

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:
(Refer to direction 2)

N94325 MasterCard Asia/Pacific (Australia) Pty Ltd (ABN 95 108 603 345)
(*MasterCard*)

- (b) Short description of business carried on by that person:
(Refer to direction 3)

MasterCard operates a global payment system.

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

Baker & McKenzie
Solicitors & Attorneys
AMP Centre
50 Bridge Street
Sydney NSW 2000
Australia

Telephone: (02) 8922 5257
Facsimile: (02) 9225 1595
Attention: Anne-Marie Allgrove

2. Notified arrangement

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

Supply of payment system services in relation to debit cards.

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

Offer to supply prizes, as part of a trade promotion, of MasterCard *applause* vouchers (to be used on the MasterCard *applause* website) to persons who have

acquired a MasterCard debit card from Bank of Western Australia Limited (*Bankwest*).

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 or who may become Bankwest MasterCard debit cardholders.

- (b) Number of those persons:

- (i) At present time:

In excess of 100,000.

- (ii) Estimated within the next year:
(Refer to direction 6)

In excess of 100,000.

- (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)

- (i) The conduct will benefit the public, because:

- improve the quality of the service offered by MasterCard to its customers; and
- promote competition in the relevant markets by exerting pressure on competitors to offer similar and other value added services.

- (ii) The conduct will not lessen competition in the markets for the relevant products and services or result in any conceivable detriment to the public because:

- it will promote competition in the relevant markets by exerting pressure on competitors to offer similar and other value added services;
- competition in the debit card and consumer banking markets is vigorous and there are many competitors;

- consumers may acquire the relevant products and services from a range of other suppliers; and
- consumers will be provided with a further incentive to purchase MasterCard debit card, thus increasing competition in the markets for debit card and consumer banking services.

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

Attached are the conditions of entry for the proposed promotion, which outline the benefits to be offered to Bankwest MasterCard debit cardholders at no additional cost to the cardholders.

There are a great many alternative suppliers of debit card and consumer banking services.

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)

Debit card and consumer banking markets.

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)

MasterCard does not consider that the proposed conduct will result in or is likely to result in any public detriment as:

- consumers are under no obligation to acquire services from MasterCard or from Bankwest; and
- consumers may obtain services from Bankwest without acquiring a MasterCard debit card, and may obtain a MasterCard debit card from a number of issuers other than Bankwest.

(b) Facts and evidence relevant to these detriments:

MasterCard considers the benefits to consumers of having the opportunity to participate in the promotion outweighs any possible public detriment.

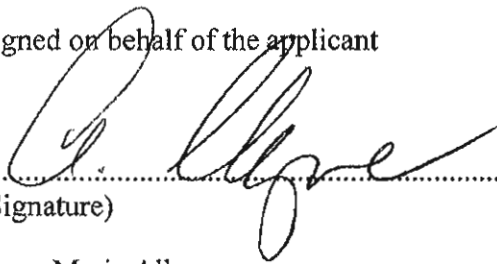
7. Further information

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

Anne-Marie Allgrove
Partner
Baker & McKenzie
AMP Centre
50 Bridge Street
Sydney NSW 1223
Australia

Dated 9 November 2009

Signed on behalf of the applicant



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(Signature)

Anne-Marie Allgrove
Partner, Baker & McKenzie

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 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.

