



AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
- 5 NOV 2008

11th Floor
51 Drutt Street
Sydney NSW 2000

Ph: (02) 8267 0600
Fax: (02) 8267 0650

www.slatergordon.com.au

Correspondence to:

PGL: Steven Lewis
Principal Lawyer: Stephen McNamee
Legal Assistant: Peggy Lo

GPO Box 1584
SYDNEY 2001

DX 1163 SYDNEY

Direct Ph: (02) 8267 0614

Email:
stephen.mcnamee@slatergordon.com.au

Our Ref: SL:SM:320740

5 November 2008

Australian Competition and Consumer
Commission
Level 7, Angel Place
123 Pitt Street
SYDNEY NSW 2000

By Hand

Dear Sir/Madam

FILE No:
DOC:
MARS/PRISM:

Third Line Forcing Notification
The Hoyts Corporation Pty Limited
Australian Multiplex Cinemas Pty Limited

We refer to the above matter and enclose the following:

- (i) Application for Exemption (Form G) Third Line Forcing Notification; and
- (ii) Cheque in favour of the Australian Competition and Consumer Commission in the amount of \$200.00.

We look forward to receipt of confirmation of exemption in due course. Should you have any questions, please contact our Stephen McNamee.

Yours faithfully
SLATER & GORDON

Per:

Stephen McNamee
Principal Lawyer
Enc



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

1. APPLICANTS

(a) Name of persons giving notice:

- N93642 (i) The Hoyts Corporation Pty Limited ("**Hoyts**") , and
N93643 (ii) Australian Multiplex Cinemas PTY LTD ("**AMC**")
(Together, the "**Channel Partners**");

(b) Short description of businesses carried on by those persons:

The Channel Partners are in the business of screening and promoting films in Cinemas in Australia.

1. Hoyts has 39 cinemas nationwide, and
2. AMC has 5 cinemas nationwide

(c) Address in Australia for service of documents on those persons:

c/- Slater & Gordon Lawyers, level 11, 51 Drutt Street Sydney.

2. Notified Arrangement

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

Introduction.

Channel partners

The Channel Partners are in the business of screening and promoting films in Cinemas in Australia.

- (A) Hoyts has 39 cinemas nationwide, and
- (B) AMC has 5 cinemas nationwide
- (C) Tickets to these screenings are sold directly to the public

VISA

VISA is an association of financial institutions which operates a world-wide payment system in which member financial institutions offer a wide range of card-based and non-card-based payment products and services to consumers and other entities, and payment acceptance capabilities to merchants, all of which utilise VISA payment processing systems

The financial institutions provide their respective customers (“**Cardholders**”) with a debit card, credit card and/or a prepaid card (**VISA card**) each bearing the VISA acceptance mark.

Background

The Channel Partners and VISA have established a marketing relationship in Australia to jointly promote the Offers described herein, to provide benefits to consumers holding VISA Cards.

Under these arrangements, VISA will enter into an arrangement with the Channel Partners whereby VISA Cardholders have the opportunity to take advantage of the Offers by purchasing the relevant products or services using their VISA Card.

(b) Description of the Conduct or Proposed Conduct:

The Channel Partners respectively propose providing a number of offers to Cardholders.

Cardholders wishing to take advantage of the offers must use their VISA Card when accepting the offer(s) and making payment.

Offer 1: 2 tickets for \$22

2 for \$22 tickets on Wednesday only. Includes all Channel Partner tickets any Wednesday (excluding premium cinemas, IMAX, Xtremescreen and thehalfpipe cinemas/screens) until October 2009.

On purchase, on Wednesdays, of two movie tickets with a Visa Card bearing the VISA acceptance mark at a Hoyts box office, Cardholders will be charged the preferential rate of \$22.00.

Cardholders can also qualify for the promotion by purchasing tickets via telephone. Participants must collect their tickets from the Channel Partners box office for verification that payment has been made with a valid VISA Card.

