

5 October 2012

FILE No:
DOC:
MARS/PRISM:

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

Dear Sir/Madam

RE: NOTIFICATION OF EXCLUSIVE DEALING

We act for Callaway Golf Company and its Australian subsidiary, Callaway Golf South Pacific Pty Ltd
ABN 26 094 768 359.

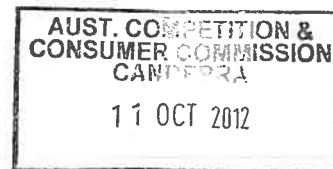
Please find enclosure a Form G (Notification of Exclusive Dealing) pursuant to subsection 93(1) of the
Competition & Consumer Act 2010 (Cth). This is in relation to a promotion, the rules of which are
exhibited to the enclosure.

Also attached is a cheque for \$100 for the processing of the notification.

Yours faithfully,



Anna Sharpe
Principal





Form G

Commonwealth of Australia

Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, 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.

1. Applicant

(a) Name of person giving notice:

N96190 Callaway Golf South Pacific Pty Ltd (ACN 094 768 359) (**Callaway**)

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

Callaway distributes golf equipment, golf accessories and golf lifestyle-related products manufactured by its parent company in Australia.

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

The Company Secretary
Callaway Golf South Pacific Pty Ltd
18 Corporate Avenue
ROWVILLE VIC 3178
Telephone: (03) 9212 9400
Email: leighton.richards@callawaygolf.com

2. Notified arrangement

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

- (i) Supply of promotional debit card services
- (ii) Supply of golf drivers

(b) Description of the conduct or proposed conduct:

Under the proposed Callaway® RAZR™ Driver Cash Back Promotion, the Applicant will provide a \$100 Debit Card to customers who purchase a Qualified Driver (defined as the following men's and women's Callaway® drivers: RAZR X® Black, RAZR Fit®, RAZR Fit® Colour Your Game™ and RAZR Fit® Tour Authentic® (including custom built versions of these drivers)) from a Participating Authorised Retailer.

As such, the proposed conduct that is the subject of this notification is:

- (i) the Applicant supplying, or offering to supply, services in the form of a \$100 Debit Card on condition that the consumer will acquire a Qualified Driver from a Participating Authorised Retailer.
- (ii) the Applicant refusing to supply services in the form of a \$100 Debit Card to consumers for the reason that the consumer has not acquired a Qualified Driver from a Participating Authorised Retailer.

Attached as **Exhibit 1** is a copy of the Official Rules for the Callaway® RAZR™ Driver Cash Back Promotion.

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:

Actual and potential customers of golfing products.

(b) Number of those persons:

(i) At present time:

The number of customers is not known.

(ii) Estimated within the next year:

Unknown.

(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:

The notified conduct is a common form of pro-competitive sales promotion that will produce public benefits. These include:

- providing consumers who acquire a Qualified Driver from a Participating Authorised Retailer with a \$100 debit card that can be used to acquire any goods or services from any retailer in Australia with “EFTPOS” facilities to accept the card. This provides a substantial and real benefit to consumers because they have the opportunity to purchasing goods and/or services from any retailer (subject to EFTPOS facilities being available) to the value of \$100. As there is no limit on the types of goods and services that may be acquired, the wide choice consumers have about how they use the \$100 debit card is also a significant benefit;
- increasing competition between manufacturers and distributors of golfing products and in particular golf drivers. Increased competition will result in the offer of lower prices, higher quality services and products, better

promotions and benefits and discounts to consumers. All of these outcomes constitute real and substantial benefits for consumers not only in the short term but over the long term;

- increasing competition between retailers of golfing products which will also result in the offer of lower prices, higher quality services and products, better promotions and benefits and discounts to consumers. All of these outcomes constitute real and substantial benefits for consumers not only in the short term but over the long term;
- enabling consumers to easily obtain the benefits of the promotion as there are many Participating Authorised Retailers in the Callaway® RAZR™ Driver Cash Back Promotion from whom consumers can acquire Qualified Drivers. This means that consumers are not forced to visit a select number of outlets to take advantage of the promotion but can obtain the benefit readily easily.

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

See 4(a) above.

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 retail market for the supply of golf driver products is highly competitive:

- There are a large number of well recognised golf driver brands that are substitutable with Callaway drivers including TaylorMade, Titleist, Nike, Cleveland/Sxiron, Mizuno, Adams, Odyssey, Ping and Cobra.
- There are a large number of retailers, including many online retailers, from whom consumers can purchase golf drivers. Online retailers include golfdiscount.com, globalgolf.com and golfsmith.com. These retail providers offer products and services that are substitutable with one another and with products sold by Callaway's Participating Authorised Retailers.

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 lessen competition in any relevant market and is unlikely to result in any public detriment.

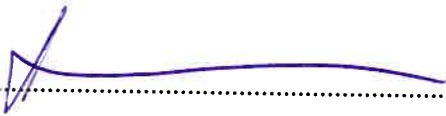
(b) Facts and evidence relevant to these detriments:

Nil.

7. **Further information**

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

The Company Secretary
Callaway Golf South Pacific Pty Ltd
18 Corporate Avenue
ROWVILLE VIC 3178
Telephone: (03) 9212 9400
Email: leighton.richards@callawaygolf.com


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Signed by the following lawyer on behalf of the applicant, Callaway Golf South Pacific Pty Ltd:

Ms Anna Sharpe
Lawyer
Sharpe Ivo
PO Box 16343
CITY EAST Q 4002

5 October 2012
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(Date)

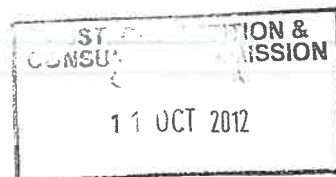


EXHIBIT 1

CALLAWAY® RAZR™ DRIVER CASH BACK PROMOTION

Official Rules

THE CALLAWAY® RAZR™ DRIVER CASH BACK PROMOTION (“PROMOTION”) IS AVAILABLE AT AUTHORISED PARTICIPATING LOCATIONS IN AUSTRALIA AND NEW ZEALAND ONLY, WHILE SUPPLIES LAST. VOID OUTSIDE OF AUSTRALIA AND NEW ZEALAND AND WHERE PROHIBITED. MUST BE 18 YEARS OF AGE OR OVER TO PARTICIPATE.

PROMOTION BEGINS AT 12:01 A.M. (AEST TIME) ON OCTOBER 1, 2012 AND ENDS AT 11:59 P.M. (AEST TIME) NOVEMBER 30, 2012 (“PROMOTION PERIOD”). PRODUCTS PURCHASED BEFORE OR AFTER THESE DATES ARE NOT ELIGIBLE FOR THIS PROMOTION.

Sponsor: Callaway Golf South Pacific Pty Ltd ACN 094 768 359, 18 Corporate Avenue, Rowville, Victoria, Australia (“Sponsor”).

Terms and Conditions:

- (1) During the Promotion Period, purchase a Qualified Driver (as defined below) in-store or on-line from a participating authorised Callaway® retailer in Australia or New Zealand (“Participating Authorised Retailer”), and you will receive one (1) \$100 cash back card (AUD\$100 if purchase made in Australia; NZD\$100 if purchase made in New Zealand) (“Cash Back Card”) per Qualified Driver purchase, while Qualified Driver supplies last at Participating Authorised Retailer. Purchases made from anyone other than a Participating Authorised Retailer are not eligible for this Promotion. Only two (2) Cash Back Cards will be redeemed by Sponsor per household (home mailing address) during this Promotion.
- (2) To redeem your Cash Back Card, a Claim Form (as described below) must be received by the Sponsor on or before December 17, 2012.
- (3) “Qualified Driver” is defined as the following men’s and women’s Callaway® drivers: RAZR X® Black, RAZR Fit®, RAZR Fit® Colour Your Game™, and RAZR Fit® Tour Authentic® (including custom built versions of the afore-mentioned drivers). No other driver models shall constitute part of the Qualified Driver.
- (4) Retailers who are authorised by Sponsor to sell authentic Callaway® products are listed on Sponsor’s website at www.callawaygolf.com/au. Not all retailers selling Qualified Drivers are participating in this Promotion. It is each participant’s responsibility to verify that a particular retailer is an Authorized Participating Retailer. Purchases made from anyone other than an Authorized Participating Retailer are not eligible for this Promotion (“Non-Qualifying Purchases”).
- (5) To redeem your Cash Back Card:
 - a. Complete a Claim Form (available on-line at www.callawaygolf.com/Global/en-AU.html), which requires your name, street address (no Post Office Box addresses will be accepted), telephone