MasterCard Asia/Pacific (Australia) Pty Ltd

Bankwest/MasterCard *applause* Registration Promotion

AUSTRALIA

Conditions of Entry

1. Information on how to enter and prize details set out in all communications regarding the MasterCard *applause* Registration Promotion ("Promotion") form part of the Conditions of Entry. By participating in the Promotion, each participant fully and unconditionally agrees and acknowledges that these Conditions of Entry and the decision of the Promoter on all matters relating to the Promotion are final and binding. Participants must be individual Bankwest Debit MasterCard cardholders who are eligible to participate in the Promotion as set out at condition 4 ("Cardholders").
2. The Promoter is MasterCard Asia/Pacific (Australia) Pty Ltd, ABN 95 108 603 345, L8 100 Arthur Street, North Sydney, NSW 2060, Australia.
3. The Promotional Period for this Promotion commences Tuesday 1 December 2009 at 00.01 (AEDST) and concludes on Sunday 14 March 2010 at 23:59 (AEDST) ("Promotional Period").
4. Entry into the Promotion is open to Cardholders who satisfy the following eligibility requirements:
 - (a) Cardholders are residents of Australia over the age of 18 years old and who for the Promotional Period, up to and including the date on which the prize is finally awarded, hold a valid Debit MasterCard issued by Bank of Western Australia Limited ("Bankwest"), and who are the persons liable to make payments under the relevant MasterCard account (i.e. primary cardholder), and any additional (i.e. supplementary) cardholders who are residents of Australia and over the age of 18 years; and
 - (b) register their contact details in accordance with condition 6.
5. Employees of the Promoter, or the Promoter's associated agencies or companies directly involved in the Promotion (as determined by the Promoter) and their immediate family members are ineligible to participate.
6. To enter the prize draw and complete the registration process Cardholders must register with MasterCard *applause* online at www.mastercardapplause.com.au/bankwest during the Promotional Period. Participants will be required to create an account by creating a Password and registering their own details, including but not limited to, their own full name, email address and city of residence. It is each entrant's responsibility to ensure that any details they provide during the registration process are accurate. Only one email address per Cardholder will be accepted. Cardholders may only register once and therefore may only gain one entry into the prize draw. Following registration, the Cardholder will automatically receive notification of a ticket number by email. If the ticket number in the email corresponds to the ticket number on the statement insert accompanying the monthly statement relating to the Cardholder's account, the Cardholder will have a winning ticket. In the event that the cardholder does have a winning ticket, they must phone 0396749700 to verify their winning ticket using a

validation code printed on the back page of the statement insert ("Validation Code"). Only one Cardholder per MasterCard account may use the Validation Code on the account statement insert to claim a prize. Prior to using the Validation Code, an additional cardholder must obtain:

- (a) the consent of the primary cardholder of their account to the additional cardholder's use of the Validation Code; and
 - (b) the primary cardholder's acknowledgement that the Primary Cardholder will not be permitted to use the Validation Code to claim a prize.
7. Prizes will be awarded to the Cardholder of the MasterCard account used to make a winning entry. If the Promoter cannot determine whether the primary cardholder or an additional cardholder made the prize winning registration due to Bankwest issuing the same MasterCard card number to each of the primary cardholder and the additional cardholder, the relevant prize will be awarded to the primary cardholder of the account used to make the winning entry.
8. Any Cardholder whose account (in the case of an additional cardholder, the primary cardholder's account) is more than 30 days in arrears (the minimum payment due on the MasterCard account being more than 30 days overdue) as at the time of the ticket validation, is ineligible to enter the Promotion and is not eligible for any prize ("Prize Exclusion Provision").
9. Cardholders who are primary cardholders irrevocably consent and authorise the Promoter to contact their issuing bank, and their issuing bank to confirm to the Promoter that their account used to make a valid purchase is in order (and that the Prize Exclusion Provision as set out in condition 8 does not apply to them). If a primary cardholder does not consent to the Promoter contacting their issuing bank and to their issuing bank confirming that the Prize Exclusion Provision does not apply, it must notify its issuing bank or the Promoter of this fact prior to the prize being drawn, or else the primary cardholder will be deemed to have consented to such disclosure by their issuing bank. Where an additional cardholder's entry is drawn, further to condition 13 the additional cardholder must obtain the consent of the primary cardholder to the matters set out in this condition (as described above).
10. The cost of accessing the promotional website will be dependant on the Cardholder's individual Internet Service Provider. Registrations must be comprehensible and relevant, in order to be valid. Incomprehensible registrations (as determined by the Promoter) will not be eligible.
11. There are fifty (50) prizes to be won for this Promotion. Each prize is a \$200 (AUD) MasterCard *applause* voucher, to be used on the MasterCard *applause* Australia website. Prizes are valid for use until 31 December 2010.
12. The maximum prize value for all prizes comes to a value of \$10,000 (AUD).
13. Cardholders will be notified of their ticket number in a confirmation email sent by MasterCard *applause* upon registration using the contact details provided to the Promoter. The holder of a winning ticket must contact MasterCard *applause* customer service on 0396749700 in order to verify their winning ticket. The winning ticket holder must provide additional information for the Promoter to use when verifying with the card issuer that the Prize Exclusion Provision does not apply. In the case of that winner being a primary cardholder, that their card issuer has confirmed that the Prize Exclusion Provision does not apply to them and that they are eligible to win a prize The prize will then be awarded to the winning cardholder. In the case of an entry by an additional cardholder being drawn, subject to condition 7, the additional cardholder must request that the primary cardholder contacts the Promoter to provide their consent to the Promoter to contact the primary cardholder's issuing bank and confirm

