

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B by

PAUL MALONEY FASHION AGENCY PTY LTD

ACN 131 692 030

Person giving this undertaking

1. This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by Paul Maloney Fashion Agency Pty Ltd (ACN 131 692 030) of Level 2, 110 Kippax Street, Surry Hills, New South Wales for the purposes of section 87B of the *Competition and Consumer Act 2010*(**the Act**).

Background

2. Paul Maloney Fashion Agency Pty Ltd (**Paul Maloney**) is a sales agents that represents designers and manufacturers of fashion items and accessories, including designer handbags. Paul Maloney negotiates supply agreements with distributors and resellers on behalf of the designers and manufacturers and receives a commission from the sale of goods.
3. In October 2010 Paul Maloney negotiated a supply agreement with 17Twelve.com, an on-line reseller, for the supply of handbags by designer 'After the Apple'. Paul Maloney provided 17Twelve.com with a 'line list' which included the recommended retail prices (RRP) of 'After the Apple' products. 17Twelve.com initially offered the 'After the Apple' handbags for sale through its on-line store at the RRP.
4. In December 2010 17Twelve.com offered a discount of "20% off RRP" for most of the stock it offered for sale through its on-line store, including the 'After the Apple' handbags. In January 2011 17Twelve.com increased the discount offered to "25% off RRP" and in February 2011 increased the discount again to "50% off RRP".
5. On 15 April 2011, a representative of Paul Maloney sent an email to 17Twelve.com referring to the price 'After the Apple' handbags were being offered for sale and stating, among other things:

"...all styles ordered must be sold at the recommended retail price and mark downs are not to take place until the last 3rd of the season in line with brick and mortar stores ...we must insist that you change the prices to the RRP within the next 24 hours".

6. On 17 April 2011 a representative of Paul Maloney sent a further email stating, among other things:

“After working with in excess of 200 retailers over 5 years I am very surprised to come across a retailer that has taken this stand in regards to RRP as the industry standard is a 2.1-2.2 mark up and is respected by all retailers (both online and brick and mortar) so as to create an even playing field in which to sell brands”.

7. Paul Maloney engaged in a further email exchange with 17Twelve.com advising that other resellers of the ‘After the Apple’ designer handbags had contacted Paul Maloney to complain about the price at which 17Twelve.com was offering those goods. Paul Maloney advised 17Twelve.com that the other resellers had demanded Paul Maloney do something to prevent discounting of the goods early in the season.
8. The ACCC considers that by engaging in the conduct described in paragraphs 5 to 7 above, Paul Maloney is likely to have engaged in resale price maintenance in contravention of section 48 of the Act, in that Paul Maloney has:
- (i) made it known to 17Twelve.com that ‘After the Apple’ goods were not to be advertised for sale or sold at a price less than the RRP specified by ‘After the Apple’;
 - (ii) attempted to induce 17Twelve.com not to advertise or to sell ‘After the Apple’ goods at a price less than the RRP specified by ‘After the Apple’;
 - (iii) used, in relation to ‘After the Apple’ goods supplied by Paul Maloney to 17Twelve.com, a statement of price that was likely to be understood by 17Twelve.com as a statement of ‘After the Apple’s’ RRP below which the ‘After the Apple’ goods were not to be advertised or sold.
 - (iv) made it known to agents and suppliers of other designers of fashion goods that 17Twelve.com was offering for sale goods from those designers at prices less than RRP and advising those agents and suppliers to induce, or attempt to induce, 17Twelve.com not to advertise or to sell goods from those designers at a price less than the specified RRP.
9. Paul Maloney acknowledges the ACCC’s concerns and that the conduct described in paragraphs 5 to 7 above is likely to have contravened section 48 of the Act.

Commencement of undertaking

10. This undertaking comes into effect when:

- (i) the undertaking is executed by Paul Maloney; and

(ii) the ACCC accepts the undertaking so executed by Paul Maloney.

11. Upon the commencement of this undertaking, Paul Maloney undertakes to assume the obligations set out in paragraphs 12 to 14 below.

Undertakings

12. Paul Maloney undertakes for the purposes of section 87B of the Act that it will not, in trade or commerce, by itself, its servants or agents, or otherwise for a period of three (3) years:

(i) make it known to a client that it may not advertise for sale or sell goods for a price less than a price specified by Paul Maloney, or the designer of the goods;

(ii) attempt to induce a client not to advertise for sale or sell goods for a price less than a price specified by Paul Maloney, or the designer of the goods;

(iii) use a statement of price that is likely to be understood by a client to be a statement of a specified price below which goods are not to be advertised or sold.

(iv) make it known to agents and suppliers of other designers of fashion goods that resellers are offering for sale goods from those designers at prices less than RRP and advising those agents and suppliers to induce, or attempt to induce, resellers not to advertise or to sell goods from those designers at a price less than the specified RRP.

