

TRADE PRACTICES ACT 1974**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION GIVEN FOR THE PURPOSE OF
SECTION 87B****BY****PENSHIRE PTY LTD****A.C.N. 010 427 479****BACKGROUND**

1. Penshire Pty Ltd ('Penshire') is incorporated in the State of Queensland and its principal activities include the importation and sale of sunglasses to retailers.
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 16 October 1996 the Commission purchased from Don Gardiner's Chem Mart at Lutwyche City Shopping Centre, Lutwyche, two pairs of 'Gregory Craig' brand sunglasses supplied by Penshire. The first pair can be described as having brown wraparound frames and grey lenses. The swing tag attached stated that the sunglasses were from the Gregory Craig 'Gold Label Series', but did not specify the lenses classification. The second pair were also from the Gregory Craig 'Gold Label Series'. They have black arms with gold attachments at the hinges and grey lenses. Again, the swing tag did not specify the lenses classification.
4. On 17 October 1996, again as part of the Commission's national monitoring programme for compliance with the Standard, the Commission purchased a pair of 'Shades Clip-ons' from Bob Teys Pharmacy, Cleveland. These sunglasses have black frames and green lenses. They are designed to fit over an existing pair of spectacles. The swing tag referred to 'CR39' lenses. The tag also referred to 'polycarbonate' lenses.
5. 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. The following results were obtained about the three pairs of sunglasses in issue:

With respect to the **first pair of Gregory Craig sunglasses**;

Marking - Clause 4.2.1 of the Standard provides that the marking of sunglasses and fashion spectacles shall include the classification of the eye wear and other relevant information in accordance with the remaining provisions of that clause. Clause 4.2.3 of the Standard requires general purpose sunglasses to contain the following marking: *"SUNGLASSES These glasses are intended to reduce sun glare in ordinary circumstances."* The Standard similarly provides precise wording for specific purpose (a) and (b) sunglasses and fashion spectacles.

The sunglasses fail to specify the lenses classification.

With respect to the **second pair of Gregory Craig sunglasses**;

Luminous Transmittance - Table 2.1 of the Standard requires general purpose sunglasses to have a minimum luminous transmittance of 8% and a maximum of 50%. The test results indicate an average of 3.35%. The sunglasses, cannot, therefore be classified as general purpose sunglasses.

Red Signal Visibility Factor - Table 2.1 of the Standard requires specific purpose (a) sunglasses to have a minimum red signal visibility factor of 0.85 and a maximum of 1.15. the test results indicate an average of 1.29. The sunglasses, cannot, therefore be classified as specific purpose (a) sunglasses.

Marking - As above, clause 4.2.1 of the Standard requires the marking of sunglasses and fashion spectacles to include the classification of the eye wear and other relevant information in accordance with the remaining provisions of that clause. Clause 4.2.3 requires specific purpose (b) sunglasses to have the following labelling: *"SPECIFIC PURPOSE (B) SUNGLASSES For protection against ultraviolet radiation in sunlight for specified environments."*

The Standard also provides that where specific purpose sunglasses have a luminous transmittance below 8% the following additional warning is required: *"NOT SUITABLE FOR DRIVING."*

With respect to the **'Shades Clip-ons'**;

Marking - The marking failed to specify the classification of the lenses in accordance with clause 4.2.1 of the Standard. Testing indicated that the lenses could be classified as general purpose, specific purpose (a) or specific purpose (b) sunglasses. Testing also indicated that the label was incorrect in referring to the sunglasses as 'Clip-ons'. Further, that the lenses were polycarbonate, not 'CR39'.

6. The Commission considers that Penshire 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 Penshire may have breached section 65C of the Act by supplying sunglasses which do not comply with the Standard.

7. Penshire 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

8. Penshire gives the following undertakings to the Commission for the purpose of section 87B of the Act. Penshire 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 Penshire 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 will clearly and prominently disclose by way of advertisements, within 7 days of the Commission's acceptance of the undertaking, in two weekday and one weekend edition of a major daily newspaper in each State in which Penshire supplies the sunglasses that:
 - (a) the second pair of 'Gregory Craig' sunglasses (described above) do not comply with the Standard;
 - (b) consumers who return the sunglasses to resellers, and resellers who return the sunglasses to Penshire are entitled to a refund of their purchase price; and
 - (c) the advertisements will appear in the first 7 pages of the newspaper, and will be 3 columns wide, 12cm deep in 12 point print, carry the safety notice border and contact points for returns. The advertisement will be subject to the approval of the Commission prior to publication;
 - (e) within three (3) months of the Commission's acceptance of the undertaking it will institute a Trade Practices Compliance program designed to create a culture of compliance throughout Penshire and to prevent, so far as is reasonably possible, any contraventions of the Act by Penshire, its directors, servants or agents;

- (f) within three (3) months of the undertaking Penshire will institute an effective Complaint Handling system consistent with the Australian Standard AS 4269-1995 (Complaints Handling);
- (g) it will appoint an appropriately qualified senior executive with overall responsibility for trade practices compliance; and
- (h) that Penshire will recompense the Commission the cost of conducting the testing on the sunglasses which do not comply with the Standard. Those costs being \$216.45.

ACKNOWLEDGMENTS

- 9. Penshire acknowledges the Commission's right to make this undertaking available for public inspection.
- 10. Penshire 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.
- 11. Penshire 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 14TH day of MARCH 1997

**THE COMMON SEAL of
Penshire Pty Ltd
A.C.N. 010 427 479**
was affixed in accordance with
its Articles of Association:



Director/Secretary

Director

Name (printed):

Name (printed):

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

(Professor Allan Fels)
Chairperson

This 25 day of JUL 1997