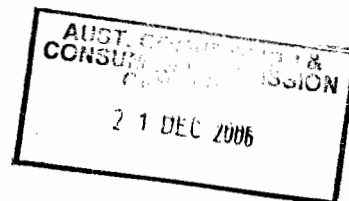
We also **enclose** a cheque for \$300 in respect of the above notifications as payment of the required fees.

If you have any queries in relation to this matter please contact Tina van Epen.

Yours faithfully

  
James Stevenson  
Partner

Contact: Tina van Epen  
Lawyer  
02 4924 7302  
[Tina.vanEpen@sparke.com.au](mailto:Tina.vanEpen@sparke.com.au)



**Encl.**

## Form G

Commonwealth of Australia  
*Trade Practices Act 1974 – Sub-section 93(1)*  
**EXCLUSIVE DEALING  
NOTIFICATION**

To the Australian Competition and Consumer Commission:

N92742

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

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

The Athlete's Foot Australia Pty Limited (ACN 001 777 582) of Unit 7, 29-31 Bridge Road, Stanmore NSW 2048 (**The Athlete's Foot**).

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

The Athlete's Foot is a retail supplier of running shoes and related products from outlets located in Australia and New Zealand.

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

The Athlete's Foot Australia Pty Limited (ACN 001 777 582) of Unit 7, 29-31 Bridge Road, Stanmore NSW 2048.

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

Retail sporting footwear products.

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

NIB Health Funds Limited (**NIB**) is a registered health benefits organisation under the *National Health Act 1953* (Cth) and provides private health insurance services.

The Athlete's Foot proposes to offer to new NIB members who join any combined hospital and extras package a \$100 credit on the purchase of footwear & accessories at The Athlete's Foot (**Promotion**) upon presentation of the \$100 Gift Card supplied to the new member from NIB. The offer is valid from 3<sup>rd</sup> January 2007 to 31<sup>st</sup> January 2007.

**Example of the proposed conduct**

If a consumer wishes to participate in the Promotion, the consumer must acquire a combined hospital and extras health insurance cover from NIB within the timeframe of the Promotion. Only then will the consumer

receive, as a once only new membership benefit, a \$100 credit on footwear & accessories supplied by The Athlete's Foot in the form of a \$100 The Athlete's Foot Gift Card (which has been provided to the customer by NIB).

**Benefits of proposed conduct**

The proposed conduct will benefit the public as it will:

- (1) reduce costs for new NIB members seeking to purchase quality sporting footwear;
- (2) promote competition in the sports clothing and footwear market by encouraging suppliers of sports clothing and footwear to offer similar discounted goods or services; and
- (3) promote competition in the health insurance market encouraging other health insurance providers to offer similar benefits to consumers in the supply of their health insurance products.

The proposed conduct will not lessen competition in the markets for the relevant products and services as:

- (1) competition in the relevant markets is vigorous and there are many competitors;
- (2) new NIB members are under no obligation to acquire selected sports footwear at a discounted price from The Athlete's Foot; and
- (3) consumers will be free to purchase sports footwear from The Athlete's Foot at regular competitive prices, irrespective of whether the consumer chooses to acquire goods and services from NIB.

The applicant believes that the benefits from the proposed conduct outlined above will outweigh any possible detriment which may arise from the proposed conduct.

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

Consumers wishing to acquire health insurance.

Consumers wishing to acquire retail sporting footwear.

**(b) Number of those persons:-**

Substantially in excess of 50

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

Not applicable.

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

**Lea Collins**  
*Promotions Manager*  
*The Athlete's Foot*  
*Unit 7, 29 Bridge Road, Stanmore, NSW 2048*

Dated 15/12/06

Signed by/on behalf of the applicant giving notice



.....

Lea Collins  
Promotions Manager  
The Athlete's Foot

## DIRECTIONS

1. If there is sufficient 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 sub-section 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 sub-section 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 sub-section 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

N92743

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

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

NIB Health Funds Limited (ACN 000 124 381) of 384 Hunter Street, Newcastle, New South Wales 2300 (NIB).

