

TRADE PRACTICES ACT 1974

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

BY

MNB VARIETY IMPORTS PTY LTD
(A.C.N 002 721 324)

BACKGROUND

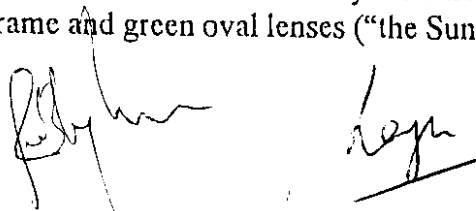
1. In the "Informations for an Offence" filed in proceedings number NG 963/1996 and NG 964/1996 in the Federal Court of Australia, on 12 December 1996, copies of which are at Schedule 1 of this Undertaking, the charges allege that MNB Variety Imports Pty Limited ("MNB"), formerly known as MNB Electronics Pty Ltd, engaged in conduct in contravention of section 65C of the Trade Practices Act 1974.
2. MNB is an importer of consumer electronic goods, non-electronic household goods, giftware and other novelty and sundry goods. MNB on-sells the imported goods to various wholesale and retail outlets.

Sun and Fun Inflatable Swim Aids

3. In September 1994, MNB imported a product known as, "Sun & Fun Inflatable Swim aids" ("the swim aids"), which it then supplied to various customers.
4. On or about 22 November 1994, MNB supplied the swim aids to Modfall Pty Ltd, trading as Dollars & Sense. The swim aids were incorrectly invoiced to Genesis Retail Pty Ltd (invoice number 32019).
5. Following an investigation by the Australian Competition and Consumer Commission ("the Commission"), MNB was informed that the Commission considered that neither the swim aids nor the packaging of the swim aids contained the markings as required by the prescribed consumer product safety standard, namely the Australian Standard AS1900-1991, "Flotation Toys and Swimming Aids for Children," ("the Swim Aids Standard").

Sundance Sunglasses

6. In about February 1995, MNB imported various styles of "Sundance" sunglasses which it then supplied to various customers. One style of the 'Sundance' brand of sunglasses had a gold metal frame and green oval lenses ("the Sundance sunglasses in issue").



7. On or about 15 March 1995, MNB supplied the Sundance sunglasses in issue to Youngdown Pty Ltd, trading as GO-LO.
8. Following an investigation by the Commission, MNB was informed that the Commission considered that the Sundance sunglasses in issue did not comply with the field of view, density matching, refractive and marking provisions of the prescribed consumer product safety standard, namely the Australian Standard AS 1067.1-1990, "Sunglasses and Fashion Spectacles" ("the Sunglass standard").

The Commission contends that the supply of the swim aids and the Sundance sunglasses was in contravention of section 65C of the Trade Practices Act 1974 ("the Act").

Upon the request of the Commission, MNB:

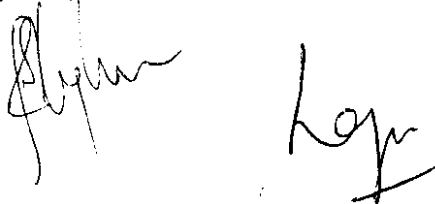
- (a) ceased supplying the swim aids and the Sundance sunglasses in issue;
- (b) in relation to the swim aids, caused safety recall advertisements to be published in the Sydney Morning Herald at page 30 on Saturday 9 December 1995 and in the Daily Telegraph, Brisbane Mail and Sydney Morning Herald on Friday 15 December 1995. A copy of the advertisement as published in the Sydney Morning Herald on Saturday 9 December 1995 is at Schedule 2 of this Undertaking;
- (c) in relation to the Sundance sunglasses in issue, caused a safety recall advertisement, to be published in the Daily Telegraph at page 93 on Friday 16 February 1996. A copy of this advertisement is at Schedule 3 of this Undertaking.

MNB admits that the supply of the swim aids and the Sundance sunglasses in issue referred to above, contravened section 65C(1) of the Act and has agreed to give the following Undertaking pursuant to section 87B of the Act.

