

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:

N94243 Think Pharmacy Pty Ltd ACN 123 456 789 ("THINK")

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

THINK operates a network of franchised and corporate *Retail Pharmacy* stores that market and sell, at locations within Australia, products and services offered by retail pharmacies under the name of "*THINK Pharmacy Stores*" ("THINK Stores"). THINK acts as the franchisor and enters into franchise agreements with franchisees entitled to operate those *Retail Pharmacy* stores.

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

C/- Claire Barratt, General Counsel, Unit 12/783 Kingsford Smith Drive
Eagle Farm, QLD, 4009

2. Notified arrangement

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

- (i) Provision of membership to the THINK Card loyalty program to THINK employees and existing and potential customers who purchase products from the network of individual THINK Pharmacy Stores operated by THINK, its related bodies corporate or its franchisees;
- (ii) The establishment of a loyalty program for the allocation of THINK Points ("Points") as a form of rewards points to members of the THINK Card loyalty program when they purchase eligible products from any participating THINK Pharmacy Store. Eligible products are limited to general retail items such as cosmetics, toiletries, health and beauty items and excludes medication; and
- (iii) The provision of benefits by THINK, its related bodies corporate and/or its franchisees, of discounts and rewards to members of the THINK Card loyalty program from time to time and providing eligible

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products to members upon the redemption of the member's allocated Points.

(b) Description of the conduct or proposed conduct:

Please see attached submissions.

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:

(Refer to direction 5)

Persons who are:

- (i) employees of THINK; and
- (iii) existing and potential customers who purchase products from any THINK Pharmacy Store.

(b) Number of those persons:

(i) At present time:

[CONFIDENTIAL]

(ii) Estimated within the next year:

(Refer to direction 6)

[CONFIDENTIAL]

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

Not Applicable.

4. Public benefit claims

(a) Arguments in support of notification:

(Refer to direction 7)

THINK submits that the notified proposed conduct would:

- (i) be of benefit to consumers in offering rewards to customers;
- (ii) occasion no public detriment; and
- (iii) have no anti competitive effect.

Please also see the attached submissions.

(b) Facts and evidence relied upon in support of these claims:

THINK submits that the allocation of THINK\$ in respect to purchases of eligible products made by members of the THINK Card loyalty program, as a means of rewarding its customers, will benefit the public by increasing competition in the market for retail pharmacy shop related loyalty programs.

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THINK believes that the THINK Card loyalty program will enable THINK and THINK Stores to compete more effectively with its competitors who operate similar loyalty programs available to customers who consume retail pharmacy and other associated products.

Please also see the attached submissions.

5. Market definition

the goods or services described at 2 (a) are supplied or acquired in the retail pharmacy market, other affected markets include retailers such as health and beauty chains. Significant suppliers of retail pharmacy products include Chemworld, Soul Pattison, Chemmart, Terry White, Amcal, Malouf Group and Guardian. Other retailers that supply similar products include health and beauty chains such as Price Line.

(Refer to direction 8)

The relevant markets in terms of the proposed conduct under this notification are the:

- (i) market for existing and potential customers of THINK Pharmacy Stores who purchase and consume *retail pharmacy products and services* and other associated products sold by THINK Pharmacy Stores at various locations currently located at the present time in Australia; and
- (ii) market for retail pharmacy related loyalty programs.

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:**

(Refer to direction 9)

Please see attached submissions.

- (b) **Facts and evidence relevant to these detriments:**

Please see attached submissions.

7. Further information

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

C/- Claire Barratt, General Counsel, Unit 12/783 Kingsford Smith Drive
Eagle Farm, QLD, 4009

Dated this ^{5th} day of October 2009

Signed on behalf of the applicant

A handwritten signature in black ink, appearing to read "R Allen", is positioned above a horizontal dotted line.

Robert Allen
Managing Director
Think Pharmacy]

DIRECTIONS

1. 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 the 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.
7. 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.

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~~—[CONFIDENTIAL]—~~ BB

SUBMISSIONS

This submission is made in support of the attached Form G Notification under section 93(1) of the *Trade Practices Act 1974* on behalf of THINK Pharmacy Pty Ltd ACN 100 116 649 ("THINK") in regards to possible Third Line Forcing conduct that may arise under sections 47(6) and 47(7) of the Act.

