

TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B OF THE TRADE PRACTICES ACT 1974

BY

AWESOME WATER PTY LTD
ACN 106 841 187
of 2/100 PARK ROAD, SLACKS CREEK, QLD, 4127.

1. Person Giving Undertaking

- 1.1 This Undertaking is given to the Australia Competition and Consumer Commission (**ACCC**) by Awesome Water Pty Ltd ACN 106 841 187 (**Awesome Water**) of 2/100 Park Road, Slacks Creek, Qld, 4127, pursuant to Section 87B of the *Trade Practices 1974* (**TPA**).

2. Background

- 2.1 Awesome Water was incorporated pursuant to the *Corporations Act 2001* in 2003.
- 2.2 In 2006 Awesome Water changed its business model from a delivery run agreement with contractors to a franchise agreement.
- 2.3 On 10 February 2008, the shares in Awesome Water were acquired by Allied Brands Limited.
- 2.4 Under new ownership Awesome Water operates a franchise system, with franchisees selling or leasing water coolers to consumers; and
- 2.5 The conduct of concern occurred prior to and during the transition to a franchise system and predates the acquisition by Allied Brands.

3. Conduct

- 3.1 The ACCC identified conduct that revealed potential non compliance with the TPA in:
- (a) The documentation provided by Awesome Water to franchisees;
 - (b) The adequacy of Awesome Water's disclosure documents;
 - (c) The income level guarantee offered by Awesome Water;
 - (d) Representations by Awesome Water concerning franchisee income and working hours; and
 - (e) The process relative to seeking of independent legal, accounting and business advice by prospective franchisees.

- 3.2 The ACCC acknowledges Awesome Water had started rectifying these issues in the transition period, and since the new owners took over the business. As part of a commitment to compliance with the TPA, Awesome Water has offered this Undertaking to resolve this matter.

4. Commencement of Undertaking

- 4.1 This Undertaking comes into effect when:
- (a) The Undertaking is executed by Awesome Water;
 - (b) The ACCC accepts this Undertaking so executed; and
 - (c) This Undertaking shall expire three years from the date of execution.
- 4.2 Upon the commencement of this Undertaking, Awesome Water undertakes to assume the obligations set out in paragraph 6.

5. Acknowledgement

- 5.1 Awesome Water acknowledges that:
- (a) The ACCC will make this Undertaking available for public inspection;
 - (b) The ACCC from time to time will publicly refer to this Undertaking; and
 - (c) This Undertaking no way derogates from the rights and remedies available to any other person arising from the alleged conduct of Awesome Water.

6. Undertakings

- 6.1 Awesome Water hereby undertakes to the ACCC for the purposes of Section 87B of the TPA that:
- (a) Awesome Water will continue to provide current and prospective franchisees of Awesome Water with disclosure documents which comply with the Franchising Code of Conduct, including:
 - (i) contact details of all current and former franchisees; and
 - (ii) an accurate description of all aspects of the Awesome Water franchise system.
 - (b) Awesome Water will not enter into a franchise agreement with a prospective franchisee unless Awesome Water has received from the prospective franchisee:
 - (i) a signed statement that the prospective franchisee has been given advice about the proposed franchise agreement or franchise business by any of:
 - (A) an independent legal advisor;
 - (B) an independent business advisor; and
 - (C) an independent accountant;or
 - (ii) a signed statement from the prospective franchisee that the prospective franchisee has been told that that kind of advice should be sought but has decided not to seek it.

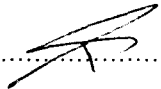
- (c) Awesome Water will not provide delivery run documentation to prospective franchisees;
- (d) Awesome Water will ensure that its employees are aware that all verbal representations or information provided in addition to the disclosure documents to prospective franchisees are true and accurate; and
- (e) Awesome Water will ensure that all representations concerning prospective franchisees' income are based upon actual performances of other full time franchisees over a 12-month period.

6.2 Awesome Water further undertakes that it will implement a trade practices compliance program in accordance with Annexure A.

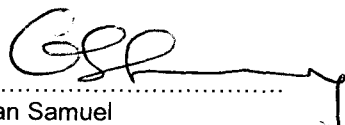
IN WITNESS OF THIS UNDERTAKING AND ITS AGREEMENTS:


EXECUTED BY AWESOME WATER PTY LTD
ACN 106 841 187 by its authorised officer pursuant
to Section 127(1) of the *Corporations Act 2001*

) ANDREW EDWARDS
) DIRECTOR

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Accepted by the AUSTRALIAN COMPETITION AND CONSUMER COMMISSION pursuant to Section 87B of the *Trade Practices Act 1974*

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Graeme Julian Samuel
Chairman
Australian Competition and Consumer Commission

 23rd
This ~~14th~~ day of December 2008

ANNEXURE A

COMPLIANCE PROGRAM UNDERTAKINGS AND ORDERS

Section 87B Undertaking LEVEL 1

Awesome Water undertakes to the Australian Competition and Consumer Commission (**the ACCC**), for the purposes of section 87B of the *Trade Practices Act 1974* (**the TPA**) that it will implement a complaints handling system and all relevant employees of Awesome Water will attend trade practices training covering sections 51A, 52, 53, 59 and 51AD (**the Franchising Code of Conduct**) of the TPA in accordance with the requirements set out below.

1. Training

Within four months of this Undertaking coming into effect, and thereafter at least once a year for the period of the Undertaking, all relevant employees will attend trade practices training focusing on sections 51A, 52, 53, 59 and 51AD of the TPA.

- 1.1. Awesome Water will ensure that the training referred to in paragraph 1.1 above is administered by a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law.
- 1.2. Awesome Water will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 1.1 above to the ACCC within 14 days of completion of the training verifying that such training has occurred.

2. Complaints handling

2.1. Awesome Water will:

- 2.1.1. develop procedures for recording, storing and responding to trade practices complaints within two months of this Undertaking coming into effect; and
 - 2.1.2. provide the ACCC with an outline of the complaints handling system developed within four months of the Undertaking coming into effect.
3. If requested by the ACCC, Awesome Water will provide, at its own expense, copies of any other documents or information in respect of matters which are the subject of the compliance program.