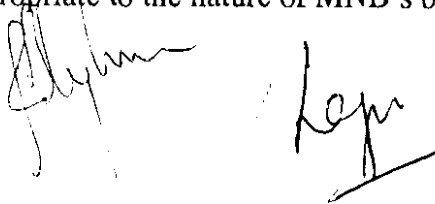
UNDERTAKING

MNB Variety Imports Pty Ltd ("MNB") undertakes for the purposes of section 87B of the Trade Practices Act 1974 ("the Act"):

1. That MNB will not supply, contrary to section 65C(1) of the Act, goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard;
2. That MNB will not supply, contrary to section 65C(1) of the Act, goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind in respect of which there is in force a notice under section 65C declaring the goods to be unsafe goods;



3. That MNB will not supply, contrary to section 65C(1) of the Act, goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind in respect of which there is in force a notice under section 65C imposing a permanent ban on the goods;
4. That MNB will not export goods the supply of which is prohibited by section 65C(1) of the Act unless the Minister has, by notice in writing given to MNB, approved the export of those goods;
5. That MNB will not supply, contrary to section 65D(1) of the Act, goods that are intended to be used, or are of a kind likely to be used, by a consumer, being goods of a kind in respect of which a consumer product information standard has been prescribed, unless the corporation has complied with that standard in relation to those goods;
6. That MNB will within one (1) month of signing this Undertaking, implement a Trade Practices Compliance Program in the form that appears at Schedule 4 of this Undertaking, the aim of which is to create a culture of compliance throughout MNB and to prevent, so far as is reasonably possible, any contraventions of the Act by itself, its directors, servants or agents; and that the Trade Practices Compliance Program will remain in force, for a minimum period of three (3) years from the date on which the Trade Practices Compliance Program is implemented;
7. That MNB will use its best endeavours to acquaint itself, its directors, servants and agents with all prescribed consumer product safety standards and prescribed consumer product information standards relating to products supplied or likely to be supplied by MNB in Australia;
8. That it will appoint a senior manager of MNB ("the Compliance Officer"), with responsibility for the implementation of the Trade Practices Compliance Program and overall trade practices compliance;
9. That MNB will develop and implement an education program using the Commission's training program known as "Best and Fairest," calculated to have the relevant staff conversant with the provisions of the Act to a level where:
 - (i) staff can avoid obvious contraventions of the Act and can identify more complex potential trade practices problems for referral to the Compliance Officer in MNB's compliance infrastructure;
 - (ii) the Compliance Officer can address more complex trade practices issues and (if that person is unable to give the relevant advice) identify issues which require referral to MNB's solicitors or to a more appropriate organisation.
10. The Compliance Officer will certify, by way of statutory declaration, that the following steps have been taken:
 - (i) during the first year, all relevant MNB staff completed those parts of "Best and Fairest" appropriate to the nature of MNB's business;

Two handwritten signatures in black ink are present at the bottom of the page. The signature on the left is more stylized and cursive, while the one on the right is more blocky and legible.

- (ii) all relevant MNB staff who have not completed "Best and Fairest" prior to commencement of that year, have done so during the year;
- (iii) that MNB, its directors, servants and agents are conversant and well acquainted with all prescribed consumer product safety standards and prescribed consumer product information standards relating to products supplied or likely to be supplied by MNB in Australia.

A certification is to be forwarded to the Commission within 30 days of the end of each of the 3 years.

11. That MNB will, at its own cost, cause an independent person ("the Independent Officer"), being a person who is not a director, servant or agent of MNB and being a lawyer, accountant or other compliance professional acceptable to the Commission, to review and report to the Commission, within 30 days of the end of each 12 month period of the 3 years following the implementation of the Trade Practices Compliance Program on:

- (i) The implementation of the Trade Practices Compliance Program and the achievement of its objectives over the preceding 12 months; and
- (ii) Recommend changes to the Trade Practices Compliance Program that may be necessary to ensure achievement of its objectives.

12. That MNB shall:

- (i) incorporate into the Trade Practices Compliance Program and implement as part of that program all changes to it that are recommended by the Independent Officer in his or her report and which are also approved by the Commission in writing; and
- (ii) implement those changes within one (1) month of the Commission's written notification of its approval.

ACKNOWLEDGMENTS

MNB acknowledges that the Commission will make this Undertaking available for public inspection.

MNB further acknowledges that the Commission will from time to time publish and publicly refer to this Undertaking at its discretion.

