

TRADE PRACTICES ACT 1974**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF
SECTION 87B****BY****THE REJECT SHOP (AUST) PTY LTD
ACN. 006 122 676****BACKGROUND**

- (1) The Reject Shop (Aust) Pty Ltd ("The Reject Shop") is a company incorporated in Victoria which retails a variety of products including clothing, homeware, giftware and cosmetics.
- (2) Following an investigation by the Australian Competition and Consumer Commission ("the Commission"), the Commission reached the view that The Reject Shop contravened section 65D of the *Trade Practices Act 1974* ("the Act") by supplying certain cosmetic products without complying with the Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations ("the cosmetics standard").
- (3) In about May 1997 Commission staff found that nine cosmetic products offered for sale in The Reject Shop's store in Bourke Street, Melbourne did not comply with the cosmetics standard as they did not have their ingredients listed on their containers.
- (4) On or about 1 July 1997 the Commission sent a letter to The Reject Shop advising it of the products which were found in its store not to comply with the cosmetics standard and of its obligations regarding cosmetic labelling.
- (5) On 20 August 1997 a Commission officer attended The Reject Shop's store in Bourke Street, Melbourne where he noticed on display the following products which he purchased:

Cyclax Apricot Facial Scrub;

Cyclax Out of Evening Primrose Night Cream;

Cyclax Vitamin E Face and Body Cream;

L'Oreal Elseve instant non-rinse intensive hair conditioner;

Xavier Laurent desir desir Paris perfume body spray; and

Xavier Laurent Louisa Paris perfume body spray.

- (6) None of the products referred to in paragraph 5 above had their ingredients listed on their containers. Further, there was no printed material displayed in the store close to the products which stated their ingredients.
- (7) On 26 August 1997 a Commission officer again attended The Reject Shop's store in Bourke Street, Melbourne where he noticed on display the following products which he purchased:

Deo Delle parfum body spray;

Actuality Sheer Make-Up;

Actuality Nail Care 1 Base Coat;

Cutex Lasting Colour Vibrance nail polish;

Revlon moisturising body lotion;

Giorgio Men's Soaps;

- (8) None of the products referred to in paragraph 7 above had their ingredients listed on their containers. Further, there was no printed material displayed in the store close to the products which stated their ingredients.
- (9) When the Commission officer attended the Reject Shop store on 26 August 1997 he also noticed on display the following products which he purchased:

Actuality Lipstick;

Actuality Colour Lash mascara;

Cool Cameo Creme nail polish

- (10) The Actuality Lipstick only had 3 of its ingredients listed on its container and the Actuality Colour mascara only had two of its ingredients listed on its container. The ingredients listed on the container of the Cool Creme Cameo nail polish were not readable as they were printed in very small print. There was no printed material displayed in the store close to these products which stated their ingredients.
- (11) The Commission is concerned that The Reject Shop continued to supply cosmetic products without complying with the cosmetics standard following its letter to The Reject Shop in July 1997.

UNDERTAKINGS

(12) The Reject Shop hereby undertakes for the purposes of section 87B of the Act that:

(a) it will not in trade or commerce sell or offer for sale cosmetic products (including the products referred to in paragraphs 5,7 and 9 above) without their ingredients being listed clearly on their respective containers in descending order by volume or mass or otherwise in accordance with the cosmetics standard;

(b) within ten days of acceptance of this undertaking it will:

(i) cause to be published an advertisement within the first six pages of the following major metropolitan newspapers:

the Sydney Morning Herald;
the Melbourne Age;
the Herald Sun; and
the Adelaide Advertiser; and

(ii) display a sign for two months at the point of sale in all of its stores

which inform consumers of the cosmetic products which it has sold within the 3 months last preceding the acceptance of this undertaking and which The Reject Shop believes do not comply with the cosmetics standard and further, offering customers in respect of any other non-complying cosmetics which The Reject Shop has sold within that period, a refund of the purchase price upon presentation of a full, partly full or empty container or package of the cosmetic product which they purchased.

The advertisement and sign will also state for which of the cosmetic products referred to therein it can provide a list of ingredients. Where there are cosmetic products which are referred to in the advertisement or sign in respect of which The Reject Shop cannot provide a list of their ingredients, The Reject Shop shall state in the advertisement and sign that it will refund to consumers who have purchased any of these products from it the amount which they paid to purchase them upon being presented with a full, partially full or empty container or package of the cosmetic product which they purchased.

The advertisements and signs will be in the form of Annexure "A" hereto. The advertisements will be of a size not less than three columns wide by 20 cm deep and printed in at least 12 point text. The signs will be of a size not less than 20 cm wide and 20cm long and printed in at least 12 point text;

(c) it will provide in accordance with the cosmetics standard a list of ingredients of the cosmetic products which are offered in the advertisements and signs referred to in paragraph 12(b) above to consumers who request these lists

within 2 months from the date of publication of the said advertisements or from the date the said signs were first displayed, whichever is the later.

