

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION GIVEN PURSUANT TO SECTION 87B OF THE TRADE PRACTICES  
ACT 1974 BY LMC PACIFIC PTY LTD ACN 003 432 504 AND MR GILLES HAUMONT**

**1 Background**

- 1.1 LMC Pacific Pty Ltd ACN 003 432 504 ("**LMC**") is a company incorporated in New South Wales carrying on business and engaging in trade and commerce, among other things, as the sole authorised Australian distributor of products manufactured and commercialised by the Cartier Group and as an operator of a number of retail outlets supplying products manufactured by or on behalf of the Cartier Group.
- 1.2 The Commission alleges that, in or about April 1996, LMC entered into a Distribution Agreement ("**the Agreement**") with Opal Collection Pty Ltd A.C.N. 050 412 630 ("**Opal Collection**").
- 1.3 The Commission alleges that, on or about 27 February 1998, LMC terminated the Agreement.
- 1.4 The Commission alleges that LMC terminated the Agreement on the grounds that Opal Collection:
- (a) displayed discount signs within its store; and
  - (b) sold Cartier products below LMC's recommended retail price,
- being conduct which constitutes resale price maintenance in contravention of section 48 of the *Trade Practices Act 1974* (Cth) ("**the Act**").
- 1.5 Pursuant to a section 155(1)(b) Notice served upon LMC on 17 November 1999 (and amended on 18 January 2000) and to a prior section 155(1)(a) and (b) Notice dated 7 July 1999, LMC has provided information and documents to the Commission responding to its allegations.
- 1.6 LMC has informed the Commission that it does not have a formal distribution agreement with Opal Collection and that the basis on which LMC ceased supplying products to Opal Collection was that it had failed to meet the criteria that LMC applies to all of its authorised retailers around Australia.
- 1.7 LMC has informed the Commission that it has made it clear to its authorised retailers that they may resell Cartier products at whatever price they wish and that it had taken no steps to discourage discounting. Indeed, LMC is well aware that virtually all of its authorised retailers regularly discount Cartier products and that, thus, there is no pattern of LMC ensuring that all Cartier products are sold at the recommended retail price.

- 1.8 LMC has informed the Commission that Opal Collection scored very poorly on almost every criteria in its distribution review of all of its retailers conducted in February 1999. In particular, LMC has informed the Commission that the total sales made by Opal Collection of Cartier products was inadequate, that the stock level that it maintained was less than average, that its image was poor and unsuitable for a shop selling luxury goods such as Cartier products, and that the level of promotional activities carried out by it for Cartier products was poor.
- 1.9 The Commission has formed the view that, despite the information provided to it by LMC, there may nevertheless have been a breach of section 48 of the Act and regards section 87B undertakings as appropriate in these circumstances.
- 1.10 LMC and Mr Gilles Haumont give these undertakings to the Commission under section 87B of the Act to address the Commission's concerns regarding potential breaches of the Act and to resolve the Commission's allegations against LMC otherwise than by enforcement proceedings.

## **2 Undertakings**

### **2.1 Corporate compliance programme**

LMC undertakes to provide to its employees at its own expense, for three (3) years from the date hereof, a trade practices compliance programme in relation to Part IV of the Act. In particular, to the extent that is practicable for a small business such as LMC, the programme will comply with Australian Standard 3806 of 1998.

LMC will ensure that documentary records of the compliance programme are maintained and available to the Commission to be reviewed from time to time within three (3) years from the date hereof. Such records will be available for inspection by the Commission within five (5) working days of a written request from the Commission.

### **2.2 Resale price maintenance**

LMC and its Managing Director, Mr Gilles Haumont, undertake that they will not engage in conduct which constitutes resale price maintenance in contravention of section 48 of the Act, including by requiring authorised retailers of Cartier products which purchase their Cartier products from LMC not to sell Cartier products below LMC's recommended retail price.

### **2.3 Letter to authorised retailers**

LMC undertakes that, within twenty-one (21) days of the date hereof, it will send to each of its authorised retailers a letter emphasising that each authorised retailer is free to set its own retail prices for products supplied by LMC, a copy of which letter is annexed hereto.

## **3 Effective Date**

These undertakings will be effective forthwith upon acceptance by the Commission.



#### 4 Acknowledgments

LMC and Mr Haumont acknowledge that the Commission will make this undertaking available for public inspection.

LMC and Mr Haumont acknowledge that the Commission may issue a media release about this undertaking and may, from time to time, publicly refer to the undertaking.

LMC and Mr Haumont acknowledge that this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct alleged by the Commission to infringe the Act.

DATED: 4 December 2000

#### IN WITNESS OF THIS UNDERTAKING:

Executed by of )  
LMC PACIFIC PTY LTD )  
by: )

.....  
R. G. Davies - Secretary

.....  
Gilles Haumont - Director


Executed by GILLES HAUMONT )  
in the presence of: )  
)

.....  
Gilles Haumont

~~CP~~ ~~CHRT~~ ~~Pelaniotls~~.....  
Signature of Witness

.....  
P. KILANIOTLS  
Name of Witness (print)

Accepted by **THE AUSTRALIAN** )  
**COMPETITION AND CONSUMER** )  
**COMMISSION** pursuant to section 87B )  
of the *Trade Practices Act 1974*: )

A handwritten signature in black ink, appearing to read 'Allan Fels', written over a horizontal dotted line.

Professor Allan Fels, Chairman

**DRAFT LETTER TO BE RETYPED ON LMC PACIFIC LETTERHEAD AND TO BE  
SENT TO ALL AUTHORISED DEALERS**

Dear [   ]

**Pricing of Cartier Products**

I am writing to you as a result of a recent enquiry by the Australian Competition and Consumer Commission concerning the basis upon which LMC Pacific Pty Ltd chooses to terminate its distribution arrangements with authorised dealers.

The Commission had been concerned that LMC may have decided to terminate an authorised dealer because of a practice of discounting against the recommended retail price of Cartier products.

LMC has told the Commission that this is not the case and I now remind you that, as an authorised dealer, you are free to set your own retail prices for Cartier products. The prices at which you sell Cartier products is not a factor which LMC takes into account in determining whether or not to terminate or renew a dealer agreement.

I will shortly be writing to you again to set out in more detail the criteria upon which authorised dealers are assessed.

In the meantime, if you have any queries, please do not hesitate to contact me.

Your sincerely

Gilles Haumont