that the Prize Exclusion Provision does not apply to the primary Cardholder's account. The prize winner's names will be displayed on www.mastercardapplause.com.au/bankwest for Australian cardholders and will be available in writing upon written request to MasterCard Asia/Pacific (Australia) Pty Ltd, Level 8, 100 Arthur Street, North Sydney NSW 2060 Australia.

14. Winners must claim their prizes by the end of the Promotional Period. Should any prizes remain unclaimed by a winner, a second chance draw will take place at 9:00am on 29 March 2010 at dload Pty Ltd (ABN 16 086 281 496), 297 Pacific Highway, North Sydney, NSW 2060, subject to state regulation. All winners will be notified by email and mail.
15. No prize is either redeemable for cash or transferable. Each prize-winner will accept the prize 'as is' and acknowledges that the Promoter accepts no responsibility for any variation in the value of the prize. There will be no compensation in the event that prize winners are unable to use the prize.
16. All valid claims for a prize and entitlements will be met unless they involve fraud or ineligibility. The Promoter reserves the right, and by their entry into the Promotion each participant consents to the Promoter exercising this right, to validate and check the authenticity of entries and prize claims, with the relevant Cardholder's issuing bank.
17. Subject to Condition 19 and 20, the Promoter does not assume any responsibility for any products or services offered under, or purchased to participate in, the Promotion. The products are sold and services are provided solely by the relevant vendors, under such terms and conditions as determined by the vendors, and the Promoter accepts no liability whatsoever in connection with the products and services. The products and services have not been certified by the Promoter and under no circumstances will the inclusion of any product or service in the Promotion be construed as an endorsement or recommendation of the product or service by the Promoter.
18. Except for warranties and conditions implied by law which cannot be excluded, the Promoter makes no representations or warranties, express or implied, regarding the quality or suitability of any prizes awarded under these Conditions of Entry. Certain legislation may imply conditions or warranties which cannot be excluded, restricted or modified except to a limited extent. In this event, to the extent permitted by law, the Promoter's liability is limited to, at its option: (i) the replacement of the prize or the supply of an equivalent prize; or (ii) the payment, if it does not contravene any law, of the cost of the replacement or supply.
19. The Promoter and its members, financial institutions, associated agencies and companies and their respective directors, officers, employees and agents, will not be liable for any loss or damage whatsoever which is suffered (including but not limited to indirect or consequential loss) or for any personal injury suffered or sustained in connection with a participant's participation in the Promotion or the receipt or use of any part of a prize, except for any liability which cannot be excluded by law.
20. The Promoter's decision is final and no correspondence will be entered into.
21. To the extent permitted by law, the Promoter and its members, financial institutions, associated agencies and companies and their respective directors, officers, employees and agents will not be responsible in any way whatsoever in respect of the following: (1) any amount spent on or charged to a participant's account in the course of entering the Promotion or for correctness of the details of the purchases and transactions made; (2) technical failures of any kind including but not limited to any error, omission, interruption, deletion, defect, delay in operation or transmission, communications, line failure or the malfunctioning failure or unavailability of any computer, server, cable, line, network, hardware, software, internet service or web site; (3) unauthorised human

intervention in any part of the entry process of the Promotion, including but not limited to theft, destruction or unauthorised access to, or alteration of the Promotion; (4) electronic or human error which may occur in the administration of the Promotion or the processing of entries; (5) any entry that is late, lost, stolen, damaged or misdirected or otherwise not received; and (6) any negligence.

