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AUST. COMPETITION & CONSUMER COMMISSION SYDNEY
23 APR 2010

## 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)

N94669

Hewlett-Packard Australia Pty Ltd (ACN 004 394 763)

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

Snapfish is a website driven service for Photographic and digital image processing, developing and printing services and custom imprinting of digital and photographic images onto photographic paper and merchandise.

- (c) Address in Australia for service of documents on that person:  
410 Concord Road, Rhodes, NSW 2138  
Facsimile: 61 2 9022-5345  
Attention: Nerida Pearse

#### 2. Notified arrangement

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

Snapfish Products and Services:

Custom cover photo book.

Nestlé Australia Limited Products and Services

Coffee and chocolate drink products, chocolate, noodles, cereals and soup products. The specific products include

NESCAFÉ Blend 43, NESCAFÉ Gold NESCAFÉ' Mild Roast and NESCAFÉ' Espresso;

MILO powder;

Nestlé CLUB Block chocolate;

MAGGI Noodles;

UNCLE TOBYS oats; and

Country Cup Soups.

- (b) Description of the conduct or proposed conduct:  
(Refer to direction 4)

Nestlé Australia Limited is proposing to run a promotion in connection with selected Nestlé products having the following key features:

The Nestlé products referred to above will be sold through their normal Woolworths supermarket retail outlets from 10 May till 21 June 2010 ("Promotion Period") with specific in-store promotional signage and promotion on TV.

Any consumer, who during the Promotion Period purchases any three of the qualifying products above can go into the draw to win one of 300 20x28cm custom hard cover photo books per week for six weeks (1800 in total). Entitlement to go in the draw is limited to one entry per household per day of the Promotion Period.

Standard mail postage and handling (P&H) for the photo books will be paid by Nestlé. Consumers may elect to upgrade their shipping to express post or other shipping method where any additional cost above the amount reimbursable by Nestlé will be at the customer's expense.

Nestlé will validate the claim and supply a Snapfish unique redemption code and instructions to the claimant via email. Consumer clicks on the link in the email which takes them to the redemption website. Consumer either registers as a Snapfish member, or logs in if an existing Snapfish member, and enters their unique redemption pin code. This applies a credit of one 20x28cm custom hard cover photo book with 20 pages plus free standard shipping credit to their Snapfish account. Consumer logs in to [www.snapfish.com.au](http://www.snapfish.com.au), uploads their photos, creates the photobook and places their order.

Customers have until 31 July 2010 to redeem their pin code through the redemption flow which once credited, will remain active until used, while the Snapfish account remains active.

See attached Terms and Conditions of promotion for further details.

**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)

Consumers who purchase selected Nestlé products.

- (b) Number of those persons:
- (i) At present time:  
None.
- (ii) Estimated within the next year:  
*(Refer to direction 6)*  
Between 100 and 300 depending on successful repeat claims.
- (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)*  
The proposed conduct will be of benefit to the public as it will:
1. reduce the costs to customers of the Snapfish website for the purchase of the selected custom hard cover photo books;
  2. promote competition in the photographic printing market by exerting downward pressure on prices offered by competitors of the Snapfish website to offer discounts;
  3. provide customers of the Snapfish website with the opportunity to obtain the selected Snapfish custom hard cover photo books at discounted prices from the ordinary price of such goods;
  4. provide customers of Nestlé Australia Limited with additional benefits when purchasing Nestlé products;
- (b) Facts and evidence relied upon in support of these claims:
- Cost reduction equal to the value of 20x28cm custom hard cover photo book being currently \$39.95 and standard shipping being \$5.95.
  - See 2(b) for description of other offered benefits.

#### 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)*

1. The national market in Australia for the supply of personalised digital photo book printing.
2. The national market for the supply of instant hot beverage products.

3. The national market for the supply of chocolate and confectionary products.

4. The national market for the supply of breakfast food products.

The market for digital photo book printing is highly competitive both online and offline. HP is constrained in this market by a number of national and multinational competitors including: Fujifilm; Kodak; Momento; Album Printer, Click On Prints, Fotofast; Photomax; Expressphoto, other suppliers and retailers such as Big W, Harvey Norman, Bing Lee etc.