MNB further 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 THESE UNDERTAKINGS)
AND ITS AGREEMENT THE COMMON SEAL))
OF MNB VARIETY IMPORTS PTY LTD)
was hereunto affixed by authority of the Board of)
Directors previously given in presence of:)



.....
Director *Stephen*

.....
Secretary *Lynn*

This 18th day of August 1997

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

.....
(Professor Allan Fels)
Chairperson

This 31 day of October 1997

Stephen
MNB

Lynn

SCHEDULE 1

1. **INFORMATION FOR AN OFFENCE
PROCEEDINGS NO. NG 963/1996**

2. **INFORMATION FOR AN OFFENCE
PROCEEDINGS NO. NG 964/1996**

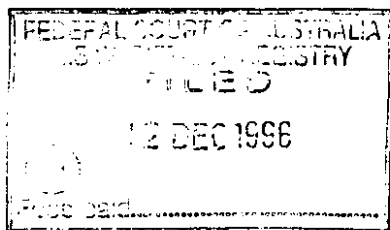
M B Stephan

Ray

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES
DISTRICT REGISTRY
GENERAL DIVISION

NO. **N 6 - 963 / 1996**

TRADE PRACTICES ACT 1974
SECTIONS 65C(1) & 79(1)



BETWEEN: AUSTRALIAN COMPETITION &
CONSUMER COMMISSION
Prosecutor

AND: MNB VARIETY IMPORTS PTY
LTD
(ACN 002 721 324)
Defendant

Form 52

INFORMATION FOR AN OFFENCE

(Order 49 rule 2)

At the time and place specified below Jenny Zaverdinos, an officer of the Australian Competition & Consumer Commission, Level 5, 77 Castlereagh Street, Sydney in the State of New South Wales, being a person duly authorized to sign this information on behalf of the Australian Competition & Consumer Commission, appears before **WARREN WILSON**, Deputy District Registrar of the Federal Court of Australia, New South Wales District Registry, and informs the said **WARREN WILSON** that on or about 22 November 1994 at Sydney in the State of New South Wales, MNB Variety Imports Pty Ltd did commit an offence against section 79(1) of the Trade Practices Act 1974 ("the Act") by contravening section 65C(1)(a) of the Act, in that MNB Variety Imports Pty Ltd, being a corporation, did in trade or commerce, supply goods that were of a kind likely to be used by a consumer, being goods of a kind in respect of which there was a prescribed consumer product safety standard and which did not comply with that standard.

The particulars of the charge are -

1. The defendant, formerly known as MNB Electronics Pty Ltd, being a corporation within the meaning of the Act, did at all material times carry on business as an importer and wholesale supplier of electronic, general and novelty goods from premises at showroom 7C, 7-11 Allen Street, Waterloo in the State of New South Wales.
2. On 2 September 1996 the defendant changed its name to MNB Variety Imports Pty Ltd.
3. Modfall Pty Ltd was at all material times a company carrying on business at Parramatta in the State of New South Wales as a shop retailer of general and novelty goods trading under the business name of "Dollars & Sense".
4. On or about 22 November 1994 the defendant, by invoice number 32019, supplied to "Dollars & Sense" goods consisting of 216 pairs of swimming aids

Commonwealth Director of Public Prosecutions
Level 35
201 Elizabeth Street
SYDNEY NSW 2000

DX 11497
SYDNEY DOWNTOWN
Tel: (02)9321-1175
Fax: (02)9264-8241
Ref: M Poberezny

MAY
M B V
[Handwritten signature]

(inflatable arm bands) styled "Sun & Fun Inflatable Swim Aids" for retail re-sale.

5. The goods failed to comply with the prescribed consumer product safety standard, viz "Australian Standard: Flotation toys and swimming aids for children, AS1900-1991" in that (i) the goods were not marked with the name, trade name, or trademark of the manufacturer or supplier in Australia contrary to clause 8.1.1(a) of the standard; (ii) the goods were not marked with any manufacturing batch identification contrary to clause 8.1.1(b) of the standard; (iii) the goods were not marked with the words "WARNING USE ONLY UNDER COMPETENT SUPERVISION" contrary to clause 8.1.5 of the standard; (iv) the packaging of the goods was not marked with the name, trade name, or trademark of the manufacturer or supplier in Australia contrary to clause 8.2 of the standard; (v) the packaging of the goods was not marked with the words "WARNING USE ONLY UNDER COMPETENT SUPERVISION" contrary to clause 8.2 of the standard.



The seal of the Australian Competition & Consumer Commission was hereunto affixed in accordance with regulation 5(3) of the Trade Practices Regulations.