number, email address, Qualified Driver serial number (located on driver head); and date of Qualified Driver purchase. All information on the Claim Form must be completed or the Claim Form may be rejected by Sponsor as incomplete and, therefore, invalid.

- b. Enclose the receipt (Original Receipt (for in-store purchases), or Online Purchase Confirmation and Packing Slip (for online purchases), as described below:
- o In-Store Purchases: Obtain your original cash register receipt for the purchase of your Qualified Driver (“Original Receipt”). Original Receipt must verify that purchase of Qualified Driver was made during the Promotion Period. Except in any territory where expressly prohibited by law, only an Original Receipt from a Participating Authorised Retailer will be honored; duplicates (even if printed by the Participating Authorised Retailer), photocopies, handwritten, altered or incomplete documents and the like will not be accepted. Please keep a photocopy of the Original Receipt for your records.
 - o For Online Purchases: Print a copy of your online purchase confirmation (“Online Purchase Confirmation”) AND obtain the original packing slip (“Packing Slip”) from the box once your Qualified Driver arrives. Your Online Purchase Confirmation must verify that the Qualified Driver was purchased during the Promotion Period. Please keep a photocopy of the Online Purchase Confirmation and original Packing Slip for your records.
- c. Mail your completed Claim Form to:

Callaway RAZR Driver Cash Back Promotion
18 Corporate Avenue
ROWVILLE VIC 3178
AUSTRALIA

- (6) Upon certification by Sponsor or its agent that the completed Claim Form meets all the requirements of these Official Rules, the Cash Back Card will be redeemed for a \$100 debit card (“Debit Card”) and sent to participant via mail to participant’s home address. The Debit Card will be in Australian dollars for Australian participants and New Zealand Dollars for New Zealand participants and expires on 1 year after the card has been activated. The debit card must be activated within 3 months of being issued. The Debit Card may be used to purchase goods or services at retailers in Australia or New Zealand (based on participant’s residence) with “EFTPOS” facilities to accept the card. Some merchants may choose not to accept the Debit Card. Debit Cards cannot be redeemed for cash, reloaded, returned for a refund, have their balances consolidated to a new gift card, or be replaced after expiry. Note: The Cash Back Card has no cash value; only the Debit Card has a cash value.
- (7) New Zealand participants will be issued a ‘Prezzy Card’ as the brand of cash back card.
- (8) Debit Cards returned to the Sponsor by mail as “undeliverable” based on the address provided by the participant will not be re-sent. Sponsor reserves the right to verify the validity of all claims and to disqualify any Promotion participant for submitting a claim that is not in accordance with these Official Rules, or for tampering in any way with the redemption process.