The market for the supply of the various Nestlé products included in this promotion is also highly competitive. Nestlé Australia Limited is constrained in this market by a number of competitors including

- Coffee - Moccona, Bushells, Riva and any soluble coffee brand including Woolworths' and Coles' private labels, etc.
- Milk Additive – AktaVite, Cadbury;
- Soups - Continental
- Chocolate – Cadbury and Lindt;
- Confectionery – Mars, Natural Confectionery Company and Woolworths' and Coles' private labels;
- Noodles – Fantastic;
- Cereals & Oats – Kelloggs, Sanitarium;

## 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)*

HP does not believe that the notified conduct will result in, or is likely to result in, any public detriment.

- (b) Facts and evidence relevant to these detriments:
- The conduct will not result in any degradation in the ability of consumers to choose between suppliers of photographic products or services.
  - The conduct will not result in any limitation on the ability of consumers to acquire photographic products from other suppliers that offer such products.
  - The conduct will not result in consumers being forced to acquire product from the Snapfish website.
  - The consumer is free to purchase the Nestlé products from any Woolworths supermarket, with other discounts applying, where offered by retailers.



**7. Further information**

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:  
Nerida Pearse  
Partnerships Marketing Manager, Australia & NZ  
Snapfish by HP  
Hewlett-Packard Australia Pty Ltd  
410 Concord Road, Rhodes, NSW 2138  
0427 902 428

Dated..... *April 20 2010* .....

Signed by/on behalf of the applicant  
*Daniel P. Reardon*  
.....  
(Signature)

Daniel Reardon  
(Full Name)

Hewlett-Packard Australia Pty Ltd  
(Organisation)

Director, Snapfish Asia Pacific  
(Position in Organisation)

## **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.

## Nestlé Family Moments Promotion in Woolworths Supermarkets

### Terms and Conditions

1. Information on how to enter & prizes form part of these terms & conditions. Any entry not complying with these terms and conditions is invalid.
2. Entry is open to residents of Australia. Any entrant under the age of 18 years requires their parent or guardian's consent to enter the prize draw. Employees of the Promoter, the Promoter's associated companies, the Promoter's agencies associated with this competition and their immediate families are ineligible to enter.
3. The promotion commences at 9.00 am Australian Eastern Standard Time ("AEST") on Monday 10 May 2010 & closes at 5.00 pm AEST on Monday 21 June 2010 ("Promotion Period").
4. To be eligible to enter the prize draw, you must purchase any 3 products from any of the following product ranges in a single transaction from a participating Woolworths supermarket during the Promotion Period ("Eligible Purchase"):
  - a. NESCAFÉ Blend 43, NESCAFÉ Gold NESCAFÉ' Mild Roast and NESCAFÉ' Espresso;
  - b. MILO powder;
  - c. Nestlé CLUB Block chocolate;
  - d. MAGGI Noodles;
  - e. UNCLE TOBYS oats; and
  - f. COUNTRY CUP Soups.
5. Once an Eligible Purchase has been made, you must send your entry to the Promoter by either:
  - a. **Mail entry** – complete the entry form found in-store, attach a copy of the purchase receipt highlighting the Eligible Purchase of 3 Nestlé products (refer to point 4 above) and send to: "Create Your Family Moment", PO Box 501, Eastern Suburbs NSW 2004; **or**
  - b. **Online entry** – go to [www.familymoments.com.au](http://www.familymoments.com.au) link and follow the prompts to submit your entry and Woolworths receipt number. (*Keep your purchase receipt safe until after the prize draw*).
6. One entry will be accepted for each Eligible Purchase, provided:
  - a. each mail entry must be in a separate envelope with a purchase receipt showing an Eligible Purchase attached; and
  - b. online entry is further limited to no more than one entry in any calendar day **and** per residential address ("Household").

## Nestlé Family Moments Promotion in Woolworths Supermarkets

Any form of automated entry using any other devices or software is invalid.