Date: 10th December 1996

Allan Fels
Allan Fels - Chairman:

Helen Lu
Helen Lu - Secretary:

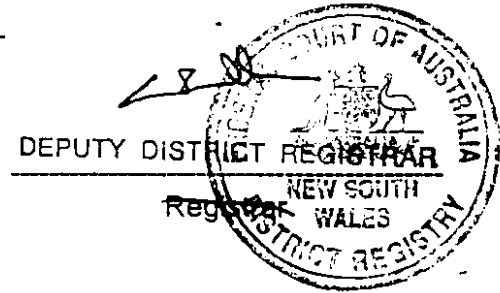
Jenny Zaverdinos
Signature of Jenny Zaverdinos
on behalf of the Prosecutor

Time: 11⁰⁰ am 12 December 1996

Place: Federal Court of Australia
Law Courts Building
Queens Square
SYDNEY NSW 2000

Signed by the abovenamed prosecutor before me -
Date: 12 DEC 1996

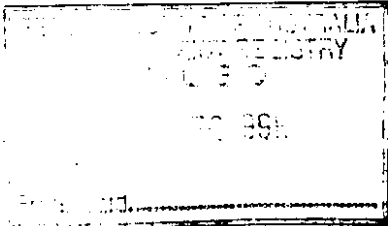
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Roy



IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES
DISTRICT REGISTRY
GENERAL DIVISION

NO: **NG - 964 / 1996**

TRADE PRACTICES ACT 1974
SECTIONS 65C(1) & 79(1)



BETWEEN: AUSTRALIAN COMPETITION &
CONSUMER COMMISSION
Prosecutor

AND: MNB VARIETY IMPORTS PTY
LTD
(ACN 002 721 324)
Defendant

Form 52

INFORMATION FOR AN OFFENCE

(Order 49 rule 2)

At the time and place specified below Jenny Zaverdinos, an officer of the Australian Competition & Consumer Commission, Level 5, 77 Castlereagh Street, Sydney in the State of New South Wales, being a person duly authorized to sign this information on behalf of the Australian Competition & Consumer Commission, appears before **WARREN WILSON**, Deputy District Registrar of the Federal Court of Australia, New South Wales District Registry, and informs the said **WARREN WILSON** that between 15 March 1995 and 3 April 1995 at Sydney in the State of New South Wales, MNB Variety Imports Pty Ltd did commit an offence against section 79(1) of the Trade Practices Act 1974 ("the Act") by contravening section 65C(1)(a) of the Act, in that MNB Variety Imports Pty Ltd, being a corporation, did in trade or commerce, supply goods that were of a kind likely to be used by a consumer, being goods of a kind in respect of which there was a prescribed consumer product safety standard and which did not comply with that standard.

The particulars of the charge are -

1. The defendant, formerly known as MNB Electronics Pty Ltd, being a corporation within the meaning of the Act, did at all material times carry on business as an importer and wholesale supplier of electronic, general and novelty goods from premises at showroom 7C, 7-11 Allen Street, Waterloo in the State of New South Wales.
2. On 2 September 1996 the defendant changed its name to MNB Variety Imports Pty Ltd.
3. Youngdown Pty Ltd was at all material times a company carrying on business at Bondi Junction in the State of New South Wales as a shop retailer of general and novelty goods trading under the business name of "Go-Lo".
4. Between 15 March 1995 and 3 April 1995 the defendant, by invoice number 33602, supplied to "Go-Lo" goods consisting of 9,000 pairs of sunglasses styled

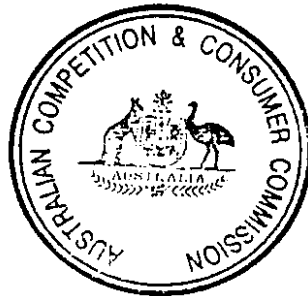
Commonwealth Director of Public Prosecutions
Level 35
201 Elizabeth Street
SYDNEY NSW 2000

DX 11497
SYDNEY DOWNTOWN
Tel: (02)9321-1175
Fax: (02)9264-8241
Ref: M Poberezny

M. J. Zaverdinos
L. R. [unclear]

"Sundance" for retail re-sale.

5. The goods failed to comply with the prescribed consumer product safety standard, viz "Australian Standard: Sunglasses and Fashion Spectacles, AS1067.1-1990" in that (i) the field of view of the lenses was less than 30mm in diameter contrary to clause 2.1.2 of the standard; (ii) the difference between the refractive powers of the lenses was greater than 0.12m⁻¹ in any pair of parallel meridians contrary to clause 2.2.3 of the standard; (iii) the difference between the luminous densities at corresponding points within a circle of 30mm diameter centred on the datum centre of a pair of lenses was greater than 0.06 contrary to clause 2.3.4 of the standard; and (iv) the goods were not labelled with the words "SUNGLASSES These glasses are intended to reduce sun glare in ordinary circumstances" contrary to clause 4.2.3 of the standard.



