

## TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND  
CONSUMER COMMISSION GIVEN FOR THE PURPOSE OF  
SECTION 87B

BY

DISCOUNT SUNGLASSES &amp; ACCESSORIES PTY LTD

A.C.N. 062 799 044

## BACKGROUND

1. Discount Sunglasses & Accessories Pty Ltd ('Discount Sunglasses') is incorporated in the State of Queensland and its principal activities include the importation and sale of sunglasses to wholesalers.
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 25 October 1996 the Commission purchased from the Roadwest Chariot store located at Karrinyup Shopping Centre, Perth, a pair of Turbo brand sunglasses supplied by Makk Eenhoorn who was supplied by Discount Sunglasses. These sunglasses can be described as having black steel frames with brown or smoke coloured gradient lenses and are labelled as 'General Purpose'.
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. The following results were obtained about the sunglasses in issue:

Red Signal Visibility factor (R) - Clause 4.2.3 of the Standard requires that general purpose sunglasses must bear the caution 'NOT SUITABLE FOR PERSONS WITH DEFECTIVE COLOUR VISION' or 'NOT SUITABLE FOR PERSONS WITH COLOUR VISION DEFICIENCIES. THESE LENSES WILL FURTHER DISTORT THEIR COLOUR PERCEPTION.' Where the lenses have a red signal visibility factor, R, greater than 1.4. The results indicate that the red signal visibility factor for the sunglasses is 1.58. The sunglasses cannot, therefore, be classified as general purpose sunglasses without the colour vision warning being included on the label.

5. The Commission considers that Discount Sunglasses 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 Discount Sunglasses may have breached section 65C of the Act by supplying sunglasses which do not comply with the Standard.
6. Discount Sunglasses 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. Discount Sunglasses gives the following undertakings to the Commission for the purpose of section 87B of the Act. Discount Sunglasses 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 Discount Sunglasses 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) 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 Discount Sunglasses and to prevent, so far as is reasonably possible, any contraventions of the Act by Discount Sunglasses, its directors, servants or agents;
  - (e) within three (3) months of the undertaking Discount Sunglasses will institute 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) that Discount Sunglasses will recompense the Commission the cost of conducting the testing on the sunglasses which do not comply with the Standard. Those costs being \$72.15.

**ACKNOWLEDGMENTS**

- 8. Discount Sunglasses acknowledges the Commission's right to make this undertaking available for public inspection.
- 9. Discount Sunglasses 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. Discount Sunglasses 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 THIRD day of APRIL  
**THE COMMON SEAL** of  
**Discount Sunglasses & Accessories Pty Ltd**  
**A.C.N. 062 799 044**

was affixed in accordance with  
its Articles of Association:



.....  
..... B. Sawyer .....

Director/Secretary

.....  
..... Barry Sawyer .....

Name (printed): BARRY ROYALD SAWYER

**DISCOUNT SUNGLASSES &  
ACCESSORIES PTY. LTD.**  
**A.C.N. 062 799 044**

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  day of  1997

16

April