

TRADE PRACTICES ACT 1974

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

BY

EXPRESS PROMOTIONS AUSTRALIA PTY LTD (ACN 006 771 428)

PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission ('the Commission') by Express Promotions Australia Pty Ltd (ACN 006 771 428) ("Express Promotions") of 4 Reeves Court, Breakwater Vic 3219 under section 87B of the *Trade Practices Act* ('the Act').

BACKGROUND

2. Express Promotions is a national stationery supplier.
3. Express Promotions ran a promotion that sought to encourage businesses to use their \$200 GST Direct Assistance Certificate ("GST certificate") with the company.
4. The promotion involved the following steps:

First Step Form Express sent unsolicited to businesses a
Promotion 703 form advertising the promotion.

Express Promotions used at least two versions of form.

One version (Form 1) was titled with the following
statement:

"Do you want \$200 worth of free stationery?"

(See Annexure A)

One version (Form 2) was titled with above statement but had the following disclaimer to the statement in small font:

"By using your \$200 GST Direct Assistance Certificate"

(See Annexure B)

Both forms invited the business to express interest in the promotion.

Second Step For a business that expressed interest, Express Promotions sent a kit that included a covering letter titled: *"You want \$200 worth of free stationery?"*

The kit included an order form. The business was asked to return its completed order form and GST Certificate to obtain stationery.

(see Annexure C)

Third Step Only businesses who completed the kit and sent their GST certificate were provided stationery.

5. On 28 June 2000, the Commission wrote to Express Promotions alerting it to its concern that Express Promotions by sending Form 1 had engaged and may be continuing to engage in conduct that was misleading or deceptive or likely to mislead or deceive contrary to section 52 of the Act. At the time the Commission was only aware of Form 1. The Commission expressed concern that the promotion would mislead consumers to believe they could obtain free stationery when in fact they had to use a GST certificate to obtain the stationery.

6. The Commission sought undertakings from Express Promotions that it would:
 - (i) not send any further copies of Form 1;
 - (ii) refund any consumer who obtained products from Express Promotions because they were misled or deceived by Form 1 that the products were free;
 - (iii) send a letter to all businesses sent Form 1 stating that it had engaged in conduct that may have misled or deceived and informing businesses that if they were in fact misled or deceived they could obtain a refund.

7. On 4 July 2000, Express Promotions advised that it had inadvertently sent Form 1 to some businesses and mainly sent Form 2. It advised that it was no longer sending and would not send Form 1. It provided a copy of Form 2 and the kit sent to businesses whom registered interest in the promotion.

8. On 5 July 2000, the Commission expressed concern to Express Promotions that Form 2 was also likely to mislead or deceive and therefore was in breach of s52 of the Act. Similarly, the kit was also likely to mislead or deceive. The Commission sought written undertakings to cease using Form 2 and the kit in addition to Form 1.

9. On 5 July 2000 Express Promotions provided a written undertaking that it would no longer send Form 2 of the kit to consumers.

10. The Commission and Express Promotions have agreed to resolve this matter by the giving and acceptance of an undertaking in the terms contained herein.

COMMENCEMENT OF UNDERTAKING

11. This undertaking comes into effect when:

- the undertaking is executed by Express Promotions; and
- the Commission accepts the undertaking so executed.

UNDERTAKINGS

12. Express Promotions gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*.

(a) CONDUCT UNDERTAKINGS

- (i) Express Promotions, its agents and employees at the Forms Express will cease to make any representations to the effect that people can obtain \$200 worth of stationery for free when in fact they must use their GST certificate to obtain the stationery.

(b) CORRECTIVE UNDERTAKINGS

- (i) Express Promotions will within 14 days of this undertaking taking effect, send to each business who was sent Form 1, Form 2 and/ or the kit, but who did not place an order in the Third Step, a corrective notice in the form of **Annexure D**, and, in the case of those businesses who placed an actual order in the Third Step, a corrective notice in the form of **Annexure DA**.
- (ii) Express Promotions will provide on or about 35 days of this undertaking taking effect a brief report to the Commission containing the following information:

- (a) a list of all businesses who Express Promotions sent Form 1, Form 2 and/ or the kit and, therefore, were sent corrective notices in the form of Annexures D and DA;
- (b) an outline of any response whether written or oral from businesses in relation to the corrective notices and how these were handled.

