

97/13P

TRADE PRACTICES ACT 1974**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION GIVEN FOR THE PURPOSE OF SECTION
87B****BY APOLLO OPTICAL PTY LTD****A.C.N. 069 019 825****BACKGROUND**

1. Apollo Optical Pty Ltd ('Apollo') is incorporated in the State of New South Wales and its principal activities include importing and retailing optical goods and sunglasses.
2. The Australian Competition and Consumer Commission ('the Commission') is responsible for ensuring compliance with mandatory consumer product standards under the *Trade Practices Act 1974* ('the Act'). The mandatory product safety standard applicable to sunglasses is Australian Standard 1067.1-1990, as amended ('the Standard').
3. As part of the Commission's national monitoring programme for compliance with the Standard, on 1 November 1996 the Commission purchased from a Bright Eyes retail store located at lake Joondalup Shopping Centre, Perth, a pair of City Club by Apollo brand sunglasses supplied by Apollo ("the Sunglasses"), which can be described as gun grey metal frames with almost clear glass lenses with the marking GUN56-16 Apollo 7570 and labelled as General Purpose sunglasses.
4. On 6 January 1997, the sunglasses were tested by Unisearch Optics and Radiometry ('Unisearch') in accordance with the Standard and failed to meet certain requirements of the Standard. Table 2.1 of the Standard requires Photochromic sunglasses to have a minimum luminous transmittance of 80% after 30 minutes in the dark at 25 degrees Celsius. The Unisearch test results indicate that the average transmittance for the sunglasses is 46.3%. The sunglasses cannot, therefore, be classified as general purpose sunglasses without the warning 'Not suitable for night driving'.
5. The Commission considers that Apollo may have breached section 53(a) of the Act by representing that the sunglasses comply with the Standard when Unisearch's test results indicate they do not. The Commission also considers that Apollo may have breached section 65C of the Act by supplying sunglasses which do not comply with the Standard.
6. Apollo acknowledges that it supplied sunglasses which do not comply with the Standard and that it may have contravened sections 53(a) and 65C of the Act.



UNDERTAKINGS

7. Apollo gives the following undertakings to the Commission for the purpose of section 87B of the Act. Apollo undertakes that:
- (a) it has ceased the sale or supply of the sunglasses which do not comply with the Standard;
 - (b) it has notified all retailers to whom it supplied the sunglasses to remove the sunglasses from sale and return them to Apollo for remedial action;
 - (c) it has, by its directors, servants or agents, completed a cycle of attendances upon those retailers to ensure that the sunglasses have been withdrawn from sale;
 - (d) it has already instituted and undertakes it will continue to maintain a Trade Practices Compliance program designed to create a culture of compliance throughout Apollo and to prevent, so far as is reasonably possible, any contraventions of the Act by Apollo, its directors, servants or agents;
 - (e) it has instituted and undertakes to continue to maintain an effective Complaint Handling system consistent with the Australian Standard AS 4269-1995 (Complaints Handling);
 - (f) it will appoint an appropriately qualified senior executive with overall responsibility for trade practices compliance; and
 - (g) at the end of each twelve month period, for three (3) years following the acceptance of this undertaking by the Commission, Apollo will cause an independent person (who shall be either the accountants or solicitors for Apollo or such other person who shall be approved by the Commission) to review and report to the Commission on:
 - (i) compliance with these undertakings over the preceding twelve months;
 - (ii) the implementation of the compliance program and the achievement of its objectives over the preceding twelve months; and
 - (iii) any recommended changes to the compliance program and the complaint handling system that may be necessary to ensure achievement of its objectives.

ACKNOWLEDGMENTS

8. Apollo acknowledges the Commission's right to make this undertaking available for public inspection.
9. Apollo acknowledges that the Commission will issue a media release in relation to this undertaking and may from time to time publicly refer to the undertaking.



10. Apollo acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

IN WITNESS OF THIS UNDERTAKING

This 10th day of March 1997

**THE COMMON SEAL of
APOLLO OPTICAL PTY LTD**
was affixed in accordance with
its Articles of Association:



.....
Director/Secretary

Lawrence Sand

Name (printed):

.....
Director

Robert Jeffrey Moss

Name (printed):

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES
ACT 1974**

.....
Chairperson

This 10 day of March 1997