

ACCC

5 MAY 1997

PERTH

TRADE PRACTICES ACT 1974

ACCC

COMPLAINANT: 5825924
COMPLAINED AG:
DOC ID: 97/5421
FILE: PC 97/10

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

BY BLAZE SUNGLASSES PTY LTD

97/28P

A.C.N. 064 173 164

BACKGROUND

1. Blaze Sunglasses Pty Ltd ('Blaze') is incorporated in the State of Western Australia and its principal activities include wholesaling sunglasses and the promotion and sales of 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 18 November 1996 the Commission purchased from the Ampol Service Station located at 207 Burslem Drive, Maddington, a pair of Blaze brand sunglasses supplied by Blaze ("the Sunglasses"), which can be described as having black plastic frames with dark blackish lenses 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 general purpose sunglasses to have a minimum luminous transmittance of 8% and a maximum of 50%. The Unisearch test results indicate that the average transmittance for the Sunglasses is 2.15%. The Sunglasses cannot, therefore, be classified as falling within any of the categories referred to in the Standard.
5. The Commission considers that Blaze 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 Blaze may have breached section 65C of the Act by supplying sunglasses which do not comply with the Standard.
6. Blaze acknowledges that it supplied sunglasses which may not comply with the Standard and that it may have contravened sections 53(a) and 65C of the Act.

UNDERTAKINGS

7. Blaze gives the following undertakings to the Commission for the purpose of section 87B of the Act. Blaze 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 Blaze 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 an advertisement, within 7 days of the Commission's acceptance of the undertaking, in one weekend edition of a major daily newspaper in each State in which Blaze supplies the Sunglasses that:
 - (i) the Sunglasses do not comply with the Standard;
 - (ii) consumers who return the Sunglasses to resellers, and resellers who return the Sunglasses to Blaze are entitled to a refund of their purchase price; and
 - (iii) the advertisements will be appear in the first 30 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 Blaze and to prevent, so far as is reasonably possible, any contraventions of the Act by Blaze, its directors, servants or agents;
- (f) within three (3) months of the undertaking Blaze 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) at the end of each twelve month period, for three (3) years following the acceptance of this undertaking by the Commission, Blaze will cause an independent 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 handing system that may be necessary to ensure achievement of its objectives.

ACKNOWLEDGMENTS

- 8. Blaze acknowledges the Commission's right to make this undertaking available for public inspection.
- 9. Blaze 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. Blaze 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 2nd day of April 1997

THE COMMON SEAL of
BLAZE SUNGLASSES PTY LTD)
was affixed in accordance with)
its Articles of Association:)



C.A. Goodwin
Director/Secretary

C.A. GOODWIN
Name (printed):

I. J. Black
Director

I. J. BLACK
Name (printed):

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

M. Marsh
Chairperson

This 10 day of May 1997