(c) REFUNDS

- (i) Express Promotions will offer a refund of the purchase price (up to a maximum of \$200) or a right of rescission to any business who obtained stationery from Express Promotions if the business can prove on the balance of probabilities it was misled or deceived by Form 1, Form 2 and/ or the kit that the stationery was free.

(d) TRADE PRACTICES COMPLIANCE PROGRAM

- (i) Express Promotions will implement a trade practices compliance program ('the Program') in accordance with **Annexure E.**

ACKNOWLEDGEMENTS

- 13. Express Promotions acknowledges that the Commission will make this undertaking available for public inspection.
- 14. Express Promotions further acknowledges that the Commission will, from time to time, publicly refer to this undertaking.
- 15. Express Promotions acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Express Promotions company.

16. Express Promotions acknowledges and accepts that the Commission may contact customers of Express Promotions to ensure that it has complied with this undertaking.

17. Express Promotions further acknowledges that the information referred to in this undertaking, the Annexures and the compliance program as in force from time to time will be held with this undertaking on the public register.

Signed on behalf of Express Promotions by

**IN WITNESS of these undertakings:
The COMMON SEAL of
Express Promotions**
was affixed hereunto by authority of
the Board of Directors in the presence of:

)
)
)
)
)



[Handwritten Signature]
Secretary/Director
Name (Printed): *ROBERT REED.*

This *23rd* day of *AUGUST* 2000

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

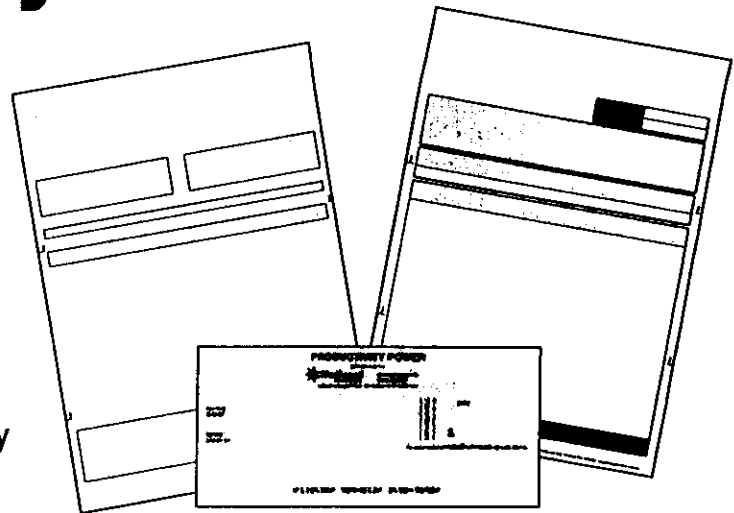
[Handwritten Signature]
Professor Allan Fels
Chairman

This *5* day of *September* 2000

< Full Name > -

Do you want \$200 worth of free stationery?

- Cheque stationery
- Invoices stationery – GST Ready
- Adjustment Note stationery – GST Ready



703

Yes Please! Tell me more...

<Full Name> _____

<Company> _____

<PO Address 1> _____

<PO Address 2> _____

<PO City> <PO State> <PO Postcode> _____

Phone: <Phone> _____

Fax: <Fax> _____

<User Number> _____

Please confirm the above details and fax this form to Forms Express:

