



TRADE PRACTICES ACT 1974

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

BY

Dellapond Pty Ltd (ACN 003 858 991)

PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission ('the Commission') by Dellapond Pty Ltd ('Dellapond') (ACN 003 858 991) of 25 Penny Place, Ardnell Park in the State of NSW under section 87B of the *Trade Practices Act* ('the Act').

BACKGROUND

2. Dellapond is a NSW based company that trades as Amazing Fences, a fence building business.
3. Amazing Fences sent to 216 consumers from 1 May 2000 to approximately 23 June 2000 invoices for the building of fences that included a sale amount and an amount for GST. The invoice included a statement that:

"If payment received by us [Amazing Fences] prior to 30 June 2000, please deduct 10% GST."

("the Invoice")
4. On 22 June 2000 the Commission wrote to Amazing Fences to express its concerns as follows:
 - (a) Amazing Fences would engage in price exploitation in breach of s75AU of the Act if it charged GST on goods and services supplied before 1 July 2000;
 - (b) Amazing Fences may have made a misrepresentation as to price in breach of s53(e) of the Act by saying that GST was payable on accounts for goods and

service supplied before 1 July 2000 where the account was paid after 1 July 2000.

5. The Commission sought information from Amazing Fences and undertakings that:
 - (a) it would not charge GST on goods and services supplied before 1 July 2000 where such accounts are not paid by 1 July 2000; and
 - (b) that it would send notice to consumers who received the invoice stating that it would not charge GST on goods and services supplied before 1 July 2000 where such accounts are not paid by 1 July 2000.

6. On 23 June 2000, Amazing Fences advised that its invoices were based on an earlier belief that GST was payable on all payments received after 1 July 2000. It had changed its belief before being contacted by the Commission so that it was clear that if the goods and services were supplied before 1 July 2000 no GST was payable. It advised that no-one had been charged GST on work completed to date and that it would not charge GST on any work completed before 1 July 2000. Further, it would write to each of the customers who received the suspect invoice and inform them of the correct position.

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

COMMENCEMENT OF UNDERTAKING

8. This undertaking comes into effect when:
 - the undertaking is executed by Dellapond; and
 - the Commission accepts the undertaking so executed.

UNDERTAKINGS

9. Dellapond gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*.

CONDUCT UNDERTAKINGS

- (i) Dellapond, its agents and employees will not represent that GST is payable on goods and service supplied before 1 July 2000;
- (ii) Dellapond its agents and employees will not charge or seek to charge GST for goods and services supplied before 1 July 2000. If it has charged, as at the date of these undertakings taking effect, GST for goods and services supplied before 1 July 2000 it will refund any amount paid by way of GST immediately.

CORRECTIVE UNDERTAKINGS

- (i) Dellapond, at its own expense, will send to each consumer, who was sent the Invoice, a notice in the form, design and content of **Annexure A**.

TRADE PRACTICES COMPLIANCE PROGRAM

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

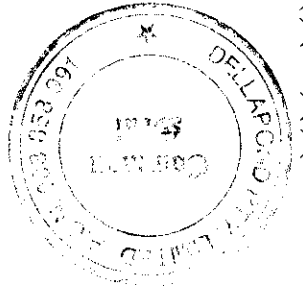
ACKNOWLEDGEMENTS

10. Dellapond acknowledges that the Commission will make this undertaking available for public inspection.
11. Dellapond further acknowledges that the Commission will, from time to time, publicly refer to this undertaking.

12. Dellapond acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Dellapond.
13. Dellapond further acknowledges that the information referred to at **Annexure B** 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 Dellapond by

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



[Handwritten signature]
.....
Secretary/Director
Name (Printed): **KIM JONES**.

This **18** 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 **3** day of **April** 2000

Annexure A**CORRECTIVE NOTICE****An apology from Dellapond Pty Ltd
trading as Amazing Fences**

From 1 May 2000, we sent to consumer invoices that included a sale amount and an amount for GST and the invoices included a statement that: "If payment made received by us prior to 30 June, please deduct 10% GST".

The Australian Competition and Consumer Commission ('the Commission') has raised concerns that the invoice was likely to mislead consumers. Their concern is that the invoice represented that GST could be payable on goods and services supplied before 1 July 2000 if the account was paid was after 1 July 2000.

Dellapond Pty Ltd accepts that GST is not payable on goods and services supplied before 1 July 2000 and that the invoice was misleading.

Dellapond Pty Ltd would like to apologise if our invoice misled you or any consumer.

Dellapond Pty Ltd will not charge GST on goods and services supplied before 1 July 2000 and has sent this notice to recipients of the invoice to clarify the matter. 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.



This corrective notice has been sent by Dellapond Pty Ltd as part of undertakings 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 Dellapond Pty Ltd.

Annexure B

Trade Practices Compliance Program

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

General

- 1) Within two (2) months of the undertaking coming into effect, Dellapond will develop for consideration by the Commission, a trade practices compliance program (“the Draft Program”).
- 2) Dellapond will make whatever changes to the Draft Program that the Commission may reasonably require.
- 3) Once the Commission has approved the Program, Dellapond will, within one (1) month of receipt of the Commission’s approval, implement the Program at its own expense.
- 4) Dellapond will place responsibility for the implementation and effectiveness of the Program with its Director.
- 5) Dellapond 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.

Complaints Handling

- 6) Dellapond will ensure that the Program incorporates an appropriate complaints handling mechanism.

Education

- 7) Dellapond will develop and implement an education program calculated to have the relevant staff, conversant with Part VB and Part V provisions of the Act to a level where:
 - i) General staff 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 or able to give the relevant advice, identify issues which require referral to Dellapond’s legal adviser.
- 8) The term “relevant staff” referred to above and below includes but is not limited to the Directors, staff involved in contact with customers or possible customers of Dellapond.

- 9) Dellapond will ensure that training sessions covering all aspects of Part VB and Part V on the Trade Practices Act be given to relevant staff 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.

Reporting

10) Dellapond will provide the Commission with the following:

- i) Within 10 working days of the implementation of the Program, a copy of the Program;
- ii) Within 10 working days of the implementation of the Program, notice of the appointment of the Compliance Officer including name, position and contact details; and
- iii) Within 10 working days after each of the training sessions, notice of completion of that seminar including an outline of the session, details of the presenter(s) and details of attendees.

11) Dellapond will make changes to the Program as reasonably requested by the Commission. Such changes are to be implemented within 2 weeks of the Commission's request.

Duration

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