

# Aēsop®

www.aesop.net.au

A trademark of Emeis Holdings Pty Ltd  
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AUST. COMPETITION &  
CONSUMER COMMISSION  
MELBOURNE  
12 7 NOV 2007



'Being good in business is the most fascinating kind of art.' Andy Warhol

General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
Dickson ACT 2602

27 November, 2007

FILE No:  
DOC:  
MARS/PRISM:

Dear Sir,

To the Australian Competition and Consumer Commission:  
Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which Aēsop Retail Propriety Limited ("Aēsop") ABN 56 007 409 001 (a) proposes to engage.

Payment of the lodgement fee of \$100 has been received by the ACCC by cheque on the 27<sup>th</sup> of November 2007 at:

Melbourne Office  
Level 35, The Tower  
360 Elizabeth Street  
Melbourne Central  
Melbourne VIC 3000

Should further information or clarification of the conducts hereby given notice of I can be contacted at (03) 9347 3422.

Kind regards,

Erin Boyling  
Retail Operations Manager

# Form G

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 93 (1)*

## NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

- (a) Name of person giving notice:

Aesop Retail Pty Ltd (“Aesop”) ABN 56 007 409 001 *N93225*

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

The provision of cosmetic products through wholesale distributors and 10 company-owned stores in Australia, including skin and hair care.

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

**Aesop Retail Pty Ltd,**

**71 – 79 Bouverie Street,**

**Carlton, Victoria 3053**

### 2. Notified arrangement

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

The proposed conduct relates to the acquisition of Aesop products and American Express Limited Australia ABN 92 108 952 085 (“American Express”) payment and credit card services.

- (b) Description of the conduct or proposed conduct:

Aesop is to offer a discount during a “promotional period” (between December 10, 2007 and December 31, 2007) on the standard retail price for Aesop cosmetic products to customers who are also customers of American Express services on the provision that they use their American Express services to pay for Aesop cosmetic products on their next purchase. The conduct in this notification will occur within the Qantas Club Lounge, located in the Domestic Terminal at Tullamarine Airport, Melbourne, during the “promotional period”.

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

- (a) Class or classes of persons to which the conduct relates:  
Existing customers of American Express financial services attending the Aesop counter during the “promotional period” at the Qantas Club Lounge, Melbourne
- (b) Number of those persons:
- (i) At present time:  
Nil
- (ii) Estimated within the next year:  
The estimated number of persons affected within the next year is 200 based on previous promotions conducted by American Express.
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:  
NA

**4. Public benefit claims**

- (a) Arguments in support of notification:
- The conduct outlined in this notification will not adversely affect competition in the relevant market; and
  - The conduct in question will result in public benefit and no public detriment.
- (b) Facts and evidence relied upon in support of these claims:  
The cosmetic market is highly competitive, by creating a more competitive offering for both purchasers of Aesop products and American Express services the conduct outlined in 2(a) will encourage competitors to offer similar allowances and benefits to their customers and therefore promote competition in the relevant markets.

**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
*(Refer to direction 8)*

The market in which the goods and services at 2(a) are supplied to:

- American Express competes in the financial services market including but not limited to card fees; interest rates; interest free periods; transaction fees; member services; and reward programs. There is a broad range of product options available to consumers, including but not limited to payment charge and credit cards provided by Visa, Diners Club and Master Card brands.
- Aesop competes in the cosmetic goods and services market. A broad range of products and prices are available to consumers through salons, department and stand-alone stores. There is a large number of discount and added benefit offers available to consumers purchasing cosmetic products at any given time. Competitors in this market include, but are not limited to, Jurlique, Aveda and Clarins cosmetic brands through both stand-alone stores and department stores such as Myer Pty Ltd and David Jones Pty Ltd.

## 6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

I do not believe there are any public detriments caused by the conduct outlined in this notification. The conduct outlined at 2(a) would not cause significant decrease in competition or affect pricing in either the financial products markets or cosmetic product markets.

(b)

Facts and evidence relevant to these detriments.

The proposed conduct:

- In no way depletes the choice or efficacy or affects the pricing for the consumer between payment cards offered by American Express or any other payment card provider. Customers are under no obligation to use the services of American Express in order to obtain Aesop products.

The proposed conduct does not lessen the competition in the cosmetic market, in no way is pricing, choice or efficacy affected, rather infighting further competition between cosmetic retailers and payment and credit card providers to offer comparable services of benefit to consumers.

- Customers are in no way obliged to purchase Aesop products or use the services of American Express in order to purchase Aesop products at the standard pricing level.

**7. Further information**

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Aesop Retail Propriety Limited, 71 – 79 Bouverie Street, Carlton, Victoria  
3053

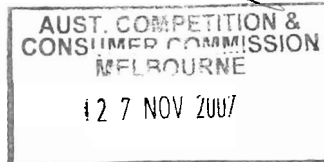
Dated Tuesday November 27, 2007.

Signed by/on behalf of the applicant

Erin Elizabeth Boyling  
(Full Name)

Aesop Retail Propriety Limited  
(Organisation)

Retail Operations Manager  
(Position in Organisation)



## DIRECTIONS

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

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. 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 section 47 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. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.

8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.