

TRADE PRACTICES ACT 1974

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

BY
CHERYL BENSON

PERSONS GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission ('the Commission') Cheryl Benson, the proprietor of The Dural Pharmacy ('Dural Pharmacy') (B2003112) of Kenthurst Road, Dural, in the State of NSW under section 87B of the *Trade Practices Act 1974* ('the Act').

BACKGROUND

2. Cheryl Benson is the proprietor of Dural Pharmacy, which is operated as an independent business entity.
3. From time to time, Cheryl Benson, on behalf of Dural Pharmacy has published letters about products and services available at Dural pharmacy.
4. In June 2000, Cheryl Benson, on behalf of Dural Pharmacy, distributed a letter ('the letter') to account customers by post. A copy of the letter of June is attached at **Annexure A**. Amongst other things, the letter contained the representation:

"...we are obliged to add the GST of 10% on the outstanding amount, before any additional purchases are made".

5. On 3 and 4 July 2000, the Commission wrote to Cheryl Benson of Dural Pharmacy alerting her to the Commission's view that the representation contained in paragraph 4a above was misleading or deceptive or likely to mislead or deceive contrary to section 52 of the Act and may have constituted a false or misleading representation under section 53(e) of the Act. The Commission informed Cheryl Benson of Dural Pharmacy of its view:

"The complainant states that the letter has the effect of encouraging consumers to pay accounts prior to 1 July 2000 under the belief that on and after this date accounts will incur an additional charge of 10% due to the GST".

6. On 8 July 2000, Cheryl Benson of Dural Pharmacy advised the Commission that she had sent corrective letters to account customers on 3 June 2000 correcting her earlier representations. On 4 July 2000 the Commission advised Cheryl Benson that some of Dural Pharmacy's account customers had advised the Commission that they had not received her letter dated 3 June 2000.

VCB
UB

Cheryl Benson

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

COMMENCEMENT OF UNDERTAKING

8. This undertaking comes into effect when:
- (i) the undertaking is executed by Cheryl Benson; and
 - (ii) the Commission accepts the undertaking so executed.

UNDERTAKINGS

9. Cheryl Benson on behalf of Dural Pharmacy gives the following undertakings to the Commission for the purposes of s87B of the Act.

ADMISSIONS

10. Cheryl Benson admits that the representations contained in the letter at **Annexure A** may constitute a breach of sections 52 and 53(e) of the Act, in that the representations contained in the letter were likely to mislead or may have mislead customers into believing that:
- (i) GST is payable on goods received prior to 1 July 2000; and
 - (ii) GST is chargeable on goods which are GST free.

Conduct Undertakings

- (i) that she, her servants and agents of Dural Pharmacy will cease and in the future refrain from making representations that:
 - a) GST is payable on goods and services received prior to 1 July 2000; and
 - b) GST is payable on goods which are GST free for the purposes of the New Tax System.

Corrective Notice Undertakings

- (ii) Cheryl Benson on behalf of Dural Pharmacy will, at her own expense, place a corrective advertisement on one occasion in the Hills News within 2 weeks of acceptance of the undertaking by the Commission. The corrective notice is to be placed in the first five pages of the Hills News. The proposed form, size of the corrective advertisement is at **Annexure B**.

C Benson *Cheryl Benson*

Corrective Letter Undertakings

- (iii) Cheryl Benson of behalf of Dural Pharmacy will send a letter of apology to all account customers within 3 days of the acceptance of this undertaking by the Commission. The proposed form, design and content of the corrective letter are at **Annexure C**.

Trade Practices Training Program

11. Dural Pharmacy will implement a training program that consists of:

- a) Cheryl Benson attending a full day Trade Practices training program on the provisions of Part V of the *Trade Practices Act 1974*, within 90 days of the acceptance of this undertaking to the Commission; and
- b) Cheryl Benson to advise the Commission in writing of her attendance at the Trade Practices training program within 100 days of the acceptance of this undertaking by the Commission.

ACKNOWLEDGEMENTS

12. Cheryl Benson acknowledges that the Commission will make this undertaking available for public inspection.
13. Cheryl Benson further acknowledges that the Commission will, from time to time, publish and publicly refer to this undertaking at its discretion, including by way of press release.
14. Cheryl Benson acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct which is the subject of this undertaking.
15. Cheryl Benson further acknowledges that the information referred to at **Annexure B**.

X
CB

C Benson

Signed by Cheryl Benson on behalf of Dural Pharmacy

Cheryl Benson

7/1/00

IN WITNESS of these undertakings:

Signed by Cheryl Benson

on behalf of Dural Pharmacy

)
)

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

Alan Fels
.....
Professor Alan Fels
Chairman

This *26* day of *April* 2000

Dural Pharmacy
Shop 12
The Village Green
Kenthurst Road
ROUND CORNER
DURAL 2158

Dear Customer,

As you are aware the implementation of the Goods and Services Tax begins on 1 July 2000. When all outstanding account balances are paid after that date we are obliged to add the GST of 10% on the outstanding amount, before any additional purchases are made.

We would therefore encourage you, to minimise the tax payable, by paying off as much of your account as possible before 30 June.

Please feel free to contact us if you wish to discuss this issue. Thank you for your custom and we look forward to serving your Pharmacy needs in the future.

Yours sincerely



C. Benson B. Pharm M.P.S.
Owner



Corrective Notice

**An apology from
Dural Pharmacy**

In June 2000, Dural Pharmacy sent letters to its account customers stating: "...we are obliged to add the GST of 10% on the outstanding amount, before any additional purchases are made".

The Australian Competition and Consumer Commission ('the Commission') was concerned that this letter encouraged account customers to pay their accounts prior to 1 July 2000 under the belief that on and after this date account customers would incur an additional charge of 10% GST on outstanding accounts.

As a result of this incorrect statement and mistake, Dural Pharmacy would like to apologise to its account customers if the letter had the effect of misleading or caused any distress to account customers about the effect of the GST on outstanding accounts.



This corrective notice has been placed by Dural Pharmacy as part of undertakings provided by the Commission in relation to possible contraventions of the *Trade Practices Act 1974*. It has been paid for by Dural Pharmacy.

10B CB
C. Brown

*Dural Pharmacy
Shop 12
The Village Green
Kenthurst Road
ROUND CORNER
DURAL 2158*

Date August 2000

Dear Customer,

In June 2000, Dural Pharmacy sent letters to its account customers, stating:
"...we are obliged to add the GST of 10% on the outstanding amount, before any additional purchases are made".

The Australian Competition and Consumer Commission ('the Commission') was concerned that this letter encouraged account customers to pay their accounts prior to 1 July 2000 under the belief that on and after this date accounts customers would incur an additional charge of 10% GST on outstanding accounts. Under sections 52 and 53(e) of the *Trade Practices Act 1974* it is misleading and deceptive to make representations that outstanding accounts would rise by 10% after the introduction of the GST.

As a result of this incorrect statement and mistake, Dural Pharmacy would like to apologise to its account customers if the letter had the effect of misleading or caused any distress to account customers about the effect of the GST on outstanding accounts.

Dural Pharmacy has agreed not to repeat these claims and to place a public apology in a local newspaper.

Yours sincerely

C Benson B.Pharm M.P.S.

Owner

XCB
CB
C Benson