Offer 2: Family ticket (two adults and two children for the same film) for \$35.00

For the family ticket - On purchase, every day of the week until the end of October 2009, of two adults and two children's movie tickets with a Visa Card bearing the VISA acceptance mark, at a Channel Partners box office, Cardholders will be charged the preferential rate of \$35 .00.

Cardholders can also qualify for the promotion by purchasing tickets via telephone. Participants must collect their tickets from the Channel Partners box office for verification that payment has been made with a valid VISA Card

Offer 3: Free Combo Upgrade

Free Combo Upgrade Regular to Large when customers pay on a Visa card at Channel Partner cinemas, valid during Feb 09 and August 09 only (RRP \$6.90).

For the Free Combo offer - On purchase, in the period 1 February to 28th February 2009 and 1st August to 31 August 2009, of a full price movie ticket with a Visa card (bearing the VISA acceptance mark at a Channel Partners box office, Visa Cardholders will be given a voucher verification to redeem their free upgrade at any candybar or kiosk within the relevant location on the date of the purchase of the ticket.

Cardholders can also qualify for the promotion by purchasing tickets via telephone. Participants must collect their tickets from the Channel Partners box office for verification that payment has been made with a valid VISA Card

Offer 4: Tickets to limited preview screenings (Hoyts only)

This offer enables VISA cardholders to purchase tickets to limited preview screening of 2 film titles before general public release

This offer applies to preview screenings promotions run before 30 September 2009 at selected Hoyts Cinemas. Note that general public will be able to access tickets/see the film titles on general release, usually a short period after the preview screenings.

VISA Cardholders may purchase with their VISA card tickets to 2 pre-screenings of a soon to be released film title at Hoyts Cinemas only, prior to general release.

VISA Cardholders will be able to purchase advance tickets either

- (D) over the internet via a VISA-hosted website which will access the Hoyts website or
- (E) at Hoyts box offices

on condition that the Cardholder pays for the tickets using his or her VISA Card (bearing the VISA acceptance mark (VISA Card)).

On general release, members of the public may purchase tickets to see the film, as usual.

Offer 5: Purchase 2 La Premiere tickets for \$50 (Monday and Wednesday nights only, Visa Platinum cardholders only)

If VISA Platinum cardholders purchase Hoyts La Premiere tickets at Channel Partners box offices on Monday or Wednesday nights in the promotion period of up to 1st October 2009 using their for Visa Platinum Visa card, (bearing the VISA acceptance mark) the cardholders will be charged \$50 only.

The cardholders qualify for the promotion by purchasing tickets using their VISA Platinum card (credit card (VISA Card) via the Hoyts box office or by telephone only. Tickets will need to be picked up on the box office for verification payment has been made with a valid VISA Card.

Visa Platinum Cardholders can also qualify for the promotion by purchasing tickets via telephone. Participants must collect their tickets from the Channel Partners box office for verification that payment has been made with a valid VISA Platinum Card.

(This is a HOYTS ONLY promotion and does not involve AMC)

Offer 6: Free glass of champagne

If a Visa Platinum cardholder, on a Monday and Wednesday during the promotion period of up to 1st October 2009 spend over \$20 on food items at Hoyts La Premiere (only), using their Visa Platinum card (bearing the VISA acceptance mark), they will be provided with a free glass of champagne at the lounge bar .

For the free glass of champagne on Monday and Wednesday - Visa Platinum cardholders who spend over \$20 on food items at Hoyts La Premiere (only) will receive a free glass of Champagne at the lounge bar.

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

(a) Classes of persons to which the conduct relates

Generally

There are about 8.8 million VISA credit cards on issue in Australia, of which 300,000 approx are Visa Platinum cards. Approximately 70% of individuals in Australia that hold a credit card hold a VISA-branded credit card. A further 5 million individuals hold VISA-branded debit cards.

