

TRADE PRACTICES ACT 1974
AND
COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission
given for the purposes of section 87B
by
Mr John Gerard O'Halloran

Persons giving this undertaking

- (1) This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Mr John Gerard O'Halloran of 19 Newcastle Drive, Pottsville, New South Wales for the purposes of:
 - (a) section 87B of the *Trade Practices Act 1974 (TPA)*, as applied by Item 6 of Schedule 7 to the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*, for conduct engaged in prior to 1 January 2011; and
 - (b) section 87B of the *Competition and Consumer Act 2010 (CCA)*, for conduct engaged in from 1 January 2011.

Background

- (2) Australian Workplace Services Pty Ltd (ACN 096 561 241) (**AWS**), of Unit 15, 39-41 Corporation Circuit, Tweed Heads South, New South Wales, carries on the business of selling first aid kits and workplace safety equipment to businesses in Australia. Mr John Gerard O'Halloran is, and was at all material times, the director of AWS and involved in the management and operation of the AWS business.
- (3) The ACCC has conducted an investigation into various aspects of the conduct of AWS, including making enquiries of small businesses who had complained to the ACCC after being contacted by representatives of AWS. Following its investigation, the ACCC formed the view that on a number of occasions since at least October 2009 AWS misrepresented to various small businesses that, amongst other things, there was a requirement under the relevant workplace safety laws of the state in which the business was located for the business to

maintain information and material of the same nature as those supplied or offered for supply by AWS, when in fact there was no such requirement.

- (4) The ACCC has also formed the view that by engaging in the conduct described in paragraph (3) above, AWS is likely to have contravened ss. 52, 53(f) and 75AZC(1)(j) of the TPA and ss. 18, 29(1)(l) and 151(1)(l) of the Australian Consumer Law (**ACL**), consisting of Schedule 2 to the CCA, by:
 - (a) engaging, in trade or commerce, in conduct that was misleading or deceptive or likely to mislead or deceive; and
 - (b) making false or misleading representations, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, concerning the need for the material supplied or offered to be supplied by AWS.
- (5) AWS has acknowledged that some businesses may have been misled by the conduct of AWS described in paragraph (3) above. AWS has admitted that its conduct is likely to have contravened ss. 52, 53(f) and 75AZC(1)(j) of the TPA and ss. 18, 29(1)(l) and 151(1)(l) of the ACL.
- (6) Mr John Gerard O'Halloran admits that he was knowingly concerned in, or party to, the likely contraventions of the TPA and ACL by AWS outlined in paragraph (4) above.
- (7) AWS has offered a separate undertaking to the ACCC and taken the following steps to address the ACCC's concerns and ensure that the conduct is not repeated:
 - (a) Obtained professional advice as to the requirements, recommendations and guidelines of all of the Australian jurisdictions into which it sells its products relating to the provision of first aid in the workplace, and related matters;
 - (b) On the basis of that advice, carried out training of its sales personnel as to those requirements, recommendations and guidelines, and as to the approach to be taken by them in dealing with customers and potential customers;

- (c) Instituted a continuous training and workshop regime for its sales personnel with a view to promoting an awareness of the requirements of the ACL; and
 - (d) Revised its sales personnel's selling routines and guidance notes.
- (8) Mr John Gerard O'Halloran wishes to address the concerns outlined in paragraph (4) above by offering this undertaking to the ACCC under s. 87B of the TPA and s. 87B of the CCA.

Commencement of undertaking

- (9) This undertaking comes into effect when -
- (a) the undertaking is executed by Mr John Gerard O'Halloran; and
 - (b) the ACCC accepts the undertaking so executed.
- (10) Upon the commencement of this undertaking, Mr John Gerard O'Halloran undertakes to assume and act in accordance with the obligations set out in paragraph (11) below.

Undertakings

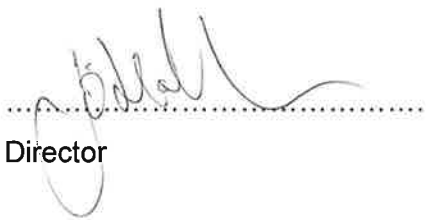
- (11) Mr John Gerard O'Halloran undertakes for the purposes of s. 87B of the TPA and s. 87B of the CCA, that for a period of three years from the date this undertaking comes into effect, he will not make, or be directly or indirectly knowingly concerned in, or party to, AWS or any other corporation, making, or causing or permitting to be made, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, any representation, whether express or implied, to consumers to the effect that they are required by state or territory workplace health and safety laws to maintain information and/or materials of the same nature as those supplied or offered for supply by AWS, when this is not the case.

Acknowledgments

(12) Mr John Gerard O'Halloran acknowledges that:

- (a) the ACCC will make this undertaking publicly available, including by publishing it on its public register of s. 87B undertakings on its website;
- (b) the ACCC will, from time to time, make public reference to the undertaking, including in news media statements and in ACCC publications; and
- (c) this undertaking does not derogate from the rights and remedies available to any other person arising from the alleged conduct.

Executed by Mr John Gerard O'Halloran



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Director

This 22nd day of December 2011

Accepted by the Australian Competition and Consumer Commission pursuant to:

- (i) Section 87B of the *Trade Practices Act 1974*, as applied by item 6 of schedule 7 to the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*, for conduct engaged in prior to 1 January 2011;
- (ii) Section 87B of the *Competition and Consumer Act 2010* for conduct engaged in from 1 January 2011.



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Rodney Graham Sims

Chairman

This 10 day of January 2012