FREEFAX **1800 676 641**

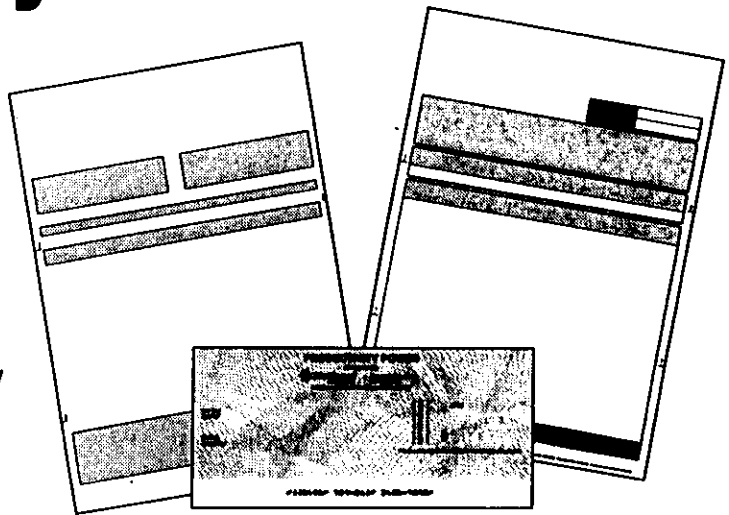
OR **FREECALL** **1800 808 862**

OR **EMAIL** **sales@formsexpress.com.au**

< Full Name > -

Do you want \$200 worth of free stationery? *

- Cheque stationery
- Invoices stationery - GST Ready
- Adjustment Note stationery - GST Ready
- Pick the products of interest



703

* By using your \$200 GST Direct Assistance Certificate

Yes Please! Tell me more...

<Full Name> _____

<Company> _____

<PO Address 1> _____

<PO Address 2> _____

<PO City> <PO State> <PO Postcode> _____

Phone: <Phone> _____

Fax: <Fax> _____

<User Number> _____

Please confirm the above details and fax this form to Forms Express:

FREEFAX **1800 676 641**

OR **FRECALL** **1800 808 862**

OR **EMAIL** **sales@formsexpress.com.au**



FORMS EXPRESS



Quality
Endorsed
Company
ISO 9002 Lic QEC 10833
Standards Australia

APPENDIX C

Forms Express
www.formsexpress.com.au
Free Fax: 1 800 676 641
Free Call: 1 800 808 862
Telephone: (03) 5227 7352
International: Phone: 61 3 5227 7352 Fax: 61 3 5223 1588
P.O. Box 318, BELMONT, VIC 3216 Australia
4 Reeves Court, BREAKWATER, VIC 3219 Australia
Operating Division of Express Promotions Australia Pty Ltd
A.C.N. 006 771 428

[[Contact:26]]
[[Company:25]]
[[Address 1:27]]
[[Address 2:28]]
[[City:30]] [[Postcode:32]]

Dear [[Salutation:40]]

You Want \$200 Worth of Free Stationery?

Here's how:

- 1) Collect your ABN number and \$200 GST Direct Assistance Certificate from the ATO.
- 2) Complete the attached order forms for either
 - (a) Cheques
 - (b) Invoices and Adjustment Notes
- 3) Complete the details on the Direct Assistance Certificate including:
 - (a) Our Registered Supplier Code **DA 4152**
 - (b) Recipient Signature on **Supplier and Claim Copies**
 - (c) The amount that you wish to claim
 - (d) Include the **entire certificate** with your order
- 4) Mail your order in the reply paid envelope to Forms Express, including your
 - (a) Order form
 - (b) Direct Assistance Certificate
 - (c) Sample Cheque (if ordering cheques)

5) Questions?

Ask our sales team on -

Freecall	1800 808 862
Freefax	1800 676 641
Email	sales@formsexpress.com.au

Yours Sincerely,

Shane Potter
Marketing and Product Development Specialist

Brisbane • Geelong • Perth

NEW ZEALAND P.O. Box 43-202 MANGERE, AUCKLAND
TEL: 0 800 442 533 FAX: 0 800 442 534



Please return this order form in the Reply Paid Envelope with your GST Direct Assistance Certificate

MYOB Cheque Order Form

FORMS EXPRESS DETAILS

Promo: 703

Company Name _____ Forms Express Customer No. (# known) _____

BANK ACCOUNT DETAILS

Account Title (As it is to appear on the "For and on behalf of" line) _____

A.C.N. / A.R.B.N. / INC. Number _____ Cheque Quantity _____ Commencing Number _____

B.S.B. Number _____ Account Number _____

Your Bank Name _____

Your Bank Address _____

Bank Contact Name _____ Bank Contact Phone No. _____

☆ To help confirm all the above details are accurate, please include a current cheque as a sample ☆

CUSTOMER AUTHORISATION

We hereby authorise Forms Express to act on our behalf when gaining approval for this order of specially printed cheques. Signature _____ Name _____ Date _____

DELIVERY DETAILS - NB Our courier does not deliver to a PO Box

Address _____

Attention _____

Phone No. _____ Fax No. _____

CHEQUE DETAILS

Company Name to appear at the top of cheque and or remittance No Yes - if this is different to Account Title as listed above please complete below

Address to appear on Remittance Only complete this section if you are ordering cheques with a remittance advice No Yes - if this is different to above please complete below

Phone & Fax No's to appear on Remittance Only complete this section if you are ordering cheques with a remittance advice No Yes - if this is different to above please complete below

Phone No. _____ Fax No. _____

ORDER DETAILS

☆ If this is a reorder, does it require alters? Yes No

	Stock Code	Colour	Quantity	Price
Cheque				
Plain Envelopes				
Logo	Black only (no screens) Please provide alpha or barcode for digital file. A \$50 charge is applicable.			
Proof	A \$50 charge is applicable for a black & white proof.			
Total Order Value				

PAYMENT DETAILS - Please forward full payment with your order

Cheque or Money Order Enclosed, made payable to Express Promotions Australia Pty Ltd

GST Direct Assistance Certificate Enclosed

Card Details Visa Mastercard Bankcard Expiry Date _____

Card Number _____

Card Name: _____ Signature: _____ Promo: 703

Code	Description	250	500	1000	2000	3000
05-020	Continuous Cheques *	\$215	\$245	\$306	\$427	\$550
05-021	Continuous Chq & Remitt.*	\$273	\$320	\$413	\$599	\$786
05-022	A4 3-Up Cheques**	\$90	\$115	\$165	\$260	\$355
05-023	A4 Chq & Remitt.**	\$160	\$205	\$295	\$475	\$650
05-022D	Deluxe A4 3-Up Cheques***	\$110	\$130	\$185	\$295	\$410
05-023D	Deluxe A4 Chq & Remitt.***	\$195	\$245	\$350	\$560	\$765

* Continuous Cheque background fugitives are light blue in colour.

** Standard A4 Cheques come in Blue and Green, please specify your choice on the order form or blue will be used.

***Deluxe A4 cheques come in Green, Blue and Peach. Please specify your choice on the order form or Marble Green will be used.

Compatible Envelopes for Cheques

Code	Description	1 - 2 Boxes (Per Box)	3 or more Boxes (Per Box)
08-A4CHQ	100 x 230 mm Self-Seal Window-faced Envelope - for any cheque mailing	\$33.00	\$31.54

- All printing will be done in black and wording will be in Helvetica typeface.
- Delivery can take 4-6 weeks due to the processing of bank authorities.
- Prices listed are valid until 30/6/2000.
- Prices subject to change without notice.

Use this form to order your MYOB Invoices and Adjustment Notes

Retail Order Form for MYOB Stationery

MYOB
Aust

Promo - 703



FORMS EXPRESS
Operating Division of Express
Promotions Australia Pty. Ltd.
ACN 006 771 428
P.O. Box 318,
Belmont, Vic 3216

Free Call: 1800 808 862
E-mail: sales@formsexpress.com.au
Postal Address: Reply Paid 318, BELMONT, VIC, 3216

FORMS EXPRESS for all your business forms and cheques needs
All forms are continuous except the A4 forms

Form No	Description	Used For	Size	Forms	1-2 Boxes (per box)	3+ Boxes (per box)	Qty	\$	
04-114	A4 Universal Form	Adjustment Note	297x210mm	500	\$37.00	\$35.37			
04-116	A4 Tax Invoice	Invoice	297x210mm	500	\$37.00	\$35.37			
04-114D*	Deluxe A4 Uni Form (please specify colour*)	Adjustment Note	297x210mm	500	\$46.00	\$43.98			
04-116D*	Deluxe A4 Tax Invoice (please specify colour*)	Invoice	297x210mm	500	\$46.00	\$43.98			
* A4 Deluxe forms come in Marble Green, Timber Blue and Sand Orange.							Less GST Vouchers	- \$200	
Total \$									

* Prices listed are valid until 30/6/2000
* Prices subject to change without notice.

To avoid ever running out, order 2 cartons and re-order when you open the last one

Attention _____ Customer No (if known) _____

Company _____

Postal Address _____ Postcode _____

Delivery Address _____
We do not deliver to P.O. Boxes.

_____ Postcode _____

Phone (_____) _____ Fax (_____) _____

Method of Payment: (Please circle) Cheque Enclosed / Credit Card / GST Direct Assistance Certificate

For even quicker processing use either:

Cheque enclosed: Please made payable to EXPRESS PROMOTIONS AUSTRALIA PTY LTD
or Credit Card payment as indicated below:

Card Name _____

Signature _____ Expiry Date _____ Mastercard Visa Bankcard

Note: These are the only forms approved for use with MYOB software.
Other forms could be of inferior quality, give poor copies and even cause printer problems. Promo - 703

**Please return this order form in the Reply Paid Envelope
with your GST Direct Assistance Certificate**

CORRECTIVE NOTICE

An apology from Express Promotions Pty Ltd trading as Forms Express

Express Promotions engaged in a promotion that included the following:

- Sending to businesses forms asking them "do you want \$200 worth of free stationery?". Some of the forms had a disclaimer in small print saying "By using your \$200 GST Direct Assistance Certificate".
- Express Promotions then sent to each business who registered interest a kit with a covering letter titled "You want \$200 worth of free stationery?" and an order form.
- For a business to obtain \$200 worth of stationery they had to complete an order form and send in their GST Direct Assistance Certificate.

The Australian Competition and Consumer Commission ('the Commission') has raised concerns that the promotion was likely to mislead or deceive businesses into believing that they could obtain \$200 of stationery for free. In fact, they could not obtain stationery for free as they had to provide something of value, their \$200 GST Direct Assistance Certificate.

Express Promotions Pty Ltd accepts that business could not obtain free stationery and therefore the promotion was likely to mislead or deceive. The Trade Practices Act prohibits companies from engaging in conduct that is likely to mislead or deceive in trade and commerce. Express Promotions Pty Ltd apologises to all businesses who received information about the promotion.

As a result of the ACCC's concerns, Express Promotions Pty Ltd is implementing a trade practices compliance program to ensure that our conduct in running future promotions will not mislead consumers.



This corrective notice has been sent by Express Promotions Pty Ltd as part of an undertaking provided to the Australian Competition and Consumer Commission (ACCC) in relation to possible contraventions of the Trade Practices Act. It has been paid for by Express Promotions Pty Ltd.

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Express Promotions Pty Ltd accepts that business could not obtain free stationery and therefore the promotion was likely to mislead or deceive. The Trade Practices Act prohibits companies from engaging in conduct that is likely to mislead or deceive in trade and commerce. Express Promotions Pty Ltd apologises to all businesses who received information about the promotion.

As a result of the ACCC's concerns, Express Promotions Pty Ltd will refund \$200 to any business who obtained stationery under the promotion if that business was in fact misled or deceived that the stationery was free. We will also implement a trade practices compliance program specifically in relation to the New Tax System changes to ensure our conduct will not mislead consumers in the future.

Please contact James Rush, 03 52277403 if you would like further information about this notice.



This corrective notice has been sent by Express Promotions Pty Ltd as part of an undertaking provided to the Australian Competition and Consumer Commission (ACCC) in relation to possible contraventions of the Trade Practices Act. It has been paid for by Express Promotions Pty Ltd.

Annexure E

Trade Practices Compliance Program

The Trade Practices Compliance Program (“the Program”) to be undertaken by Express Promotions will be implemented as follows:

General

- 1) Express Promotions will, within one (1) month of receipt of the Commission’s acceptance of the undertaking implement the following Program at its own expense.
- 2) Express Promotions will place responsibility for the implementation and effectiveness of the Program with its Director.
- 3) Express Promotions will appoint a senior officer as the Trade Practices Compliance Officer (“the Compliance Officer”). The Compliance Officer will be appointed at the time the Program is implemented.
- 4) The Compliance Officer has a right to nominate another senior officer of Express Promotions to undertake his duties when absent from his employment.

