



TRADE PRACTICES ACT 1974

Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B

by

Cuisine Courier Pty Limited

ACN 083 244 599

Background:

1. Cuisine Courier provides a restaurant delivery service in Melbourne and Sydney. As part of this business Cuisine Courier publishes and distributes, by itself or by its agents, menu booklets listing menus and prices for a variety of restaurants. Cuisine Courier also has a web site displaying the same details as the menu booklets.
2. Some of the menu booklets and web site displayed GST exclusive prices for menu items and associated fees.
3. Following an investigation, the Commission has reached the view that Cuisine Courier contravened the *Trade Practices Act 1974* (the Act) in that Cuisine Courier made false and misleading representations in its menu booklets and on its web site in contravention of sections 52 and 53(e) of the Act. The Commission has also reached the view that Cuisine Courier contravened the Act in that Cuisine Courier did not state the full cash price in contravention to section 53C of the Act. The Commission considers Cuisine Courier contravened sections 52, 53(e) and 53C of the Act by advertising prices that are GST exclusive.
4. The Commission wrote to Cuisine Courier in August raising its concerns that Cuisine Courier's menu booklets and web site price displays may amount to conduct in breach of sections 52, 53(e) of the Act. The Commission wrote again to Cuisine Courier in September confirming its view regarding sections 52 and 53(e) and also raising concerns that Cuisine Courier's conduct may breach section 53C.
5. In response to the concerns expressed by the Commission Cuisine Courier has:
 - i. ceased distribution of menu booklets that do not display GST inclusive prices;
 - ii. updated its website to display GST inclusive prices; and
 - iii. provided certain undertakings to the Commission for the purpose of section 87B of the Act. These undertakings are outlined below.

Undertakings:

6. Immediate cessation of the distribution, by Cuisine Courier and/or its distributors, of all menu booklets that do not include GST inclusive prices for menu items and other fees associated with using Cuisine Courier. This includes any booklets or advertising that contain a GST rider that GST applies but does not include GST inclusive prices.
7. Immediate amendment of all prices for menu items and other fees associated with using Cuisine Courier contained on Cuisine Courier's web site so that they are GST inclusive.
8. An advertisement in the form of Attachment A will be placed in *The Australian* newspaper, by no later than Thursday 21 September 2000. The advertisement and its placement should be in a form and manner acceptable to the Commission.
9. Until such time as new menu booklets are printed and distributed, Cuisine Courier shall continue its amended telephone recording stating the following:

"Cuisine Courier is replacing all its menus to display GST inclusive pricing. The menu you are using may not yet have been replaced and therefore may contain GST exclusive pricing. If that is the case, GST will be added to your bill if you proceed. Your customer service operator will be able to advise you of the GST component of your bill".

Cuisine Courier's customer service operator will also ask a customer if they have heard the recorded message, and if not the operator will read out the message to ensure that all customers are aware that the menu booklets they have been using may not contain GST inclusive prices and associated fees and if they do not, an additional GST charge would apply to the listed prices and associated fees.

10. Cuisine Courier will use its best endeavours to ensure that:
 - i. future advertising, menu booklets or other forms of promotion must contain GST inclusive menu prices and associated fees and that the price or fee displayed will include a price inclusive of the amount of GST payable and that the GST inclusive price or fee will be given at least equal prominence with the display, if any, of the components of the price and be consistent with one of the examples bearing a tick in the ACCC Checklist for Small Business Displaying Prices brochure; and
 - ii. when future reference is made to prices and/or fees applicable to the provision of goods and services by Cuisine Courier such prices and/or fees will comply with the Trade Practices Act 1974.

