

FORM G

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 – Subsection 93(1)

**EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition & 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(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or (9)(a), (b), (c) or (d) of the Act in which the person giving notice engaged or proposes to engage.

1. (a) Name of person giving notice:

N94326 Health Eyewear Pty Ltd ABN 24 126 819 154 (“**Health Eyewear**”).

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

Health Eyewear offers optical products and services.

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

Colin Kangisser
Chief Executive Officer
Health Eyewear Pty Ltd
Suite 4/16-18 Malvern Ave
Chatswood NSW 2067

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

Prescription glasses, sunglasses and contact lenses.

(b) Description of the conduct or proposed conduct

Health Eyewear proposes to offer customers of Bupa Australia Health Pty Ltd ABN 50 003 098 655 (“**Bupa Australia Health**”) and MBF Australia Pty Ltd ABN 81 000 057 590 (“**MBF Australia**”) and trading as MBF, HBA and Mutual Community discounts off its products from time to time. Please refer to the attached submission for further details.

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

Consumers who are customers of MBF, HBA and Mutual Community.

(b) Number of those persons

The offer will be available to all MBF, HBA and Mutual Community customers. At the present time MBF, HBA and Mutual Community together cover around 2,766,867 lives on 1,330,158 policies.

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

Not applicable as the number of persons stated in item 3(b)(i) is greater than 50.

4. Public benefit claims

Please refer to the attached submission for arguments in support of notification.

5. Market definition – description of markets in which the relevant goods are supplied or acquired and other affected markets (including significant suppliers and acquirers, substitutes available, restrictions on the supply or acquisition of the relevant goods and services eg geographic or legal restrictions)

The relevant markets are the markets for the provision of optical services and prescription glasses and the market for the provision of private health insurance. Competition in each of these markets is strong and competitive and there are other suppliers in both of these markets that compete for business on an equal footing. Health Eyewear is one of many providers of optical services and prescription glasses. Further, Health Eyewear does not have a substantial degree of market power.

6. Public detriments

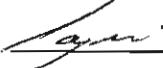
Please refer to the attached submission.

7. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice is:

Colin Kangisser
Chief Executive Officer
Health Eyewear Pty Ltd
Suite 4/16-18 Malvern Ave
Chatswood NSW 2067
Ph: (02) 9411 4712
Fax: (02) 9411 4717

Dated: Health Eyewear Pty Ltd ABN 24 126 819 154

Signed by/on behalf on the applicant:

Signature: 

Full name: COLIN KANGISSER

Organisation: HEALTH EYEWEAR PTY LTD

Position: DIRECTOR / CEO

**SUBMISSION BY BUPA AUSTRALIA
IN SUPPORT OF NOTIFICATION UNDER SECTION 93
OF THE TRADE PRACTICES ACT 1974**

This submission is made by the Bupa Australia Group comprising Bupa Australia Health Pty Ltd ABN 50 003 098 655 (“**Bupa Australia Health**”) and MBF Australia Pty Ltd ABN 81 000 057 590 (“**MBF Australia**”) and trading as MBF, HBA and Mutual Community (“**Bupa Australia**”) on behalf of Health Eyewear and supports the Form G notification attached.

1. Overview of proposed conduct

- 1.1 Bupa Australia Health and MBF Australia are private health insurers under the Private Health Insurance Act 2007 (Cth).
- 1.2 Health Eyewear operates optical stores throughout Australia.
- 1.3 Bupa Australia has negotiated an arrangement with Health Eyewear. Under this arrangement, Health Eyewear offers discounts when supplying products to Bupa Australia customers (that is, those who have health insurance with MBF, HBA or Mutual Community).
- 1.4 This conduct by Health Eyewear is arguably a contravention of sections 47(6) and (7) of the *Trade Practices Act 1974* (Cth) if Health Eyewear is considered to be:
 - (a) giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of good or services to consumers on the condition that those consumers take out private health insurance with MBF, HBA or Mutual Community; or
 - (b) refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of goods or services to consumers for the reason that those consumers have not acquired or have not agreed to acquire private health insurance from MBF, HBA or Mutual Community.

