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**WOLKENBERG**  
IMPORTS

**TRADE PRACTICES ACT 1974**

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

**BY**

**TOM WOLKENBERG IMPORTS PTY LTD**  
A.C.N. 004 716 232

**BACKGROUND**

1. Tom Wolkenberg Imports Pty Ltd trading as Sunchaser Sunglasses ('Sunchaser') is incorporated in the State of Victoria 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 26 March 1997 Commission staff purchased from a service station in Midland, Perth, Western Australia a pair of Sunchaser brand sunglasses ('the sunglasses') which had been supplied by Sunchaser. The sunglasses have black plastic frames with yellow plastic lenses and carry the marking '8519' on the frame. The sunglasses were described as Fashion Sunglasses on a swing tag label attached to the frame.
4. The sunglasses were tested by Unisearch Ltd ('Unisearch') in accordance with the Standard and failed to meet certain requirements of the Standard. Table 2.1 of the Standard requires a minimum violet colouration factor of 0.3%. The Unisearch test results indicate that the average transmittance for the sunglasses is 0.1%. The sunglasses should not have been classified as Fashion Sunglasses but as Specific Purpose Sunglasses Type (b) with the warning 'Not suitable for driving'.
5. The Commission considers that Sunchaser 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 Sunchaser may have breached section 65C of the Act by supplying sunglasses which do not comply with the Standard.
6. Sunchaser acknowledges that it supplied sunglasses which were incorrectly labelled and not in accordance with the Standard and consequently it may have contravened sections 53(a) and 65C of the Act.
7. Sunchaser has ceased the sale and supply of the sunglasses and has notified all retailers to whom it supplied the sunglasses to remove the sunglasses from sale and return them to Sunchaser for remedial action.

**TOM WOLKENBERG IMPORTS Pty. Ltd.**

A.C.N. 004 716 232

2 LYNCH STREET, HAWTHORN, MELBOURNE, AUSTRALIA 3122.

Phone: (03) 9818 3000 Toll Free: 1800 33 4891 Fax: (03) 9818 3001

**AUSTRALIAN DISTRIBUTORS SUNCHASER, VERTIGO AND STREET HEAT SUNGLASSES**

## UNDERTAKINGS

8. Sunchaser gives the following undertaking to the Commission for the purpose of section 87B of the Act. Sunchaser undertakes that:
- a) it will, within one month following the acceptance of this undertaking by the Commission, visit all retailers to whom it supplied the sunglasses to ensure that the sunglasses have been withdrawn from sale or correctly labelled;
  - b) it will, within one month following the acceptance of this undertaking by the Commission, appoint an appropriately qualified senior executive with overall responsibility for trade practices compliance;
  - c) it will, within two months following the acceptance of this undertaking by the Commission, institute and maintain a Trade Practices Compliance program designed to create a culture of compliance throughout Sunchaser and to prevent, so far as is reasonably possible, any contraventions of the Act by Sunchaser, its directors, servants or agents whosoever;
  - d) it will, within two months following the acceptance of this undertaking by the Commission, institute and undertake to maintain an effective Complaint Handling system consistent with the Australian Standard AS 4269-1995 (Complaints Handling); and
  - e) at the end of the twelve month period following the acceptance of this undertaking by the Commission, it will cause, at its expense, an independent person to 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; and
    - iii. any recommended changes to the compliance program and the complaint handling system that may be necessary to ensure achievement of their objectives.

## ACKNOWLEDGMENTS

9. Sunchaser acknowledges the Commission's right to make this undertaking available for public inspection.
10. Sunchaser acknowledges that the Commission may issue a media release in relation to this undertaking and may from time to time publicly refer to the undertaking.
11. Sunchaser acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the stated conduct.

## IN WITNESS OF THIS UNDERTAKING

This 27<sup>th</sup> day of June 1997

THE COMMON SEAL of  
TOM WOLKENBERG IMPORTS PTY LTD  
was affixed in accordance with  
its Articles of Association:

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)



*[Handwritten Signature]*  
.....  
Director/Secretary

.....  
Director

T.H.O.M.A.S. B. W.O.L.K.E.N.B.E.R.G.  
Name (printed):

.....  
Name (printed):

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

*[Handwritten Signature]*  
Chairperson

This 6<sup>th</sup> day of July 1997