

TRADE PRACTICES ACT 1974**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B****BY****GLOBAL DANCE FOUNDATION INCORPORATED
REGISTERED NUMBER 1004654****Background**

1. Global Dance Foundation Incorporated (GDF) is incorporated in the State of Western Australia under the Associations Incorporations Act 1987. The principal activities of GDF are the promotion of dance in Australia and overseas and to hold dance congresses, conventions, competitions and communications.
2. On or about 26 May 1995, GDF entered into an agreement with the Western Australian Tourism Commission (WATC) for the purpose of arranging a World Dance Congress 1997 (WDC) in Perth, Western Australia to be held between about 5 to 13 August 1997. WATC agreed to provide finance for the promotion of the WDC. GDF, in conjunction with Cedar Developments Pty Ltd (ACN 008 805 007), trading as Gilbert International, undertook to actively promote within Australia and overseas, the WDC concept by means of direct mailing to dance organisations and by placing information on the GDF Internet website <http://www.global-arts.org/gdf/>.
3. Between about November 1995 and August 1996 GDF sent out about 6,600 promotional packages to dance organisations in about 110 countries including Australia. During that time GDF did not receive any registration fees for the WDC. On or about May 1996 GDF became aware that the WDC could not be held. In early October 1996 GDF ceased to send out WDC promotional material but continued to provide information on its Internet site.
4. Following an investigation the Australian Competition and Consumer Commission (the Commission) considers that GDF, by continuing, from about 24 May 1996, the date on which it became aware the WDC could not be held, to represent that the WDC would be held, engaged in misleading or deceptive conduct contrary to Section 52 of the *Trade Practices Act 1974* (the Act).
5. GDF acknowledges that a contravention of the Act may have occurred.
6. When GDF became aware of the Commission's concerns, it removed all WDC promotional material from the GDF Internet Web site.

Undertakings

7. GDF gives the following undertakings to the Commission for the purposes of section 87B of the Act. GDF undertakes that:
 - (i) by the close of business Friday 29 August 1997 it will complete the mail out of letters, in terms of the letter which forms Attachment 1 to these Undertakings, to organisations to which WDC promotional material had been sent and which had responded to the WDC promotional material;
 - (ii) within seven days from the date the Commission accepts these Undertakings, it will place on its Internet Web site, a copy of the letter forming Attachment 1 to these Undertakings;
 - (iii) GDF will appoint a senior executive to be responsible for all promotional material relating to any future dance congress, convention or competition in which it becomes involved;
 - (iv) for a period of 3 years from the date the Commission accepts these undertakings, all future advertising for any congress, convention or competition will clearly identify the potential for the event to be postponed due to lack of support if that is the case;
 - (v) for a period of 3 years from the date the Commission accepts these undertakings, and in the event that any congress, convention or competition is to be, or is likely to be, postponed, GDF will notify each organisation which was invited to attend of the postponement within 7 days of GDF becoming aware of the possibility of the postponement: and
 - (vi) within 30 days from the date the Commission accepts these Undertakings, it will implement a trade practices compliance training program for its executives and staff.

Acknowledgments

8. GDF acknowledges the Commission's right to make the Undertakings publicly available for inspection and its right to publicise the matter.
9. GDF acknowledges that the Commission may from time to time publicly refer to the Undertakings.
10. GDF acknowledges and accepts that these Undertakings in no way denigrates from the rights and remedies available to any other person arising from the alleged conduct.

In Witness These Undertakings

This ^{11th} Eleventh day of August 1997

**The Common Seal of
Global Dance Foundation Inc**
was affixed in accordance with its
Constitution



Sylvia Box
.....

Member
Name (printed):
SYLVIA BOX

Colleen Reynolds
.....

Member
Name (printed):
COLLEEN D. REYNOLDS

P. G. Reynolds
.....

Member
Name (printed):
P. G. REYNOLDS

**Accepted by the Australian Competition and Consumer Commission Pursuant to
Section 87B of the Trade Practices Act 1974**

[Signature]
Chairperson

This 20 day of August 1997



GLOBAL DANCE FOUNDATION INC.

Attachment 1

Level 1
175 Main Street
Osborne Park
Perth, Western Australia 6017

Facsimile: 61 8 9345 3108

Email: admin@global-arts.org

<http://www.global-arts.org>

World Dance Congress 1997

The World Dance Congress cannot take place in 1997 due to failing to attract the sponsorships necessary to guarantee its success.

Dear World Dance community member,

In November 1995 more than 6000 Dance and dance associated organisations in 109 countries were airmailed the World Dance Congress "Invitation to the Future of Dance".

Those details were also accessible on the Foundation's Internet program <http://www.global-arts.org>

Unfortunately we have been unable to attract the international sponsorships necessary to ensure it will take place in accordance with the program distributed worldwide and the Congress is postponed until those conditions can be met.

We will reopen our Internet program in early August to keep dance informed on future plans and invite comment for publication on the "common interest of world dance".

Our failure to inform the dance community months ago was due to our inability to agree postponement conditions with our host sponsor.

We apologise to those who have written, faxed, emailed and sent performance videos for consideration and did not receive a response.

The Foundation Board of Management greatly appreciates your interest and support. Pursuit of the goals of the Congress and the "common interests of world dance" will continue.