- (9) Claim Forms deemed incomplete by Sponsor, in its sole discretion, will be returned to participant for completion (returns will be by way of regular mail or email). Participant must complete the required information and re-submit to Sponsor for receipt by December 17, 2012. Any submissions received after December 17, 2012 will be ineligible for this Promotion.
- (10) Allow six (6) to eight (8) weeks for claim processing. If you have not received a Debit Card from Sponsor via mail within this timeframe, you have three options to make an inquiry:
- i) By mail:

Reward Inquiry —

Callaway RAZR Driver Cash Back Promotion
18 Corporate Avenue
ROWVILLE VIC 3178
AUSTRALIA
 - ii) By phone:

1800 217 777 (AUS), 0800 441 471 (NZ) (Monday – Friday 10am – 3pm)
 - iii) By email:

cgsp.marketing@callawaygolf.com
- (11) Returns of Qualified Drivers may not be permitted or may be subject to special conditions. Where a return of a Qualified Driver is permitted, the Qualified Driver must be in original, new condition and accompanied by an original receipt. The above does not purport to exclude, restrict or modify your rights under the Trade Practices Act.
- (12) Purchase of a Qualified Driver that is returned to a retailer for cash or credit refund is not eligible for this Promotion and, in the event of such return, Sponsor reserves the right to cancel or retain the Debit Card issued to participant under this Promotion and/or to seek other means of reclamation of same.
- (13) Non-Qualifying Purchases also include, among others (i) purchases made from online auction sites; (ii) purchases made outside of Australia or New Zealand; (iii) purchases of used or pre-owned golf clubs; (iv) purchases or redemptions made via member rewards or VIP programs; (v) wholesale, governmental, institutional or group purchases; (vi) products obtained through corporate or affiliate programs, loyalty programs, employee purchase programs or points programs; and (vii) purchases without a valid receipt or order confirmation. Only actual purchasers of a Qualified Driver purchased from an Authorized Participating Retailer may participate in this Promotion. Promotion valid for purchases made by consumer end-users only and not for products purchased for re-sale or promotional/charity/tournament or other group events.
- (14) Offer valid only on Qualified Drivers purchased in Australia or New Zealand at an Authorized Participating Retailer during the Promotion Period; purchaser must be a legal resident of the country in which the Qualified Driver was purchased, and 18 years of age or older. Qualified Drivers purchased before or after the Promotion Period are not eligible for this offer.

- (15) Taxes, fees and other charges are not included in this promotion. Compliance with these Official Rules is subject to verification. No substitutes, store credit, rain checks, vouchers or cash value will be issued by Authorised Participating Retailer or Sponsor.
- (16) Offer may not be combined with any other offers, discounts or promotions. Offer not valid for groups, clubs or organizations, or for employees of the Sponsor and its parent, subsidiaries, affiliates, retail locations, suppliers, distributors, advertising, promotion or any other agencies or entities involved with this Promotion and members of their families (parents, siblings, children, and their respective spouses) and/or those residing in the same household (whether related or not) of each of the above are not eligible to participate in this Promotion.
- (17) If this Promotion is interfered with in any way or is not capable of being conducted as anticipated, Sponsor reserves the right, in its sole discretion, to the fullest extent permitted by law (a) to disqualify any entrant; or (b) subject to any written directions from a regulatory authority, to modify, suspend, terminate or cancel the Promotion for any lawful reason.
- (18) This Promotion is governed by the laws of the State of Victoria, Australia, for the resolution of all claims and disputes. If any part of these Official Rules is deemed to be invalid or otherwise unenforceable or illegal, the balance of the Official Rules shall remain in effect and shall be construed in accordance with its terms as if the invalid or illegal provision were not contained herein. All trademarks are owned by the respective rights holders. By participating in this Promotion, you agree that any dispute or difference whatsoever arising out of or in connection with this Promotion or these Official Rules shall be submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations. Unless the parties agree upon an arbitrator, either party may request a nomination from either the President or the Chairman of the Chapter where the dispute arises. You further agree that this arbitration shall be the sole and exclusive forum and venue for resolving any disputes arising out of this Promotion or in any way relating to these Official Rules and waive all rights, if any, to a trial by jury. If for any reason this provision is deemed to be unenforceable, you consent to the exclusive jurisdiction and venue of the state or federal courts located in the City of Melbourne, State of Victoria, Australia.

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