

TRADE PRACTICES ACT 1974

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

BY

**RSL COM PERSONAL COMMUNICATIONS PTY LIMITED
ACN 078 792 195**

Background

- (1) RSL COM Personal Communications Pty Limited ACN 078 792 195 (RSL COM) is a wholesaler and reseller of telecommunications products and services of Vodafone Australasia Pty Limited's network (Network Vodafone) and Optus Mobile Pty Limited.
- (2) On 10 December 1998, RSL COM appointed Moore Talk Communications Pty Ltd ACN 084 068 164, trading as MT Marketing (MT Marketing), as an authorised dealer of RSL COM. By reason of the entry into the Dealer Agreement of 10 December 1998, MT Marketing acts as an authorised agent of RSL COM in the manner outlined in paragraph (3) below.
- (3) MT Marketing is based in Brisbane and (amongst other things) conducts telemarketing activities to promote the sale of mobile phone and access plan packages on a national basis. In the course of its business, telemarketing representatives of MT Marketing (MT representatives) telephone business and domestic consumers, promote RSL COM services and endeavour to obtain the signature of potential customers on RSL COM's Application for Digital Service Connection (the Application). If the Application is subsequently accepted by RSL COM, a contract for the provision of mobile telephone services is formed between the consumer and RSL COM on the terms and conditions appearing on the reverse side of the Application.
- (4) Between February 1999 and September 1999, MT Representatives endeavouring to obtain the signature of potential customers on the Application observed a practice whereby they forwarded the Application to the potential customer by facsimile. While they faxed the front page of the Application to the customer, they failed to fax customers the reverse side of the Application containing the terms and conditions. During this period approximately 1427 customers' Applications were accepted by RSL COM and such customers thereby entered into contracts with RSL COM for the provision of mobile telephone services (the Affected Consumers).
- (5) Following an investigation, the Australian Competition and Consumer Commission (the Commission) has reached the view that RSL COM, through the conduct of its agent MT Marketing, has contravened sections 52, 53(g), 51AB and 51AC of the *Trade Practices Act 1974* (the Act) by failing to provide potential customers with a copy of the relevant terms and conditions

attaching to the Application before obtaining the signatures of the potential customer.

- (6) In early November 1999, the Commission advised RSL COM that it was of the view that the conduct referred to in paragraph (4) above, if correct, contravened sections 52, 53(g), 51AB and 51AC of the Act.
- (7) RSL COM acknowledges that section 52 of the Act prohibits conduct that misleads or deceives, section 53(g) prohibits false representations concerning the existence, exclusion or effect of any condition, warranty, right or remedy, and sections 51AB and 51AC prohibit a corporation in trade or commerce in connection with the supply or acquisition of goods or services, from engaging in conduct that is unconscionable. RSL COM admits that the conduct of its agent, MT Marketing, has contravened sections 52, 53(g), 51AB and 51AC the Act. RSL COM has advised the Commission that it took steps to ensure that the conduct referred to in paragraph (4) above ceased as soon as that conduct was brought to RSL COM's attention.

Undertakings

- (8) This undertaking takes effect at the time the Commission's acceptance of it is communicated to RSL COM.
- (9) RSL COM undertakes for the purposes of section 87B of the Act:
 - (i) That it will:
 - (a) not by itself, its directors, servants, agents or howsoever fail to provide potential customers with a copy of the terms and conditions attaching to the contract for mobile services, in legible form, prior to the entry into the contract by the potential customer;
 - (b) within 30 days of this undertaking taking effect, forward a letter in the terms in the schedule in this undertaking, to the Affected Consumers, and shall enclose a copy of this undertaking;
 - (c) within 60 days of this undertaking taking effect, provide to the Commission evidence of completion of the action referred to in (9)(i)(b) above;
 - (d) not to take any steps to enforce any contract with any Affected Consumer, who elects to rescind their contract with RSL COM.
 - (ii) Within two months of this undertaking first taking effect, RSL COM will review the information which it provides to RSL COM Dealers (whether such information is given in writing or orally) at the time RSL COM Dealers enter into a Standard Dealer Agreement (the Information), for the purpose of ensuring that the Information makes clear that RSL COM Dealers are obliged to provide customers with a

legible copy of the terms and conditions attaching to the contract for mobile services with RSL COM, prior to the customer entering into such contract;

- (iii) Within four months of this undertaking first taking effect, RSL COM will conclude a review of the operating procedures followed by MT Marketing and all other dealers, on such basis as it considers appropriate, in relation to their activities in the promotion of RSL COM's services, to ensure that they comply with the terms of the Act;
- (iv) Within three months of this undertaking taking effect, RSL COM will review its trade practices compliance program, to ensure that it fully takes account of RSL COM's obligations under the Act and addresses the conduct the subject of this Undertaking;
- (v) Within six months of this undertaking taking effect, RSL COM shall cause, at its own expense, an independent audit of its trade practices compliance program to be conducted by a suitably qualified compliance professional who is entirely independent of RSL COM and has no conflict of interest or duty in providing audit services to it;

The auditor will review and report in writing on:

- (a) The particulars of the compliance program, RSL COM's implementation of that compliance program and the achievement of its objectives;
 - (b) The completion of the review to be undertaken in accordance with paragraph (9)(iv) of this Undertaking; and
 - (c) Any recommended changes to the compliance program that may be necessary to ensure achievement of its objectives.
- (vi) RSL COM will require the auditor to provide a copy of the audit report to the Commission within one week of the completion of the report.
 - (vii) If requested by the Commission, RSL COM will provide to the Commission all relevant information showing whether any recommendations made by the auditor have been implemented.
 - (viii) RSL COM will, from the date of this undertaking, make all reasonable endeavours to ensure that all existing RSL COM dealers, whether appointed directly by RSL COM or through third parties, have undertaken the compliance program referred to in paragraph (9)(iv) above.
 - (ix) Within two months of this undertaking first taking effect, RSL COM will conclude its review of the Application and all ancillary documentation provided by its dealers to customers and potential customers to ensure that such documentation complies, at a minimum,

with the Industry Code Customer Information on Prices, Terms and Conditions (the Code) prepared by the Australian Communications Industry Forum, within 60 days of the Code being finalised. RSL COM will continually review and amend its Application and ancillary documentation within a reasonable time of it becoming aware of changes to the Code to ensure that it complies, at a minimum, with the Code as amended from time to time.