11. Cuisine Courier shall create and maintain at its own expense, a trade practices compliance program in respect of Part V of the Act. The essential elements of such a program are as follows:

- i. Compliance program to be developed within 6 weeks of commencement of the undertaking and implemented within 6 weeks of approval of the program by the Commission.
- ii. Aims of program:
 - Create a culture of compliance within Cuisine Courier;
 - Prevent so far as is reasonably possible, any contravention of Part V of the Act by Cuisine Courier, its directors, employees or agents; and
 - Include procedures and mechanisms to minimise the likelihood of further contraventions of Part V of the Act.
- iii. The object of implementing the compliance program is to create and maintain compliance in accordance with Australian Standard on Compliance, AS-3806.
- iv. Cuisine Courier will formally adopt, or reaffirm:
 - A policy of strict compliance with both the letter and spirit of Part V of the Act; and
 - Sanctions against any director, employee or agent who is knowingly or recklessly concerned in the contravention of Part V of the Act.
- v. Cuisine Courier will appoint an appropriately qualified named director as a compliance officer with overall responsibility for trade practices compliance.
- vi. The compliance program is to cover all directors, employees and agents of Cuisine Courier whose duties could result in them being concerned in conduct that might breach Part V of the Act.
- vii. Cuisine Courier will develop and implement an education program calculated to have its employees conversant with the provisions of Part V of the Act to a level where:
 - Employees can avoid obvious contraventions and can identify more complex trade practices problems for referral to the compliance officer;
 - Persons with responsibility within Cuisine Courier for compliance can effectively carry out these responsibilities; and

- The compliance officer can address more complex trade practices issues and (if that person is not legally qualified and able to give relevant advice), identify issues which require referral to Cuisine Courier's solicitors.
- viii. After implementation, the trade practices compliance program will remain in force for a period of two years from the commencement of the undertaking under s 87B.
- ix. At the end of the first twelve month period following its implementation, Cuisine Courier will submit the program for review by an independent auditor such as an appropriately qualified solicitor. The results of this review are to be provided to the Commission within four weeks of their receipt by Cuisine Courier. Should the review identify weaknesses in the compliance program, Cuisine Courier will make suitable amendments to the compliance program. Cuisine Courier will also make any changes to its program that the Commission may reasonably require on receipt of the review. Cuisine Courier will advise the Commission of these amendments within three weeks of receipt of the Commission direction seeking such amendments.

Acknowledgements:

12. Cuisine Courier acknowledges the Commission will make this undertaking available for public inspection.
13. Cuisine Courier acknowledges that the Commission may issue a media release about this undertaking and may, from time to time, publicly refer to the undertaking.
14. Cuisine Courier acknowledges this undertaking in no way derogates from the rights or remedies available to any other person arising from the alleged conduct.
15. Cuisine Courier further acknowledges that the audit referred to in paragraph 11 and the trade practices compliance program as in force will be held with this undertaking on the public register.

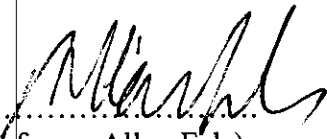
IN WITNESS of these undertakings and its agreement the Common Seal of Cuisine Courier Pty Limited (ACN 083 244 599) was hereto affixed by authority of the Board of Directors in the presence of:


Secretary/Director:.....
Brian William Moberg
 BRIAN WILLIAM MOBERG

Director:.....
Peter James Dugan
 PETER JAMES DUGAN

This 21st day of September 2000

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


.....
(Professor Allan Fels)
Chairman

This 29 day of  2000

Attachment A

0002

Ref No: 2088986VJ Pub: AUS Date: 21sep00 CL

**CUISINE COURIER PTY LTD
CUSTOMER SERVICE UPDATE**

Cuisine Courier wishes to advise all customers and potential customers that it is currently in the process of updating all of its menu booklets to ensure that they contain GST inclusive menu prices and associated fees.

The menu you are using may not yet have been replaced and therefore may contain GST exclusive pricing.

Customers who are in possession of menu booklets which do not include GST inclusive prices for menu items and associated fees should take the additional GST charge into account when considering the placement of an order. Your customer service operator will be able to advise you of the GST component of your bill when you place an order by phoning 1300 361 112.

Customers can also access a full range of menus showing GST inclusive prices for all menu items and associated fees and can place an order through our website at www.cuisinecourier.com.au

CUISINE COURIER

WED 11:03 FAX +61 2 8334 1444

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