Advertising and Promotions Reviews

- 5) Express Promotions will require the Compliance Officer to review all advertising and promotion (“Advertising and Promotion Review”) of Express Promotions (by any medium) to ensure that it complies with the *Trade Practices Act 1974*, prior to its publication, broadcast or distribution. Without limiting the scope of the Advertising and Promotions Review, it will address:
 - i) Whether representations contained in the advertisements or promotions are able to be substantiated;
 - ii) Whether representations contained in the advertisements or promotions are likely to mislead or deceive consumers;
 - iii) Whether representations as to future matters, are made on reasonable grounds; and
 - iv) Whether the representations made in the advertisement or promotions require qualification, and if so, whether the advertisement or promotions provides the information necessary to qualify the representation. Such qualification should be of a size and prominence to effectively qualify any representation.
- 6) Express Promotions will require the Compliance Officer to maintain a documentary record of the Advertising and Promotions Reviews. Such documentary record will include:
 - i) a copy of the advertisement or promotion;
 - ii) a description of the publication (including name, date, page(s) and publisher) or a general description of whom the promotion was directed or sent to;

- iii) written advice that the advertisement or promotion had been reviewed and cleared by the Compliance Officer (including the date on which the advertisement was reviewed); and
 - iv) written advice of any possible contraventions of the Trade Practices Act that were identified by the Compliance Officer and the action taken to address these possible contraventions.
- 7) Express Promotions will ensure that the documentary records of the Compliance Reviews are available to the Australian Competition and Consumer Commission (“the Commission”) to be reviewed from time to time. Such records are to be available from one week after the date of publication of the advertisement or commencement of the promotion for a period of 3 years after that date. Such records shall be provided to the Commission within 5 working days of a written request for those records.

Complaints Handling

- 8) Express Promotions will ensure that the Program incorporates an appropriate complaints handling mechanism.

Education

- 9) Express Promotions will develop and implement an education program calculated to ensure that sales and marketing staff of Express Promotions are conversant with the Part V provisions of the Act to a level where:
- i) they can avoid obvious contraventions and can identify more complex trade practices problems for referral to the Compliance Officer;
 - ii) the Compliance Officer can carry out their responsibilities; and
 - iii) the Compliance Officer can address more complex trade practices issues or, if not legally qualified, refer to Express Promotions’s legal adviser.
- 10) Express Promotions will ensure that training sessions covering all aspects of Part V on the Trade Practices Act be given to sales and marketing staff of the Express Promotions on two occasions within the twelve months after the implementation of the Program. The first of these training sessions is to be completed within 3 months of the Program being implemented and the remaining one between 8 and 9 months later.

Review

- 11) Express Promotions will ensure that an independent external auditor, including a Quality Assurance Professional with expertise in trade practices law, conducts an audit (“the Audit”) of the Program with a view to improving its effectiveness. The Audit will be conducted between 11 and 12 months after the implementation of the Program. The Audit will identify deficiencies and make recommendations as to possible improvements to the Program.

Reporting

- 12) Express Promotions will provide the Commission with the following:
- i) Within 10 working days of the implementation of the Program, notice of the appointment of the Compliance Officer including name, position and contact details;
 - ii) Within 10 working days after each of the training sessions to be conducted at the of the Express Promotions, notice of completion of that seminar including an outline of the session, details of the presenter(s) and details of attendees; and
 - iii) Within 10 working days of the completion of the Audit, a copy of the Audit together with advice as to what changes Express Promotions intends to incorporate in the Program as a result of the Audit.
- 13) Express Promotions will make changes to the Program as reasonably requested by the Commission having considered the documentation referred to at paragraph 11 (iii) above. Such changes are to be implemented within 2 weeks of the Commission's request.

Duration

- 14) The Program will remain in effect for three years following the undertaking coming into effect.