2. Details of offers

The table below sets out the details of the offers:

Business/Product	Description of offer
Prescription glasses	<p>When MBF, HBA and Mutual Community customers purchase any set of frames with prescription lenses they will be entitled to receive \$100 off the regular retail price.</p> <p>Terms and Conditions:</p> <ul style="list-style-type: none"> • Offer is not available with any other offer or discount or redeemable for cash or credit. • Offer does not apply to purchases of sunglasses. Offer expires 31 December 2009.
Prescription glasses	<p>MBF, HBA and Mutual Community customers will be entitled to receive two pairs of selected prescription glasses for \$180.</p> <p>Terms and Conditions:</p> <ul style="list-style-type: none"> • Offer applies to the purchase of a set of selected

Business/Product	Description of offer
	<p>frames with single vision hard coat lenses only. The two pairs of glasses must be purchased in the one transaction.</p> <ul style="list-style-type: none"> • Offer is not available with any other offer or discount or redeemable for cash or credit. • Offer does not apply to purchases of sunglasses. Offer expires 31 December 2009.
Sunglasses	<p>MBF, HBA and Mutual Community customers will be entitled to receive 20% off the regular retail price of sunglasses.</p> <p>Terms and Conditions:</p> <ul style="list-style-type: none"> • Offer is not available with any other offer or discount or redeemable for cash or credit. • Offer expires 31 December 2009.
Non Standard Contact Lenses	<p>MBF, HBA and Mutual Community customers will be entitled to receive 15% off the regular retail price of non standard contact lenses.</p> <p>Terms and Conditions:</p> <ul style="list-style-type: none"> • Offer is not available with any other offer or discount or redeemable for cash or credit. • Offer expires 31 December 2009.

3. Products and services

We consider the relevant products and services to which this notification relates are:

- prescription glasses, sunglasses and contact lenses; and
- private health insurance.

4. Public Benefit

The proposed conduct of Health Eyewear offers significant benefits to the public because:

- the discounts make the services and products more affordable and better value for consumers; and
- the conduct motivates competitors to offer similar benefits and discounts and therefore increases competition in the products and services.

5. Competitive effects

5.1 The proposed conduct will have no detrimental effects on competition. Competition for each of the product and services is strong and there are other companies competing for business on an equal footing. Health Eyewear does not have a substantial degree of market power.

5.2 The offers in no way limit the choice of consumers because:

- Health Eyewear will continue to offer its products and services to consumers at the regular price, regardless of whether or not the consumers are Bupa Australia customers; and
- consumers are free to purchase retail products from other competing suppliers.

6. Conclusion

For the reasons set out above, we believe the Commission should not serve a notice under section 93 of the TPA in respect of the attached notifications. This is because the conduct will cause no detriment and will generate tangible public benefits.

14 October 2009

Emma Zipper
General Counsel & Company Secretary
Bupa Australia Group
600 Glenferrie Road
HAWTHORN VIC 3122

Dear Emma

Consent to notification of third line forcing –Bupa Australia & Health Eyewear

We acknowledge that the arrangements between the Bupa Australia Group, comprising Bupa Australia Health Pty Ltd ABN 50 003 098 655 and MBF Australia Pty Ltd ABN 81 000 057 590 and trading as MBF, HBA and Mutual Community (“**Bupa Australia**”) and Health Eyewear Pty Ltd ABN 24 126 819 154 trading as Blink Optical (“**Health Eyewear**”) may be considered a contravention of section 47 of the *Trade Practices Act 1974* (Cth).

In particular, the arrangements involve Health Eyewear offering discounts when supplying products to customers who have taken out private health insurance with MBF Australia, HBA or Mutual Community.

As a result, we consent to Bupa Australia lodging with the ACCC, on our behalf:

- (1) a Form G notification; and
- (2) a submission made by Bupa Australia on behalf of Health Eyewear supporting the Form G notification - highlighting the public benefit associated with the proposal and the absence of any misuse of market power,

in the form attached.

We also agree to Bupa Australia providing a copy of this letter to the ACCC as evidence of Health Eyewear’s consent to Bupa Australia lodging the Form G notification on Health Eyewear’s behalf.

Yours sincerely,



Colin Kangisser
Chief Executive Officer
Health Eyewear Pty Ltd