13. Paul Maloney undertakes for the purposes of section 87B of the Act that it will, at its own expense, within 28 days of this Undertaking coming into effect:

(i) cause a copy of the pro forma letter set out in **Annexure A** to be sent to each client of Paul Maloney advising of the ACCC's concerns regarding the enforcement of any practice of not advertising or selling goods at prices less than RRP; and

(ii) informing them that they are free to set the minimum price at which they advertise or sell goods;

(iii) advise the ACCC when the letter set out in Annexure A has been sent to all Paul Maloney clients.

14. Paul Maloney undertakes for the purposes of section 87B of the Act that it will, at its own expense, within three (3) months of this Undertaking coming into effect:

(i) implement (*or review and amend existing*) a Trade Practices Compliance Program to ensure that it meets the requirements set out in **Annexure B** for employees and other persons involved in its business, being a program designed to minimise Paul Maloney's risk of future

breaches of section 48 of the Act, and to ensure awareness of their responsibilities and obligations in relation to the requirements of Part IV of the Act, in particular section 48.

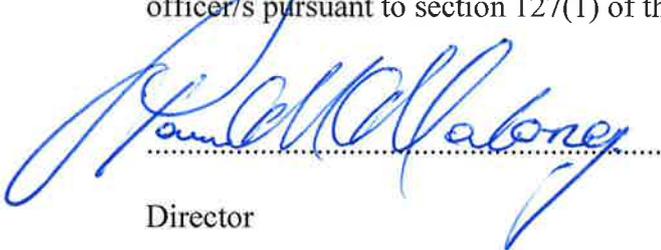
Acknowledgments

15. Paul Maloney acknowledges that:

- (i) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of s. 87B undertakings on its website;
- (ii) the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications;
- (iii) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
- (iv) a summary of the ACCC Compliance Program Review reports referred to in Annexure B of the Undertaking may be held with this Undertaking in the public register.

Executed by

Paul Maloney Fashion Agency Pty Ltd ACN 131 692 030 and by its authorised officer/s pursuant to section 127(1) of the *Corporations Act 2001*.

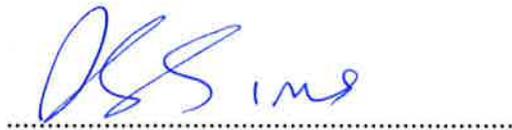


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Director

This 18th day of January 2012.

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE *COMPETITION AND CONSUMER ACT 2010*.



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Rodney Graham Sims
Chairman

This 25th day of January 2012.

ANNEXURE A

Letter to clients of Paul Maloney Fashion Agency

[To be placed on Paul Maloney Fashion Agency letterhead]

[Date]

[Name of client]

[insert address]

Dear Sir/Madam (or personalise)

ACCC – Resale Price Maintenance

The ACCC is concerned that Paul Maloney Fashion Agency Pty Ltd (Paul Maloney) is likely to have engaged in resale price maintenance conduct by seeking to prevent a retailer from offering a product for sale at a price below the recommended retail price specified by the supplier.

As an explanation, resale price maintenance is an attempt by a supplier to set a minimum price below which retailers cannot sell, advertise, display or offer goods for sale. Resale price maintenance is prohibited by section 48 of the *Competition and Consumer Act 2010* (the Act).

Paul Maloney acknowledges the ACCC's concerns in relation to this matter and is cooperating with the ACCC to resolve it.

Please note that as a retailer you are, and always have been, free to discount or set a minimum price at which you advertise or sell products you purchase from any supplier. This freedom is protected by the Act and any recommended retail price or RRP used or set by any supplier is a suggestion only.

As part of the resolution to this matter Paul Maloney has provided a court enforceable undertaking to the ACCC pursuant to section 87B of the Act. This enforceable undertaking is to minimise the risk of any resale price maintenance issues arising in the future, and I am writing to you as a condition of that undertaking (which you can view on the ACCC's undertaking register at www.accc.gov.au).

If you have any questions regarding this letter please contact (name of Paul Maloney contact person).

Yours sincerely,

(Name and title of authorised person)

ANNEXURE B

TRADE PRACTICES COMPLIANCE PROGRAM

Paul Maloney Fashion Agency Pty Ltd (Paul Maloney) will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

1. Training

- 1.1. Within three (3) months of this Undertaking coming into effect, and thereafter at least once a year for the period of the Undertaking, Jon Hewitt, General Manger of Paul Maloney, will, at Paul Maloney's expense, attend practical training focusing on Part IV of the *Competition and Consumer Act 2010*, in particular section 48.
- 1.2. Paul Maloney 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 Competition and Consumer law.
- 1.3. Within 14 days of completion of the training referred to in paragraph 1.1 above Paul Maloney will provide to the Australian Competition and Consumer Commission (the ACCC) a written statement or certificate from the Competition and Consumer law professional who conducts the training, verifying that such training has occurred.

2. Complaints handling

- 2.1. Within one (1) month of this Undertaking coming into effect, Paul Maloney will develop procedures for recording, storing and responding to trade practices complaints; and
 - 2.2. Within two (2) months of the Undertaking coming into effect, provide the ACCC with an outline of the complaint handling system developed.
3. If requested by the ACCC, Paul Maloney 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.