The seal of the Australian Competition & Consumer Commission was hereunto affixed in accordance with regulation 5(3) of the Trade Practices Regulations.

Date: 10th December 1996

Allan Fels
Allan Fels - Chairman:

Helen Lu
Helen Lu - Secretary:

Jenny Zaverdinos
Signature of Jenny Zaverdinos
on behalf of the Prosecutor

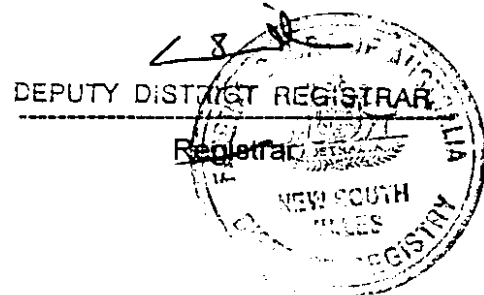
Time: 11⁰⁰ am 12 December 1996

Place: Federal Court of Australia
Law Courts Building
Queens Square
SYDNEY NSW 2000

Signed by the abovenamed prosecutor before me -

Date: 12 DEC 1996

[Handwritten signature]



SCHEDULE 2

**SAFETY RECALL ADVERTISEMENT
PUBLISHED IN
THE SYDNEY MORNING HERALD
AT PAGE 30
ON SATURDAY 9 DECEMBER 1995**

MB / Flynn
LB / Lopez

'SAFETY RECALL'

**SUN & FUN INFLATABLE
7 1/2" X 7 1/2" SWIM AIDS
& 20" SWIM RINGS**

Anyone who has purchased
Sun Fun Swim Aids and/or
Swim Rings, please return to place of
purchase for full refund. As the product
does not comply with 1900-1991
Australian Standard Floatation Toys
and Swim Aids for Children.

Product was sold around late
1994 and early 1995.

MNB ELECTRONICS P/L
Ph (02) 690 1622
7C/7-11 ALLEN STREET
WATERLOO NSW 2017

M.B. V. [Signature]
LB [Signature]

SCHEDULE 3

**SAFETY RECALL ADVERTISEMENT
PUBLISHED IN
THE DAILY TELEGRAPH
AT PAGE 93
ON FRIDAY 16 FEBRUARY 1996**

MB v. Flynn
LB v. Lynn

SUNGLASSES SAFETY RECALL

The "Sundance" glasses have a gold metal frame with green oval lenses.
Anyone who has purchased these sunglasses can return them to the place of purchase for a full refund. These glasses do not comply with the field of view requirement being too narrow, the density matching requirements and other requirements of Australian Standard AS1067.1-1990. These sunglasses cannot be sold in Australia.

MNB MNB Electronics Pty Ltd
PH: (02) 690 1622
PO Box 46, Strawberry Hills
Post Office, NSW, 2012

*Mr. Stephen
L.A. Layan*

SCHEDULE 4

TRADE PRACTICES COMPLIANCE PROGRAM

OF

MNB VARIETY IMPORTS PTY LTD

(A.C.N 002 721 324)

*MAY 11/2011
LBY Layne*

TRADE PRACTICES COMPLIANCE PROGRAM

OF

MNB VARIETY IMPORTS PTY LTD

(A.C.N 002 721 324)

1. Maintain up-to-date copies of all prescribed consumer product safety standards and prescribed consumer product information standards that relate to products that MNB supplies, at MNB's business premises.
2. Identify the suppliers from whom MNB purchases its products and forward to those suppliers up-to-date copies of the relevant safety standards and information standards and any other publications that may assist in interpreting those standards.
3. Upon identifying a prospective product for importation and distribution into Australia make the necessary enquiries to ascertain whether the product is required to comply with any prescribed consumer product safety standards and/or prescribed consumer product information standards.
4. If MNB supplies a product or intends to supply a product that is subject to a product safety standard and/or information standard:
 - (a) obtain a sample(s) from the supplier and have such sample(s) tested by:
 - (i) an organisation registered by the National Association of Testing Authorities (NATA) to test the particular product to the relevant standard; or
 - (ii) where a NATA accredited organisation does not exist, an appropriately qualified person to test the particular product to the relevant standard;to ensure that the product complies with the relevant standard prior to supplying the product in Australia; and
 - (b) ensure that the product and/or its packaging are marked with all the required markings and/or warnings; and
 - (c) ensure that the product complies with the relevant standard prior to supplying the product in Australia.
5. Ensure that the products supplied by MNB prior to the implementation of this compliance program comply with the relevant standards.

MA: [Signature]
L.A.: [Signature]