

TRADE PRACTICES ACT 1974

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

BY

MOBILE INNOVATIONS PTY LIMITED (ACN 063 582 990)

1. PURPOSE

1.1 Mobile Innovations Pty Limited ("Mobile Innovations"), ACN 063 582 990 has engaged in promotional activities which raise concerns for the misleading conduct provisions of the Trade Practices Act 1974 ("the Act"). Mobile Innovations has previously provided an undertaking to the Commission in relation to such provisions. The purpose of this undertaking is to augment the compliance measures in its existing compliance program so as to develop a more rigorous regime to remove the risk of Mobile Innovations falling short of the fair trading standards imposed by the Act.

2. PERSON GIVING THE UNDERTAKING

2.1 This Undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Mobile Innovations pursuant to section 87B of the Act.

3. BACKGROUND

3.1 In May 1996, Mobile Innovations, a mobile phone service provider, distributed approximately 100000 flyers promoting a special offer on mobile phone sales. The promotional flyers listed the following features of the offer:

- a Nokia 2010 handset nominally priced at \$1.00;
- connection to the Vodafone mobile digital network at no charge;
- tariff plans starting from \$38 per month;
- monthly access charges; and
- a "no-nonsense 15 month agreement".

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- 3.2 The promotional flyer did not mention that the agreement lapsed at the end of the 15 month period only if the customer gave 3 months notice of that intention, that is, notice before the end of the 12th month. If notice was given after the twelfth month, Mobile Innovations took the three months period as commencing from the date that the notice was given, with the consequence that obligations to pay ran beyond the advertised 15 months. For customers who failed to give notice, Mobile Innovations took the 3 month period to start from the end of the fifteenth month, with the consequence that contractual obligations extended to 18 months.
- 3.3 ACCC inquiries also suggest that Mobile Innovations telephone marketing staff failed to follow company procedure which obliges them to inform potential customers of the notice requirement.
- 3.4 The ACCC considers that the promotion flyer's silence on the notice issue and the representation that the agreement would terminate at the end of 15 months after connection constituted misleading and deceptive conduct in contravention of section 52 of the Trade Practices Act 1974.
- 3.5 Mobile Innovations conceded that the original promotion "may have had the potential to mislead some readers", and has amended promotional material to warn of the notice requirement.
- 3.6 Mobile Innovations has offered to give the undertaking in the terms set out below to the Commission pursuant to section 87B of the Act. The Commission has agreed to accept the undertaking.

4. COMMENCEMENT OF THE UNDERTAKING

- 4.1 This undertaking comes into effect when the:
- (a) undertaking is executed by Mobile Innovations; and the
 - (b) undertaking so executed is accepted by the Commission.

5. UNDERTAKING FOR THE PURPOSES OF SECTION 87B

Augmented Compliance Measures

- 5.1 Mobile Innovations will intensify the development and application of its current trade practices compliance program by introducing the following additional compliance measures for a period of 2 years from the commencement of these undertakings:
- I) Mobile Innovations will conduct pre-launch market testing of all new mobile phone promotional material including any such promotional material where there is a significant change to the wording to a degree that it could have new meaning, in order to test that consumers can clearly discern:



- the minimum duration period of the mobile phone contract;
 - any notice requirements which affect contract duration;
 - the cost of the handset;
 - the cost of any connection fee to the Vodafone network;
 - the cost of any fee for delivery of the handset to the consumer;
 - the cost of the monthly access fee; and
 - the total cost of any minimum call requirements.
- ii) Mobile Innovations will take all necessary steps designed to ensure that telephone marketing staff inform customers who respond to promotional material of matters listed in paragraph (i).
- iii) Mobile Innovations will conduct a series of at least four seminars in 1998 and four seminars in 1999 to further expose telemarketing staff to trade practices concerns in the telecommunications industry.
- iv) Mobile Innovations will engage a consultant to:
- anonymously audit telephone marketing staff on at least four occasions for each promotional campaign, the results of which are to feed into subsequent seminars, and
 - prior to publication, identify any promotional material which may raise trade practices concerns and subject it to legal scrutiny.
- v) Mobile Innovations will review its trade practices compliance program by reference to the Draft Australian Standard 97019. The results of the review shall be submitted to the ACCC within 3 months of the commencement of these Undertakings, and comments settled with the ACCC within 4 months of the commencement of these Undertakings. The revised program shall be fully in place and operational within 7 months of the commencement of these undertakings.

