

97/29H

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF
SECTION 87B OF THE TRADE PRACTICES ACT 1974**

GIVEN BY

**TEQUILA INVESTMENTS PTY LTD (ACN: 009 583 242)
of 109 Liverpool Street Hobart**

1 BACKGROUND

- 1.1 Tequila Investments Pty Ltd ("the Company") is the registered owner of the business name Les Lees (Business Registration: 19458B).
- 1.2 As part of its business activities, the Company sells mens, womens and boys leisure and formal clothing from four stores within Southern Tasmania.
- 1.3 On 15 April 1996 the Company held a clearance sale at its Les Lees store located on the upper level of Eastlands Shopping Centre in Rosny, Tasmania. The Company placed a large sign adjacent to sale items that were located on a trestle at the entrance of the store. The following representation was made on the sign:

"Please choose carefully. There is NO RETURN & NO REFUND for trestle stock. Thank you."
- 1.4 On 2 May 1996 the Australian Competition and Consumer Commission ("the Commission") informed the Company that the alleged sign was misleading or deceptive or likely to mislead or deceive, and that the conduct was likely to amount to a false and misleading representation contrary to sections 52 and 53(g) of the Trade Practices Act ("the Act") respectively. On 6 May 1996 the Company contacted the Commission and undertook to cease the conduct.
- 1.5 The Company placed an advertisement in the 18 April and 1 May 1997 editions of *The Mercury* newspaper; and the 17 and 24 April and 1 May 1997 editions of *The Glenorchy Star Newspaper* promoting a 'closing down' sale for the Company's Moonah Les Lees store, located at 98 Main Road Moonah in Tasmania. The following representation was made in the advertisement:

"• No lay-bys • No exchanges • No refunds".

Annexed to this undertaking and marked "Annexure 1" is a true copy of the said advertisement.

- 1.6 On 1 May 1997 the Company placed three signs on the premises of the Moonah Les Lees store. The signs were located on the wall behind the sales counter, behind the cash register and on the cash register. The following representations were made on the signs respectively:
- (a) "No Exchanges No Refunds No Holds No Laybys"
 - (b) "No Exchanges No Refunds No Laybys"
 - (c) "No Refunds No Laybys No Exchanges"
- 1.7 Following an investigation by the Commission, the Commission reached the view that the company had contravened the Act in that the Company had engaged in conduct that was misleading or deceptive or likely to mislead or deceive, and that it had made false or misleading representations in regard to the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy on the purchase of sale items of clothing contrary to sections 52 and 53(g) of the Act respectively. The Commission considers the Company contravened sections 52 and 53(g) of the Act by the repeated conduct of limiting and attempting to limit the statutory warranty rights of consumers.
- 1.8 The Company accepts that consumers may have been misled by the Company's conduct referred to in paragraph 1.7 which has now ceased and corrective measures taken as per the undertakings.

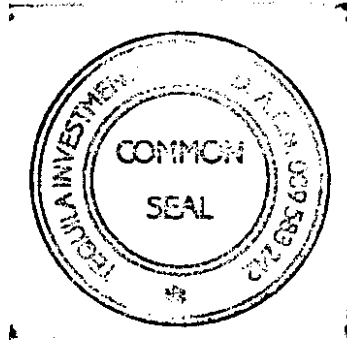
2 UNDERTAKINGS

- 2.1 The Company hereby undertakes for the purposes of section 87B of the Act that it or its subsidiaries:
- (a) will not, by any method, make representations which purport to limit the statutory warranty rights of consumers;
 - (b) within fourteen days of the date of this undertaking, place a corrective advertisement, in the terms of "Annexure 2" to these undertakings, in *The Mercury Newspaper* and *The Glenorcy Star Newspaper*;
 - (c) within twenty-one days of the date of this undertaking, provide instruction to staff on the relevant provisions of the Trade Practices Act and the requirement to comply with such provisions, and provide similar instruction to all new staff; and
 - (d) within 30 days of the date of this undertaking, advise the Commission in writing as to all actions the Company has taken and what procedures it has implemented to comply with these undertakings, and the results thereof to that time.

3 ACKNOWLEDGMENTS

- 3.1 The Company acknowledges this undertaking will be placed on the Commission's public register.
- 3.2 The Company acknowledges that the Commission may from time to time publicly refer to this document.
- 3.3 The Company acknowledges 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 these undertakings)
)
THE COMMON SEAL OF)
TEQUILA INVESTMENTS PTY LTD)
was hereunto affixed by authority)
of the Board of Directors in the)
presence of:)



John Bedonni
.....
Director

This *15th* day of *MAY* 1997

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

Allan Fels
.....

(Professor Allan Fels)
Chairperson

This *18* day of *May* 1997

LES
LEES

Moonah store closing.

LAST 3 DAYS!

AT LEAST
40% OFF
EVERYTHING

• No lay-bys • No exchanges • No refunds
92 Main Road Moonah.

07-10-2007

MOONAH STORE ONLY

LES LEES

MOONAH CLOSING DOWN SALE

In our recent advertising of the closing down sale at the Moonah Les Lees store we claimed that 'No Refunds' were available. It has been brought to our attention by the Australian Competition and Consumer Commission that such a statement is contrary to the Trade Practices Act. Les Lees acknowledges this.

Les Lees wishes to inform all customers that any product that may be unmerchantable (that is, defective) that was purchased during the Moonah store closing down sale may be returned to your nearest Les Lees store for a full refund on providing proof of purchase.

Les Lees wishes to maintain its usual high standard of customer service and its policy of customer satisfaction at all times. We regret any inconvenience this may have caused and confirm it was not our intention to mislead our customers.

• Les Lees •

Eastlands • Northgate • Hobart

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