4. Public benefit claims

Arguments in support of notification

- i. Approximately approximately 8.8 million credit cardholders in Australia have a VISA card and a further 5 million individuals in Australia have a Visa debit card.
- ii. The proposed conduct will provide these VISA Cardholders with a benefit if they choose to purchase movie tickets or food and beverage at Hoyts or AMC during the promotional period, using their VISA Cards.
- iii. Offers 1,2, 5 and 6 (The \$22, the Family Ticket, the \$50 Hoyts La Premiere ticket offer and the free glass of champagne offers) are not exclusive and may be run by the Channel Partners outside of the specific weekdays specified to all customers.
- iv. Offer 3 (The upgrade promotion) will run for a short time period and the proposed conduct will all material not impose any material restriction on access to purchase popcorn by the general public during the promotional period.
- v. With respect to offer 4 (the film previews),
 - (b) the public will still be able to see the 2 film titles on general release and the proposed conduct will not impose any material restriction on access to tickets by the general public.
 - (c) In addition, a maximum limit of seats will be imposed for the preview screenings, available in selected Hoyt's cinemas only for day only.

Benefits of the proposed conduct:

- i) The offers detailed will provide VISA Cardholders with an additional ticket or food and beverage benefit when they use their cards at Hoyts or AMC cinema chains, during the dates specified only.
- ii) Other members of the public will not be materially affected by this and can purchase tickets and combo if they so wish, in the normal manner.
- iii) VISA Cardholders will have no obligation to take advantage of the promotion.
- iv) The Combo upgrade promotion will last for a short time period.
- v) As to the Preview offers:
 - 1. The proposed exclusivity arrangements will provide VISA Cardholders, who are not an insubstantial percentage of the public and a high proportion of Cardholders generally, with access to limited tickets to a preview of 2 film titles, prior to the tickets or the film becoming available to the general public.
 - 2. Other members of the public will have ample opportunity to purchase tickets to see the film titles upon general release and these can be purchased by cash and other credit cards and charge cards.
- vi) The notified conduct will likely have little or no effect on the prices of cinema tickets, however it is expected the proposed conduct may increase competition in the Cinema market, by making a visit to Hoyts cinemas more appealing than other cinemas because of the added attraction of the offers.

For the reasons above, there is no significant detriment to the public as a result of the proposed conduct. Any minimal detriment is substantially outweighed by the public benefits outlined above.

5. Market definition

(a) Description of the markets

- (i) The goods and services are supplied within the entertainment market.

- (ii) The conduct that is the subject of this notification does not introduce any restrictions on the supply or acquisition of the goods and services.
- (iii) Substitutes for cinema attendance may be said to include the purchase or renting of DVDs or attending live theatre (or the opera), or attending sporting events such as cricket or football.
- (iv) A VISA debit card is usually available to most members of the population who are employed or have some form of fixed regular income.

(b) **Number of those persons in the market :**

About 8.8 million individuals in Australia hold a VISA credit card, of which 300,000 approximately are Visa Platinum cards. When added to numbers of VISA debit card holders, there are approximately 14 million VISA cards on issue in Australia.

6. Public detriment

- i. The only obvious "detriment" to the public which we can identify, is that members of the public who are not cardholders will not be able to partake in the proposed offers.
- ii. This may be overcome for those members of the public if they apply for and are provided with a Visa card.

7. Further Information

**Slater and Gordon lawyers
Level 11, 51 Druiitt Street
SYDNEY**

Attention: Stephen McNamee

Telephone: 8267 0662

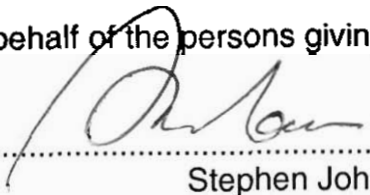
Facsimile: 8267 0650

Email: stephen.mcnamee@slatergordon.com.au

Dated: 05 Nov 08

Signed by/on behalf of the persons giving this notice




.....
Stephen John McNamee

Solicitor in the employ of
Slater and Gordon Lawyers

Solicitor for the applicants