Compliance Audit

5.2 Mobile Innovations shall commission an independent audit of its compliance program to be conducted annually. The audit shall be carried out by a suitably qualified compliance professional who is acceptable to the ACCC.

5.3 The matters which the audit must address include:

- the effectiveness of the current program;
- any deficiencies in the program and the related remedial steps to be taken; and
- the additions or alterations which may be needed to improve the program or maintain its efficacy.

5.4 The date for the completion of the first such audit, and the provision of the auditor's report to the ACCC, shall be one year after the commencement of these Undertakings. Subsequently, audit reports shall be prepared and presented by it on the same date in each following year, with the last such report due on 2 years after the commencement of these Undertakings.

5.5 Subject to ACCC approval, Mobile Innovations will implement those recommendations.

Compensation

5.6 Mobile Innovations will within 30 days of the date of this undertaking send letters to all subscribers who may have been affected by the advertising the subject of this undertaking in the form of the draft letter annexed to this undertaking and marked "A".

5.7 For the purpose of offering compensation, a subscriber who may have been affected shall include those subscribers who responded to the promotion who did not give notice before the end of the twelfth month and who were disconnected after a 15 month term but before the end of the 19th month.

5.8 Mobile Innovations will within 30 days of receiving statutory declarations (as enclosed with the letters sent in the form at Annexure "A"), post cheques made payable to each person making each declaration, each cheque to be to the total amount of any monthly access charges levied by Mobile Innovations for any months in excess of 15 months for which each sender of a statutory declaration indicates that he or she is entitled, by reason of having been disadvantaged in relation to the notice period applying to his or her Mobile Innovations subscriptions.

6. ACKNOWLEDGMENTS


6.1 Mobile Innovations notes that the Commission may from time to time publish and publicly refer to this undertaking at its discretion, including by way of press release.

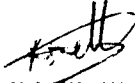


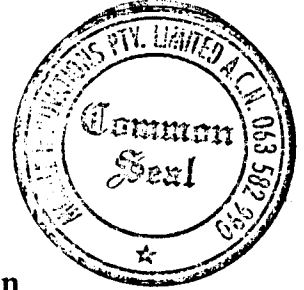
6.2 Mobile Innovations acknowledges and accepts that this undertaking in no way derogates from the rights and remedies which may be available to any other person arising from the conduct which is the subject of this undertaking.

**IN WITNESS OF THESE UNDERTAKINGS
AND ITS AGREEMENT THE COMMON SEAL OF**

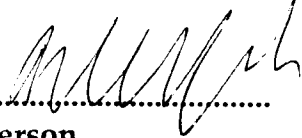
Mobile Innovations Pty Ltd ACN 063 582 990 was hereunto affixed by authority of the Board of Directors in the presence of:


.....
Director


.....
Secretary



Accepted by the Australian Competition and Consumer Commission


.....
Chairperson

This 18 day of June 1998

DRAFT LETTER

"A"

Dear

Re: Mobile Number

We refer to the above mobile phone service with Mobile Innovations.

The promotional material you responded to when purchasing your mobile phone and entering into your subscription advised a 'straightforward 15 month contract' and our terms and conditions reaffirmed this with clause 3(a) advising that 3 months written notice was required at any time after a minimum 12 month period.

The Australian Competition and Consumer Commission (ACCC) have advised us that our original promotional material may have had the potential to mislead readers in respect of the contract length.

Our staff are trained to clarify all aspects of our Terms and Conditions during the sales process. However, it is a concern to us that our advertising may have been confusing. In the event that you feel you have been disadvantaged in relation to the notice period applying to your subscription, please provide us with an appropriate statutory declaration so that we may assess your claim.

Yours sincerely


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