22. The Promoter, in its sole discretion, reserves the right to cancel, suspend, terminate or modify the Promotion if fraud, technical failures or any other factor beyond the Promoter's reasonable control adversely affects the Promoter's ability to conduct the Promotion as contemplated in these Conditions of Entry, subject to any written directions from any regulatory authority. In such event, the Promoter reserves the right to award any prize at random from among the eligible entries received up to the time of the cancellation or modification. The Promoter also reserves the right in its sole discretion to disqualify any individual it finds to be tampering with the entry process or the operation of the Promotion or to be acting in violation of these Conditions of Entry or in an unsportsmanlike, non-genuine or disruptive manner. Any attempt by any person to deliberately cause damage or undermine the operation of the Promotion may be a violation of criminal and civil law, and, should such an attempt be made, the Promoter reserves the right to seek damages from any such person, to the fullest extent permitted by law, in addition to disqualifying such person.
23. The Promoter will use its best endeavours to provide the prizes listed. If any of the prizes are unavailable for whatever reason, the Promoter reserves the right to substitute that prize or item for a prize or item of an equivalent value.
24. The Promoter's failure to enforce any term of these Conditions of Entry will not constitute a waiver of that or any other provision by the Promoter.
25. By acceptance or receipt of a prize, a prize-winner agrees to hold harmless the Promoter, its financial institutions, its members, its related companies and agencies, and each of their respective directors, officers, employees and agents from and against any claim, action, proceeding, judgment, damage, loss, expense or liability suffered by the Promoter, its financial institutions, its members, its associated companies and agencies and their respective directors, officers, employees and agents in connection with the prize-winner's participation in the Promotion or receipt, redemption or use of the prize.
26. The Promoter accepts no responsibility for any tax implications that may arise from the prize winnings or the use thereof. It is the responsibility of each entrant to seek independent advice on the possible implications this may have on their own financial situation.
27. Records of all entries become and remain the sole property of the Promoter. Except where prohibited by law, and unless otherwise advised by the entrant, all entries will be entered into a database and the Promoter reserves the right to use entrants' data for future promotional, marketing and publicity purposes in any media worldwide without notice and without any fee being paid by or to the entrant. The Promoter may share the Cardholder's data with Bankwest for marketing purposes. Except where prohibited by law, participation in the Promotion constitutes a Cardholder's consent to the storage, use and disclosure of a Cardholder's entry details as set out in these Conditions of Entry and also constitutes a Cardholder's acknowledgment that the Promoter may use overseas facilities to process, store or back up its information. As a result, the Promoter may transfer a Cardholder's personal information to its overseas facilities for storage. However, this does not change any of the Promoter's commitments to safeguard a Cardholder's privacy.
28. Except where prohibited by law, participation in the Promotion constitutes a prize-winner's consent to the Promoter's use of the prize-winner's name, likeness, opinions

and address for: (1) any future promotional, marketing and publicity purposes in any media worldwide, without further payment or consideration or notice; and (2) any disclosure of such Information by the Promoter required by law, and it is a condition of entry that in order to claim the prize, prize-winners must agree to execute any necessary consents and releases to effect the foregoing.

Information collected pursuant to the Promotion from entrants is subject to the privacy policies of the Promoter, which can be found at www.mastercard.com.au and will be handled in accordance with all applicable privacy laws in Australia.

29. As per the provisions of the Australian Privacy Act, all personal details of Australian entrants will be stored at the office of the Promoter. A request to access, update and correct any information should be directed to that office (as detailed below). Participants may access and correct their personal information held by MasterCard by contacting:

MasterCard Australia
Level 8, 100 Arthur St
North Sydney NSW 2060
Australia
30. Any cancellation or modification to the Promotion will be notified on the Promoter's website: www.mastercardapplause.com.au/bankwest
31. A copy of these Conditions of Entry and prize details can be obtained by visiting www.mastercardapplause.com.au/bankwest
32. If all or any part of any term or condition contained in these Conditions of Entry is declared or becomes unenforceable, invalid or illegal for any reason, that term or provision (or part of that term or provision) will be deemed severed from these Conditions of Entry to the extent of the unenforceability, invalidity or illegality and the other terms and conditions will remain in full force and effect as if the offending term or provision (or part of that term or provision) had not been inserted into these Conditions of Entry.
33. These Conditions of Entry will be governed by the laws of the respective state or territory of Australia where the entrant resides and each entrant agrees to submit to the non-exclusive jurisdiction of the courts of the relevant state or territory of Australia.