- (d) where a consumer has purchased a product from The Reject Shop in respect of which a refund is offered in the advertisements and signs referred to in paragraph 12(b) above, it will provide that consumer with a refund of the amount paid to purchase that product where the consumer within 2 months from the date of publication of the said advertisements or from the date the said signs were first displayed, whichever is the later, produces a full, partially full or empty container of that product.
- (e) it will within 3 months of the acceptance of this undertaking, implement a Trade Practices Compliance Program with the following characteristics and attributes:
 - (A) Aim

To create a culture of compliance within The Reject Shop and to prevent, so far as is reasonably possible, any contraventions of the Act by The Reject Shop or by its directors, employees or agents.
 - (B) Standards Inspection Procedure

The formal adoption by The Reject Shop of a procedure with the object of ensuring compliance with all relevant consumer product safety standards and consumer product information standards prescribed pursuant to section 65E of the Act for any products promoted, advertised, offered for sale, sold or supplied by The Reject Shop.
 - (C) Policy

The formal adoption, or reaffirmation, by The Reject Shop, of a policy of strict compliance with both the letter and spirit of the Act within The Reject Shop and the adoption, or reaffirmation, and enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act.
 - (D) Compliance infrastructure

The appointment of an appropriately qualified senior executive as the Compliance Officer with overall responsibility for Trade Practices compliance.
 - (E) Coverage

The compliance program to cover all directors, employees and agents of The Reject Shop whose duties could result in them

being concerned in conduct that might breach the Act ("relevant staff").

(F) Education

Development and implementation of an education program calculated to have the relevant staff conversant with the provisions of the Act to a level where:

- (i) general staff can avoid obvious contraventions and can identify more complex potential Trade Practices problems for referral to the appropriate person in The Reject Shop compliance infrastructure;
- (ii) persons with responsibilities within The Reject Shop compliance infrastructure can effectively carry out those responsibilities; and
- (iii) The Reject Shop's Compliance Officer can address more complex Trade Practices issues and (if that person is not legally qualified and able to give the relevant advice) identify issues which require referral to its solicitors.

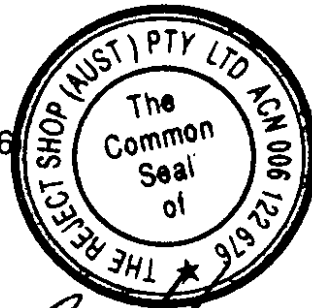
- (13) it will implement the program referred to in paragraph 12(e) above ("the Program") for a minimum period of 5 years from the acceptance of this undertaking.
- (14) it will ensure that prior to implementation of the Program a firm of solicitors with expertise in trade practices law approves that the Program has the characteristics and attributes set out in paragraph 12(e) above.
- (15) at the end of each 12 month period following the acceptance of this undertaking, until the third anniversary of the acceptance of the undertaking, it will cause a firm of solicitors with expertise in trade practices law to review and report on:
 - (a) The Reject Shop's compliance with these undertakings over the preceding 12 months;
 - (b) the implementation of the trade practices compliance program and the achievement of its objectives over the preceding 12 months; and
 - (c) any recommended changes to the trade practices compliance program that may be necessary to ensure achievement of its objectives.
- (16) it will cause the firm of solicitors to complete the review and provide a copy of its report to The Reject Shop and to the Commission within ten days of the end of each 12 month period; and

(17) it will incorporate into the trade practices compliance program, and implement as part of that program, all changes to it that are recommended by the firm of solicitors.

ACKNOWLEDGMENTS

- (18) The Reject Shop acknowledges that the Commission will make the undertaking available for public inspection.
- (19) The Reject Shop further acknowledges that the Commission will from time to time publicly refer to this undertaking.
- (20) The Reject Shop further 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 and its agreement the common seal of THE REJECT SHOP (AUST) PTY LTD (ACN 006 122 676) was hereunto affixed by authority of the Board of Directors in the presence of:



Secretary/Director..... *Jerrisa* Director..... *Colin*

This 31st day of OCTOBER 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 17 day of *March* 1997

Annexure A

NOTICE TO CUSTOMERS OF THE REJECT SHOP

The Australian Competition and Consumer Commission has recently drawn to the attention of The Reject Shop (Aust) Pty Ltd that certain cosmetic products sold by the company were not labelled with their ingredients as required under the *Trade Practices Act 1974*.

The Reject Shop (Aust) Pty Ltd wishes to advise those of its customers who purchased from it cosmetic products without proper ingredient labelling of the ingredients of those products.

Set out below is a list of the cosmetic products which the company is aware of that it has sold over the last 3 months without proper ingredient labelling.

Products:

The company does not have available a list of ingredients of the all of the above-mentioned products. Lists of the ingredients of the following products are available to customers from the company's stores:

Products:

The company may have sold over the last 3 months other cosmetic products which do not appear in the above lists, but which also were not labelled with their ingredients as required under the *Trade Practices Act 1974*.

In respect of the products sold by the company over the last 3 months where there is no available list of ingredients, the company offers to refund to those of its customers who purchased these products the amount which they paid for them. Customers who wish to take advantage of this offer must produce the container of the product purchased (either full, partially full or empty) at any of the company's stores within the next 2 months.

Store Details: