



Wesfarmers Limited

ABN 52 004 964 019

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27 August 2009

via email: adjudication@acc.gov.au

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Sir/Madam

Exclusive Dealing Notification – Kmart Australia Limited


We enclose a notification under section 93(1) of the *Trades Practices Act 1974* (Cth) ("**Act**") of conduct which may constitute exclusive dealing under the Act.

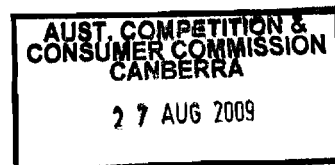
The notified conduct relates to the provision of a discount by Kmart on Disney branded "Cars Toon" toys on the condition that a movie ticket to the Disney "G-Force" movie is acquired for viewing at a Hoyts' cinema complex.

Enclosed is a Form G notification, which provides further details of the conduct. The prescribed lodgment fee for the notification of \$100 has been deposited into the nominated ACCC account (payment reference – Kmart Australia Ltd).

Please feel free to contact me if you have any queries.

Yours faithfully


Brant Charman
Legal Counsel
Corporate Solicitors Office



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:

Kmart Australia Limited, ABN 73 004 700 485 ("Kmart"). N94099

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

Operator of discount department stores in Australia.

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

C/- Brant Charman
Legal Counsel
Wesfarmers Limited
800 Toorak Road
Tooronga, VIC, 3000

2 Notified arrangement

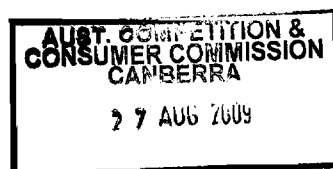
(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

This notice relates to the retail supply by Kmart of Disney branded "Cars Toon" toys ("Disney Cars").

(b) Description of the conduct or proposed conduct:

The conduct involves Kmart:

- giving (and offering) a discount on Disney Cars purchased from Kmart stores to customers who have acquired a ticket to view the Disney G-Force movie, including a short prelude cartoon of 5 minutes duration titled "Cars Toon - Tokyo Mater" ("Disney Movie") at a Hoyts' cinema, or



- refusing to give or allow a discount on Disney Cars to customers for the reason that the customer has not acquired a ticket to the Disney Movie at a Hoyts' cinema.

A sample copy of the offer to consumers is attached to this notification as Annexure A.

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:

Members of the public who acquire Disney Car/s at a Kmart retail store.

(b) Number of those persons:

(i) At present time:

Unknown, but greater than 50.

(ii) Estimated within the next year:

Unknown, but greater than 50.

(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:

Public benefits

The notified conduct will result in the following public benefits:

- a lower price for Disney Cars for customers choosing to participate in the discount offer described above; and
- promote competition in the relevant markets by exerting pressure on competitors of Kmart to offer similar and other discounts.

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

Not applicable.

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):

The relevant markets are:

- a national market for the supply of toy products; and
- a national market for the supply of movie screening services.

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:**

The notified conduct will not result in any conceivable public detriment and consumers are will be better off for the reasons noted in section 4 above.

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

Factors relevant to the assessment of the conduct include:

- the conduct will not affect the ability of consumers to choose to acquire toys from other toy retailers, of which there are many;
- the conduct will not affect the ability of consumers to choose to acquire tickets for movies from other cinemas;
- consumers will not be required to acquire both the Disney Cars and tickets to the Disney Movie as a 'bundle' – they will remain free to acquire separately the Disney Cars at Kmart, tickets to the Disney Movie at Hoyts, or either products from Kmart's or Hoyts' respective competitors;
- customers will only be offered a potential discount if they elect to take up the offer. They will not face any additional fees / charges on any products or services available from Kmart or Hoyts; and
- the offer attached to this notification is only available for a short term (ending on 14 October 2009).

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/- Brant Charman
Legal Counsel
Westfarmers Limited
800 Toorak Road
Tooronga, VIC, 3000

Telephone: (03) 9829 4224
Facsimile: (03) 9829 6406

Dated: 27th August 2009

Signed on behalf of the applicant



(Signature)

Brant Charman

Legal Counsel

Westfarmers Limited

HOYTS EXCLUSIVE OFFER

We hope you enjoyed seeing



Tokyo Mater

at HOYTS Cinema

.....
Take this coupon to Kmart and receive 20% off Disney Cars toys*

Offer valid from September 17th until October 14th, 2009



©Disney/Pixar

Kmart Team Member Instructions

1. Customers must present coupon at the start of the transaction. 2. Scan the barcode on the first Disney Cars toy, override using type 09, enter 20 as override %. 3. Repeat step 2 for each Disney Cars toy. 4. Scan any other items and total transaction. 5. Finalise transaction. 6. Deface coupon and place in register drawer. 7. Forward coupon to main office in next clearance.

* Conditions Apply. Promotion runs from 17/9/09 - 14/10/09. Voucher is not transferable, exchangeable or redeemable for cash. You must purchase at least one ticket to see G-Force from the Ticket Box to receive your voucher. One voucher per transaction permitted. You must bring your proof of purchase (ticket stubs if purchased from the ticket box, or your confirmation page if purchased online) in-store to redeem your voucher. Ranges of Cars products may vary from store to store. Not in conjunction with any other offer.



G G-FORCE

Thanks for seeing

*Check out these great G-Force products
at your leading retailer.*



6cm Action Figures Collect them all!



13cm Action Figures

Recreate all the fun of espionage with these cool action figures complete with accessories and spring load features!

Use Juarez's backpack to control her attack moves!

Get into places you otherwise wouldn't with Darwin and his "Mooch" launch feature.



Flying Operative

Your very own remote controlled flying agent. Choose from Blaster the adrenaline junkie or Darwin!

In Stores Now

©Disney