1. Background

- 1.1 For the last 7 years, THINK has been operating a network of corporate *retail Pharmacy* stores in *Queensland, New South Wales, and Victoria*. For the past 12 months Think has been marketing and selling *products and services offered by retail pharmacies* under the name of "*THINK Pharmacy*". As a commitment to encouraging and rewarding the loyalty of its customers, THINK proposes to offer its employees and its existing and potential customers of THINK Pharmacy, membership to its new loyalty program, the THINK Card.

2. THINK Card Loyalty Program

- 2.1 Commencing on 1 May 2008, employees of THINK and existing and potential customers of THINK Stores have been eligible to join as members of the THINK Card loyalty program ("Members") and are entitled to earn THINK Dollars ("THINK\$"), as a form of rewards points, for every purchase made on eligible products at any participating THINK Store.
- 2.2 The THINK Card loyalty program will be open to all persons, including employees of THINK, who wish to become Members. Membership in the THINK Card will be offered to potential members on the basis of the THINK Card terms and conditions which will be provided prior to joining. Enrolment in the THINK Card is free of charge for the term. There is no requirement for members to maintain an active status and Members are free to terminate their membership of the THINK Card at anytime upon notice to THINK. Think Dollars expire after three years from the date of allocation to the Member.
- 2.3 Upon joining the THINK Card loyalty program, Members will be entitled to:
- (a) earn THINK\$ on purchases made on any eligible product at any participating THINK Store;
 - (b) receive benefits, discounts and/or earn bonus THINK\$ in conjunction with special and joint promotions conducted by THINK for Members from time to time; and
 - (c) redeem allocated THINK\$ from the Members' THINK Card Account towards eligible products at any participating THINK Store.
- 2.4 When a Member presents their THINK Card and purchases an eligible product at any participating THINK Store, THINK will allocate THINK\$ to a Member's THINK Card Account on the basis per Australian Dollar ("AUD\$") spent on an eligible product. At present, the base THINK\$ rate will be calculated at five THINK\$ per

every (1) one AUD\$ spent on eligible products subject to the THINK Card terms and conditions.

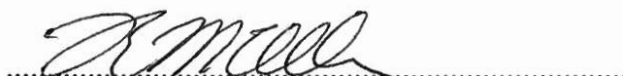
- 2.5 The THINK Card is a rewards card only and it is not a Credit or Debit card in any form. The issuing and redemption of THINK\$ will only occur in whole amounts when purchasing eligible products at any participating THINK Store. No change in THINK\$ or AUD\$ will be given in relation to any part THINK\$ redeemed and THINK\$ will only be earned for the number of whole AUD\$ spent on eligible products at any participating THINK Store. THINK\$ and the THINK Card will not be considered as a form of property or transferable and will only have a cash or monetary value that is only redeemable for eligible products specified by THINK from time to time.

3. Conduct under section 47(6) and 47(7) of the Act

- 3.1 It is noted that the above mentioned conduct which THINK is proposing to undertake in relation to the THINK Card loyalty program may be construed as breaching the Third Line Forcing provisions under sections 47(6) and 47(7) of the Act.
- 3.2 Such scrutiny may be formed on the basis where THINK will allocate THINK\$ to Members on condition that they acquire goods of a particular kind or description from a third party in terms of a Member purchasing eligible products from a participating THINK Store which is operated by an independent franchisee of THINK.
- 3.3 In light of this, THINK seeks to notify the ACCC of the conduct under section 93(1) of the Act. Accordingly, it is also noted that the relevant test to be applied, in approving this notification, under section 93(3A) of the Act, must be satisfied in that the likely benefit to the public from the proposed conduct will not out weigh the likely detriment to the public from the proposed conduct.
- 3.4 It is submitted that the proposed conduct in question:
- (a) would be of benefit to consumers in offering rewards to customers;
 - (b) would occasion no public detriment; and
 - (c) would have no anti competitive effect.
- 3.5 THINK submits that the allocation of THINK\$ in respect of purchases of eligible products made by Members as a means of rewarding its customers, will benefit the public by increasing competition in the market for pharmacy related loyalty programs.
- 3.6 In particular, THINK notes that its competitors in the retail pharmacy shop market such as Malouf Group and Priceline also offer various forms of loyalty program memberships to their respective customers.
- 3.7 THINK believes that the THINK Card loyalty program will enable THINK and THINK Stores to compete more effectively with its competitors who operate similar loyalty programs available to customers who purchase and consume retail pharmacy and other associated products.

Dated this 5th day of October 2009

Signed on behalf of the applicant



Robert Allen
Managing Director
Think Pharmacy