7. The Promoter reserves the right to require any entrant to provide their proof of an Eligible Purchase for every entry they made during the Promotion Period in order to claim a prize. Further, any winner who enters online may be required by the Promoter to present their proof of Eligible Purchase in the form of a copy of the purchase receipt for every online entry made by their Household, including non-winning entries. The Promoter retains the absolute discretion to require any entrant, (including groups of entrants in the same Household), to provide proof of residency at the Household address shown on their entry before awarding a prize.
8. The Promoter reserves the right to verify the validity of all entries and reserves the right to disqualify any individual entrant or group of entrants for tampering with the entry process, including but not limited to making multiple entries that are not associated with a separate Eligible Purchase, or for submitting an entry which is not in accordance with these conditions of entry.
9. All valid entries received during the Promotion Period will be entered in the major prize draw and the next occurring weekly prize draw. Non-winning entries will roll into any remaining weekly prize draws.
10. The following prizes will be awarded:
  - a. Major prize is \$20,000 which will be delivered to the winner as their choice of either a direct electronic deposit into their nominated bank account or as a bank cheque payable to their name, 3 to be won;
  - b. Minor prize is a credit with Snapfish valued at \$45.90 recommended retail price ("RRP") (includes \$5.95 postage & handling fee) which may be used for a Snapfish 20x28cm custom hard cover Photo Book containing 20 pages (10 double-sided sheets) which may display up to 13 images per page, (depending on the template chosen by the winner). In order to redeem the prize, the winner must visit the website [www.snapfish.com.au/nestle\\_photobook](http://www.snapfish.com.au/nestle_photobook). Promoter will give the winner a 15 digit alphanumeric prize code which must be activated by no later than 31 July 2010. The prize must be redeemed by each winner by visiting the website [www.snapfish.com.au/nestle\\_photobook](http://www.snapfish.com.au/nestle_photobook) and using the prize code provided by the Promoter which adds a product credit into the winner's Snapfish account. To claim your free Photo Book:
    - (i) go to [www.snapfish.com.au/nestle\\_photobook](http://www.snapfish.com.au/nestle_photobook) and either register with Snapfish or log in if you have an existing account with Snapfish;



## Nestlé Family Moments Promotion in Woolworths Supermarkets

- (ii) enter your unique 15 digit alphanumeric pin code by 31 July 2010, once the pin code has been verified, the "Customer Service Credit" will be credited to your Snapfish account without an expiry date. The "Customer Service Credit" may only be used for ordering the chosen Photo Product and will not be transferrable to another person, redeemable against any other product or redeemable for cash; and
- (iii) when you are ready to create your Photo Book, go to [www.snapfish.com.au](http://www.snapfish.com.au), login to your Snapfish account and follow the prompts to upload your digital images and design your Photo Book. The "Customer Service Credit" will be automatically applied when you submit your order. For assistance with this process, please contact [support@snapfish.com.au](mailto:support@snapfish.com.au).

Each week 300 minor prizes will be awarded, (ie. a total of 1800 minor prizes to be awarded). The prize includes standard postage & handling fee valued at \$5.95 and as described requires no additional fees or charges to be redeemed. However the winner may elect to pay for express delivery for an additional cost paid directly to Snapfish by credit card when they redeem their prize).

11. All prize draws will be conducted at 11am at Unit 6, 106 Old Pittwater Road, Brookvale NSW 2100 as follows:
  - a. A weekly prize draw will occur Wednesdays, commencing 19 May 2010 and concluding on 23 June 2010, (total of 6 weekly prize draws). The first 300 valid entries drawn will each win a minor prize.
  - b. The major prize draw will take place on Thursday 24 June 2010. The first 3 valid entries drawn from all entries received during the Promotion Period will win one of the 3 major prizes.
12. All winners will be notified by mail. The names and postcodes of the Major Prize winner will be published in The Australian on Wednesday 30 June, 2010 and all winners' names and postcodes will also appear at [www.familymoments.com.au](http://www.familymoments.com.au).
13. Total prize pool is valued at up to \$142,620 RRP.
14. Prizes are not transferable & cannot be taken as cash.
15. Prize values are correct at time of printing but no responsibility is accepted for any variation in the value of any prizes.
16. The Promoter is not liable for any loss or damage whatsoever which is suffered, including but not limited to indirect or consequential loss, or for personal injury suffered or sustained during

## **Nestlé Family Moments Promotion in Woolworths Supermarkets**

the course of accepting or using the prize, except for any liability which cannot be excluded by law.

