

TRADE PRACTICES ACT 1974**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION GIVEN FOR THE PURPOSE OF
SECTION 87B****BY****ICENET PTY LTD ACN 056 599 305
TRADING AS "ICENET".****BACKGROUND**

1. Icenet Pty Ltd ("Icenet") formerly Dram Enterprises Pty Ltd is incorporated in the State of Western Australia. Icenet's principal business activity is the provision of internet access services carried on under its registered business name "Icenet".
2. On or about 1 April 1997 Icenet published and directly distributed a four page letter promoting its internet access services (the promotional letter). The promotional letter contained the following representations:-

"...IAPs that offer unlimited time access also have 'killer daemons' that knock you off line after an hour or two and don't let you log back for 1/2 hr to 2 hr. This is most upsetting if you are in the middle of a down load, or a chat or sending mail to an important client etc. Most providers can only provide a user to modem ratio of 10 to one or more.

Our effective user to modem ratio is about 1 to 1. This enables you to get on to the network at almost any hour of the day or night. ..."

3. On or about 6 May 1997 Icenet published and distributed a brochure headed "Icenet May/June 1997 Special Offers" (the promotional brochure). The promotional brochure contained the same representations referred to in paragraph 2 above. Icenet distributed the promotional brochure at the Perth Computer Expo, 16-18 May 1997.
4. Following a complaint that the promotional letter was misleading and deceptive or false and misleading the Australian Competition and Consumer Commission ("the Commission") wrote to Icenet on 19 June 1997 detailing the complaints. The complaints were:-

1. The claim that **“...IAPs that offer unlimited time access also have ‘killer daemons’ that knock you off line after an hour or two and don’t let you log back for 1/2 hr to 2 hr....”** was not accurate in that not all IAPs had ‘killer daemons’ that cut off service after an hour or two, and logging back on was available in less than 1/2 hr to 2 hr and in most cases was available after 5 minutes.

2. The claim that **“Most providers can only provide a user to modem ratio of 10 to one or more. Our effective user to modem ratio is about 1 to 1. This enables you to get on to the network at almost any hour of the day or night. ...”** used different measures in making the service comparison it not an accurate comparison and distorted the results in favour of Icenet.

5. On 24 June 1997 Icenet faxed a written response to the Commission and on the same day offered certain undertakings to the Commission to settle the matter.
6. Following its investigation, the Commission considered:
 - that Icenet had engaged in misleading or deceptive conduct in service level comparisons with its competitors services in respect to the use of user to modem ratio and effective user to modem ratio and the claims made in respect of time restrictions to access caused by the “killer daemons” which constituted breaches of section 52 of the Trade Practices Act 1974 (“the Act”);
 - that Icenet had made false or misleading representations in respect to the use of user to modem ratio and effective user to modem ratio and the benefits of the services which constituted a breach of section 53(c) of the Act; and
 - that Icenet had made false or misleading claims in respect of time restrictions to access caused by the “killer daemons” and the characteristics of competitors services which also constituted a breach of section 53(c) of the Act.
7. Icenet acknowledges that it may have contravened the Act.

UNDERTAKINGS

8. Icenet gives the following undertakings to the Commission for the purpose of section 87B of the Act. Icenet undertakes that:

- (i) it will forthwith cease use of the promotional letter referred to in paragraph 2 above, as it stood, and the promotional brochure referred to in paragraph 3 above, as it stood;
- (ii) in future it will not engage in misleading or deceptive conduct in comparisons of its service levels with the service levels of its competitors or statements about the performance characteristics of competitor services;
- (iii) in future it will not make false and misleading representations in comparisons of its service levels with the service levels of its competitors or statements about the performance characteristics of competitor services;
- (iv) it will offer to terminate the contracts of, and provide refunds to, those customers who claim Icenet misled them by using the promotional letter referred to in paragraphs 2 above, or the promotional brochure referred to in paragraph 3 above.
- (v) it will by 5 September 1997;-
 - (a) send by e-mail to all customers,
 - (b) publish and distribute by direct delivery to all businesses it previously delivered the promotional letter, referred to in paragraph 2 above, to in April 1997 (in so far as it is able to identify them),
 - (c) send by e-mail or facsimile transmission, to all other recipients (in so far as it is able to identify them) of the promotional letter referred to in paragraph 2 above, since April 1997, and
 - (d) commence display on its Web Page for a period of 3 calendar months,

the corrective information in the form of Schedule 1 to this Undertaking.

- (vi) it will by 5 September 1997 cause to be published in the Computer Lift-out pages of The West Australian newspaper a corrective advertisement two columns wide (7.4 cms) and 12 cms deep in the form of Schedule 1 to this Undertaking.
- (vii) it will within three months of signing this undertaking develop and institute a Trade Practices Act education and compliance program for its management and staff including the following elements:
 - (a) an education program designed to make all executive directors and relevant staff conversant with the provisions of the Act;
 - (b) implement appropriate checking measures to screen its advertising and promotional material to ensure it complies with the Act; and

- (c) the appointment of a senior executive as its Trade Practices Act compliance officer to ensure it meets its obligations as set out in this Undertaking.

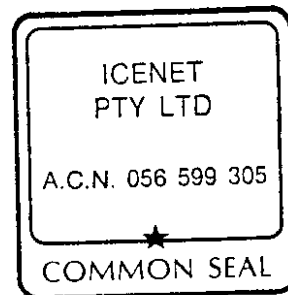
ACKNOWLEDGMENTS

9. Icenet acknowledges the Commission's right to make this undertaking publicly available for inspection and its right to publicise the matter.
10. Icenet acknowledges that the Commission will issue a media release and will from time to time publicly refer to the undertaking.
11. Icenet 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 20th day of August 1997.

THE COMMON SEAL of ICENET PTY LTD



(was affixed in accordance with its Articles)

Secretary
Name (printed):

David Di Prospero.

Director
Name (printed):

RICHARD DI PROSPERO.

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

Allan Fels
Chairperson

This 27 day of August 1997

SCHEDULE 1

ICENET PTY LTD formerly DRAM ENTERPRISES PTY
LTD ACN 056 599 305 trading as ICENet.

CORRECTIVE ADVERTISEMENT AND APOLOGY

ICENet advertising of its internet access services.

Icenet accepts the Australian Competition and Consumer Commission's concerns that advertising material it distributed since April 1997 by direct distribution to businesses and by hand out at the Perth Computer Show 97 which contained the following claims:-

"...IAPs that offer unlimited time access also have 'killer daemons' that knock you off line after an hour or two and don't let you log back for 1/2 hr to 2 hr. ..."
When this was not the case;

and

"Most providers can only provide a user to modem ratio of 10 to one or more.Our effective user to modem ratio is about 1 to 1. ..." By using different measures of service the comparison was distorted in favour of Icenet and was not an accurate comparison.

These claims may have misled consumers in breach of the *Trade Practices Act 1974*. Icenet apologises for advertising in this manner.

Icenet offers to terminate contracts and provide refunds to customers who claim that Icenet misled them by these claims.

If you wish to terminate your contract and receive a refund please cease using the service and immediately contact ACCOUNTS on 9227 1676.