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

NIB is a registered health benefits organisation under the *National Health Act 1953* (Cth) and provides private health insurance services.

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

c/o David Lethbridge, Company Secretary, 380 Hunter Street, Newcastle NSW 2300

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

Private health insurance.

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

The Athlete's Foot Australia Pty Limited (**The Athlete's Foot**) is a retail sporting footwear supplier in Australia.

NIB proposes to offer new members who join any combined hospital and extras package a \$100 credit on the purchase of footwear and accessories at The Athlete's Foot upon presentation of the \$100 gift card supplied to the new member from NIB. The offer is valid from 3rd January 2007 to 31st January 2007.

**Example of the proposed conduct**

If a consumer wishes to participate in the Promotion, the consumer must shop at one of The Athlete's Foot stores within the timeframe of the Promotion. Only then will the consumer receive, as a once only new membership benefit, a \$100 credit on footwear and accessories from The

Athlete's Foot in the form of a \$100 Gift Card that has been supplied by NIB.

Benefits of proposed conduct

The proposed conduct will benefit the public as it will:

- (1) reduce costs for new NIB members seeking to purchase quality sporting footwear;
- (2) promote competition in the sports clothing and footwear market by encouraging suppliers of sports clothing and footwear to offer similar discounted goods or services; and
- (3) promote competition in the health insurance market encouraging other health insurance providers to offer similar benefits to consumers in the supply of their health insurance products.

The proposed conduct will not lessen competition in the markets for the relevant products and services as:

- (1) competition in the relevant markets is vigorous and there are many competitors;
- (2) new NIB members are under no obligation to acquire selected sports footwear at a discounted price from The Athletes Foot; and
- (3) consumers will be free to purchase sports footwear from The Athlete's Foot at regular competitive prices, irrespective of whether the consumer chooses to acquire goods and services from NIB.

The applicant believes that the benefits from the proposed conduct outlined above will outweigh any possible detriment which may arise from the proposed conduct.

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

Consumers wishing to acquire health insurance.

Consumers wishing to acquire retail sporting footwear.

**(b) Number of those persons:-**

Substantially in excess of 50.

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

Not applicable.

Athlete's Foot in the form of a \$100 Gift Card that has been supplied by NIB.

#### Benefits of proposed conduct

The proposed conduct will benefit the public as it will:

- (1) reduce costs for new NIB members seeking to purchase quality sporting footwear;
- (2) promote competition in the sports clothing and footwear market by encouraging suppliers of sports clothing and footwear to offer similar discounted goods or services; and
- (3) promote competition in the health insurance market encouraging other health insurance providers to offer similar benefits to consumers in the supply of their health insurance products.

The proposed conduct will not lessen competition in the markets for the relevant products and services as:

- (1) competition in the relevant markets is vigorous and there are many competitors;
- (2) new NIB members are under no obligation to acquire selected sports footwear at a discounted price from The Athletes Foot; and
- (3) consumers will be free to purchase sports footwear from The Athlete's Foot at regular competitive prices, irrespective of whether the consumer chooses to acquire goods and services from NIB.

The applicant believes that the benefits from the proposed conduct outlined above will outweigh any possible detriment which may arise from the proposed conduct.

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

Consumers wishing to acquire health insurance.

Consumers wishing to acquire retail sporting footwear.

### **(b) Number of those persons:-**

Substantially in excess of 50.

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

Not applicable.



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

c/o David Lethbridge, Company Secretary, 380 Hunter Street, Newcastle  
NSW 2300

Dated 15/12/2006

Signed by/on behalf of the applicant giving notice



.....  
David Lethbridge  
Company Secretary

## DIRECTIONS

1. If there is sufficient 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 sub-section 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 sub-section 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 sub-section 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.