17. Each entry becomes the property of the Promoter. All details will be held in accordance with the Nestlé Privacy Policy which can be accessed by visiting [www.nestle.com.au](http://www.nestle.com.au) or calling 1800 005 510.
18. Promoter's decision is final and no correspondence will be entered into.
19. The Promoter may conduct an unclaimed prize draw at the same time and place as the original draw on 13 October 2010 to distribute any prizes unclaimed by that date subject to any written directions given by a relevant lotteries or gaming authority. The first valid entry drawn will win the prize of the highest value and the draw will continue until all unclaimed prizes have been distributed. If any prize awarded is valued at over \$250 the winner's name and postcode will be published in The Australian on 20 October 2010 and all winners' names and postcodes will also appear at [www.familymoments.com.au](http://www.familymoments.com.au)
20. If a prize winner is under the age of 18 years, the prize will be delivered to the winner's parent/guardian on their behalf.
21. Each minor prize winner should look to the manufacturer of products and provider or services awarded as prizes for all warranties. However, these terms and conditions do not exclude or limit the application of any statutory provision (including a provision of the Trade Practices Act 1974) where to do so would contravene that statute or cause any part of these terms and conditions to be void.
22. Subject to the approval process required by any relevant gaming or lotteries authority, in the event that any prize item is unavailable due to circumstances beyond the Promoter's reasonable control, the Promoter reserves the right to substitute a different prize item of equal or greater value.
23. Redemption of the Photo book will be subject to the terms and conditions and privacy policy of Snapfish. By claiming the Photo book the claimant accepts the terms and conditions and privacy policy of Snapfish. The Promoter and its associated agencies or companies accept no liability for the claimant's redemption of the Photo book via the Snapfish website and Snapfish's collection of and use of the claimant's personal information. Snapfish's privacy policy can be read at [www.snapfish.com.au/privacy/](http://www.snapfish.com.au/privacy/).

## **Nestlé Family Moments Promotion in Woolworths Supermarkets**

24. By entering the competition, the major prize winner agrees that the Promoter may use their name, image and photograph/s for publicity and promotion purposes, without compensation, and agrees that the Promoter will own copyright in any such images and photograph/s and in all material incorporating the photograph/s.
25. Prizes will only be delivered in Australia. Major prize winners should allow 28 days from the prize draw for delivery of their prize. Minor prize winners will be provided with their 15 digit alphanumeric prize code and instructions on how to register and redeem their Photo Book within 14 days of each weekly prize draw. Prize codes must be registered before 12.00 pm AEST on 31 July 2010. Once a prize code has been registered, minor prize winners will receive a product credit without an expiry date for their Snapfish 20x28cm custom hard cover Photo Book containing 20 pages (10 double-sided sheets) on their Snapfish account.
26. If for any reason this Promotion is not capable of running as planned, whether caused by infection by computer virus, mobile phone failure, line drop out, bugs, tampering, unauthorised intervention, fraud, technical failures or any other cause beyond the control of the Promoter which corrupt or affect the administration, security, fairness or integrity of the Promotion, the Promoter reserves the right in its sole discretion, (subject to any written direction given by a relevant Regulatory Authority), to cancel, terminate, modify or suspend the Promotion. The Promoter may in its sole discretion disqualify any individual who tampers with the entry process.
27. Entries are deemed to be received at the time of receipt into the Promoter's database. The Promoter is not responsible for receipt of incorrect, inaccurate or incomplete information caused by an entrant or occurring during transmission. The Promoter is not responsible for any problems or technical malfunction of any telephone, telephone or computer network, or lines, servers, or telephone or internet providers, traffic congestion on any phone or computer network, or any combination thereof, including any injury or damage to participants or any other person's handset or computer related to or resulting from participation or sending or receiving of any communication or of any materials in this Promotion.
28. The Promoter is Nestlé Australia Ltd. ABN 77 000 011 316 of 1 Homebush Bay Drive, Rhodes NSW 2138. Authorised by NSW Permit No. LTPS10/03298, VIC Permit No. 10/1095, ACT Permit No. TP 10/01475.1, SA T10/808.