Sincerely yours,

Peter G Reynolds
Chairman

ACCC Perth Regional Office
Submission to Enforcement Committee

Details of Matter:

Mr G Gallop MLA, Leader of the Opposition in the Western Australia Parliament, in March 1997 referred to the Perth office of the Commission, details of an international promotion by Global Dance Foundation Incorporated (GDF) of a World Dance Congress 1997 (WDC) to be held in August 1997. The Tourism Commission of WA had advanced some \$430,000 to help finance the promotion and conduct of the WDC. Mr Gallop alleged that GDF knew that the WDC could not be held as promoted due to lack of support yet GDF continued to promote the WDC on an Internet Web site. The matter has been the subject of considerable questioning in both Houses of the WA Parliament and many articles have appeared in The West Australian Newspaper. The latest development has been the referral of the matter to the WA Parliament Public Accounts Committee which has conducted public hearings and has called Mr Peter Reynolds of GDF to appear before it. The WA Premier has publicly stated that he will also appear before the Committee.

Intended Outcome:

That the misleading representations cease and are corrected.

Previous Commission/Enforcement Committee decisions:

None

Background:

In early 1995 GDF was formed by a number of people who were interested in the development in Western Australia of dancing. Negotiation by Mr Peter Reynolds of GDF with the WA Tourism Commission resulted in GDF entering into a contract with WATC for GDF to promote and stage the WDC in Perth over 12 days commencing 4 August 1997. GDF was permitted by the terms of the contract to use the services of an associated corporation, Cedar Developments Pty Ltd trading as Gilbert International, to promote the WDC. The WATC provided a \$430,000 grant to GDF.

2. In November 1995 GDF published an "Invitation to the Future of Dance" promotional package (the package) for the 4 day congress and 8 day festival which it then distributed by mail to over 6000 potential attendees in Australia and overseas. The package detailed the intended WDC program and included a photograph of, and comments by, the WA Premier Hon R Court, and the Perth Lord Mayor Dr P Natrass JP. The WDC registration fee was set at \$600 with a deposit of \$150 payable upon registration. Entrance charges for the proposed dance program were also detailed. The package also included an invitation to take up membership of GDF. An original copy of the package is Attachment 1.

3. GDF also promoted the WDC on an Internet web site which included material similar to that contained in the mail out package.

4. By about May 1996 GDF was aware that there were problems with the future of the WDC as expected nominations had not been received. GDF raised its concerns with WATC. Copies of WATC minutes of meetings show that WATC was aware of the problems facing GDF but it considered that any deferment of the WDC was a matter for

GDF to decide. GDF did not share this view. By August 1996 GDF say it ceased to mail out the package. No changes were made to the Internet information.

5. On 12 March 1997 the allocation of funds by WATC to GDF was raised in the WA Legislative Council. On 14 March 1997 the matter was raised with Perth office by Dr Gallop's office and on 20 March 1997 a written submission was received from Dr Gallop.

6. The substance of the allegations were put to GDF on 3 April 1997. GDF responded on 14 April 1997 and has, since that date, continued to cooperate with this office by providing information and documents. It seems that GDF was of the view that the terms of the contract with WATC precluded GDF from making any public announcement of a deferment of the WDC unless WATC gave approval for the announcement. Following receipt of the Commission's letter of 3 April 1997, GDF removed the promotional material from the Internet. It has prepared a letter announcing a postponement of the WDC which it intends to send to all persons who responded to the package. A copy of the letter will be placed on the Internet. GDF says that it did not accept any nominations deposits for the WDC. All funds allocated by WATC have been used up in the promotion of the WDC. The WATC representative on the GDF Committee of Management has resigned and the membership of GDF is now 3 persons.

7. GDF was advised that, in order to overcome concerns the Commission may have about the promotion of the WDC, an option may be for GDF to offer to the Commission a s87B undertaking. GDF has provided this undertaking.

8.. The s87B offered by GDF contains undertakings that GDF will complete a mail out of the letter by 29 August 1997 and that the letter will be placed on the Internet. Also, GDF will for a period of 3 years from the date of acceptance by the Commission of the undertaking, ensure that all promotional material is checked and in the event of GDF becoming aware of any congress or other proposed dance event being likely to be postponed, GDF will advise all invitees within 7 days of so becoming aware. GDF has also undertaken to implement a trade practices compliance program.

Recommendations:

1 That the s87B offered by GDF be recommended for acceptance by the Chairman in settlement of this matter and that Dr Gallop be advised of the outcome. The s87B Undertaking is attached to this paper.

Potential Obstacles/Opportunities:



1. The WA Government Public Accounts Committee is some way off finalising its hearings. The allegations concerning the provision of public funds to private organisations are not relevant to trade practices legislation. However, the promotion, by a private owned business such as GDF, of future services which contain elements of misleading or deceptive conduct needs to be addressed. Given the size of GDF and that potential attendees have not paid any money to the WDC, the resolution of the complaint involving possible s52 conduct by way of a s87B undertaking, should indicate to all the parties that the Commission has acted in an impartial and effective manner.

Resource use:

Resources are available to prepare letters to Dr Gallop.

Issues for decision:

1. To recommend that the Chairman accept the s87B offered by GDF.

<p>P Dawson  ----- Case Officer Date: 12 August 1997</p>	<p>L Hollis  ----- Regional Director Date: 12 August 1997</p>	<p>----- Committee Member Date:</p>	<p>----- Minute Secretary Date:</p>
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