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**Bartier
Perry**

FILE No:
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MARS/PRISM:

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

5 February 2013

MEC 130063

Dear Sir/ Madam

Notification of Exclusive Dealing

We act for Stuart Alexander & Co Pty Ltd (**Stuart Alexander**).

Please find **enclosed** a notification in relation to conduct which may constitute exclusive dealing. The notification relates to promotional offers by Stuart Alexander to consumers who buy particular confectionery goods distributed by Stuart Alexander from particular participating retailers.

We enclose a cheque for \$100 for the lodgement fee.

If the Commission has any questions or wishes to discuss the notification please contact me.

Yours faithfully
Bartier Perry



Michael Cossetto | Executive Lawyer
D 8281 7892 F 8281 7838 M 0409 933 511
mcossetto@bartier.com.au

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Commonwealth of Australia

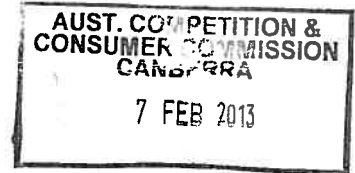
Competition and Consumer Act 2010 — subsection 93 (1)

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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM



1. Applicant

(a) **Name of person giving notice:**

N96554 Stuart Alexander & Co Pty Ltd (ABN 43 000 058 677) (**Stuart Alexander**)

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

Stuart Alexander operates in the Australian fast moving consumer goods (**FMCG**) arena. It imports, markets and distributes premium FMCG brands across various categories including food and beverage, confectionery, snacks, chocolate and tobacco.

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

c/o Michael Cossetto, Executive Lawyer, Bartier Perry, Level 18, 133 Castlereagh Street, Sydney NSW 2000

2. Notified arrangement

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

1. Goods and services supplied by Stuart Alexander (**Promotion Goods and Services**) which may include:
 - (i) promotional goods and services, such as prizes; and
 - (ii) opportunities to participate in competitions, lotteries or draws to win prizes.
2. ChupaChups brand confectionery products (**Eligible Confectionery Goods**) that are distributed by Stuart Alexander and re-supplied by independent supermarkets, other than Coles and Woolworths (**Participating Retailer**) to various persons.

(b) Description of the conduct or proposed conduct:

1. Stuart Alexander proposes to run a competition for a limited promotional period, during which consumers (**Customers**) who acquire Eligible Confectionery Goods from one or more Participating Retailer will be eligible to participate in the competition to win particular prizes (**Promotion**).
2. Customers who acquire Chupa Chups product from retailers other than a Participating Retailer (such as Coles and Woolworths) will not be eligible to enter the competition.
3. The Promotion will be a game of chance. In order to enter the Promotion, entrants will be required to:
 - (i) purchase either five (5) ChupaChups singles in a single transaction, or one (1) ChupaChups multipack, from any participating independent supermarket nationally; and
 - (ii) submit a valid entry form.
4. The prizes offered by Stuart Alexander to winner of the competition are:
 - (i) Minor Prizes: The first 1,000 entrants who submit a valid Online entry will each receive a minor prize of one (1) eSaver Movie Voucher valued at \$12.50. Total minor prize pool value is up to \$12,500.
 - (ii) Major Prize: Entries will be divided into the following State/Territory groups: NSW/ACT, QLD, VIC, WA and SA/NT/TAS (**State/Territory Group**). The first five (5) valid entries drawn in each State/Territory Group will each win one (1) Limited Edition ChupaChups Mega Tin, which contains 1,000 single serve ChupaChups of various flavours. Total Major Prize pool value is \$12,500.
5. It is possible that the Promotion may technically fall within sections 47(6) and/or (7) of the *Competition and Consumer Act 2010* (Cth), on the basis that Stuart Alexander is offering a service (ie. entry into the Promotion) on the condition that customers acquire goods (ie. Eligible Confectionery Goods) from a third party (ie. Participating Retailer).

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:

Consumers who buy Eligible Confectionery Goods and other confectionery goods that are similar to Eligible Confectionery Goods.

Participating Retailers and other retailers who sell Eligible Confectionery Goods and other confectionery goods that are similar to Eligible Confectionery Goods.

(b) Number of those persons:

(i) At present time:

Greater than 50.

(ii) Estimated within the next year:

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:

Stuart Alexander submits that the benefit to the public likely to result from the notified conduct would outweigh any detriment to the public likely to result from the conduct. This is supported by the following:

(i) Consumers – the notified conduct will provide consumers with the opportunity to obtain various rights, benefits, privileges and additional goods and services (eg. in the form of prizes) when they buy Eligible Confectionery Goods from a Participating Retailer, which would not otherwise be offered by Stuart Alexander.

(ii) No price increase – Stuart Alexander will not increase the price it supplies Eligible Confectionery Goods in order to cover the cost of the supply of Promotion Goods and Services.

(iii) Competition – the notified conduct and consumer incentives of the kind proposed:

A. are common in the relevant market;

B. promote competition in the market by encouraging other providers of confectionery goods to offer similar (or better) promotional benefits;

- C. are a feature of the strong and competitive tension that exists not only between suppliers in the relevant market, but also between retailers in the relevant market.

(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 relevant market is the Australian market for confectionery goods.

The market is characterised by vigorous and effective competition amongst a number of suppliers. Significant suppliers of confectionery goods include:

- Kraft Australia
- Mars Australia
- Nestle Australia
- Cadbury
- Wrigley Australia
- Ferraro
- Ferndale

Confectionery goods are acquired by merchants on a wholesale basis and by members of the general public through retailers.

Significant retailers of confectionery goods include:

- Coles, Woolworths, IGA, Aldi and other independent supermarkets or grocery stores; and
- 7-Eleven and other petrol stations and convenience stores.

There is no barrier to any competitor in any market offering competing promotional incentives if they wish to do so.

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:

Stuart Alexander submits that there will be no public detriment as a result of the notified conduct.

The notified conduct is not anti-competitive. This is supported by the following:

- (i) Customers who buy Eligible Confectionery Goods from a Participating Retailer will not be under any obligation to participate in any Stuart Alexander promotional offer.
- (ii) The notified conduct will not result in any restriction or limitation on the ability for consumers to buy Eligible Confectionery Goods from non-participating retailers, to buy other confectionery goods from third parties, or to participate in promotions and competitions offered by third parties.
- (iii) For reasons outlined above, Stuart Alexander considers that given the enormity of the market for confectionery goods, the notified conduct will have a negligible effect on competition within that market.
- (iv) The Promotion, including the eligibility criteria, will be advertised and marketed clearly and accurately, and in accordance with the Australian Consumer Law.

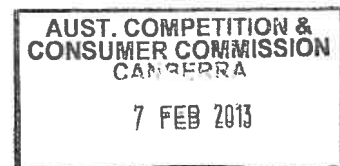
(b) Facts and evidence relevant to these detriments:

See 6(a) above.


7. Further information

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

Michael Cossetto
Executive Lawyer
Bartier Perry
Level 18, 133 Castlereagh Street
Sydney NSW 2000



Dated: 5/2/2013
Signed on behalf of the applicant



Michael Cossetto
Executive Lawyer
Bartier Perry

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 *Competition and Consumer Act 2010* 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.