- (x) RSL COM will join the Code as a signatory as soon as practicable once the final version is available for signing. In the event that RSL COM satisfies the Commission that, having regard to all the circumstances, it would be unreasonable to require RSL COM to join the Code as a signatory, the Commission will give consideration to varying the undertaking such that RSL COM does not undertake to join the Code as a signatory.

Schedule

LETTERHEAD OF RSL COM PERSONAL COMMUNICATIONS PTY LIMITED

Dear Customer

RE: CONTRACT FOR MOBILE SERVICES WITH RSL COM PERSONAL COMMUNICATIONS PTY LIMITED

The purpose of this letter is to provide you with a copy of the terms and conditions attaching to your contract for mobile services and offer you the opportunity to cancel your contract for mobile services with RSL COM Personal Communications Pty Limited (RSL COM), before the duration of the contract has expired, if you completed an Application for Digital Service Connection (the Application) via facsimile as a result of an approach by Moore Talk Communications Pty Ltd (trading as MT Marketing), and were not provided, at that time, with a copy of the terms and conditions attaching to the Application. A copy of those terms and conditions is enclosed with this letter.

MT Marketing is an authorised dealer of RSL COM and promotes RSL COM's mobile services. It has been brought to our attention by the Australian Competition and Consumer Commission (ACCC), that MT Marketing, in conducting telemarketing activities, failed to provide a number of customers with a copy of the terms and conditions attaching to the contract for mobile services with RSL COM, before signing. This is in breach of the Dealer Agreement which MT Marketing agreed to. RSL COM was not aware of this practice until it was brought to our attention by the ACCC.

Our discussions with the ACCC, and the actions we have undertaken to carry out as a result of them, are outlined in the enclosed Undertaking we have given to the ACCC.

The *Trade Practices Act 1974* ('the Act') prohibits corporations from making false representations, and from engaging in misleading and deceptive conduct or unconscionable conduct. A failure to provide a customer with a copy of the terms and conditions attaching to a contract to which they are about to enter, is considered to be conduct which is in all the circumstances, unconscionable, and results in the contract being unenforceable.

The purpose of the Act is to enhance the welfare of Australians through the promotion of competition and fair trading, and provisions of consumer protection. Breaches of the Act are serious offences.

RSL COM wishes to comply with the Act and co-operate with the ACCC. As such, we have implemented a compliance program so that possible breaches of the Act can be avoided. Where businesses are engaged by RSL COM as dealers or agents, they are required to comply with the provisions of RSL COM's trade practices compliance program also.

RSL COM has also given an undertaking that it will offer, to customers who completed the Application via facsimile as a result of an approach by MT Marketing and were not, at that time, provided with a copy of the terms and conditions attached to the Application, the opportunity of cancelling their contract with RSL COM. Customers who decide to cancel their contract with RSL COM will be required to return the SIM card provided with the mobile handset, but may keep the mobile handset which was provided to them.

However, you are under no obligation to cancel your contract. If, after reading the terms and conditions enclosed in this letter, you wish to continue your contract for mobile services, you may disregard this letter and your contract will continue. However, if you wish to cancel your current contract in light of the information provided above, please contact RSL COM.

RSL COM apologises for any inconvenience this may cause.

Yours sincerely

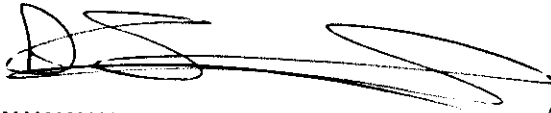
Director

Acknowledgments

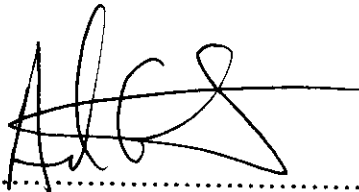
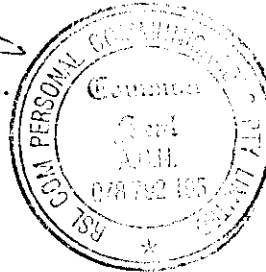
(10) RSL COM acknowledges:

- (i) The Commission's right to make this undertaking available to the public including by placing it on a register, publishing it and allowing third parties to publish it;
- (ii) That the Commission may issue a media release about this undertaking and may, from time to time, publicly refer to this undertaking; and
- (iii) That this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct referred to at paragraph (4) above.

IN WITNESS of these undertakings and its agreement the common seal of **RSL
COM PERSONAL COMMUNICATIONS PTY LIMITED ACN 078 792 195** was
hereunto affixed by authority of the Board of Directors in the presence of:



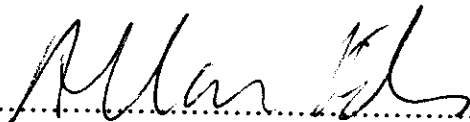
.....
Secretary/Director



.....
Director

This 22nd day of August 2000

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



.....
(Professor Allan Fels)
Chairman

This 5 day of September 2000