

TRADE PRACTICES ACT 1974

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

BY

RAYMOND MOORE

Background

- (1) Moore Talk Communications Pty Ltd ACN 084 068 164 ('MTC'), trading as MT Marketing, is based in Brisbane and its business includes providing services on a national basis for connecting customers to mobile telephone networks as agent for various mobile communications service providers.
- (2) Raymond Moore is a director and secretary of MTC and has had overall responsibility for the day-to-day operation of the business since 26 August 1998.
- (3) MTC is currently an authorised agent pursuant to dealer agreements with RSL COM Personal Communications Pty Ltd ACN 078 792 195 ('RSL COM'), and Signal Telecommunications Pty Ltd ACN 078 413 199 ('Signal'). Until 22 October 1999, MTC was also an authorised agent of One.Tel Limited ACN 068 193 153 ('One.Tel').
- (4) Since February 1999, MTC has provided its services by way of telemarketing. In the course of its business, telemarketing representatives of MTC ('MT representatives') telephoned business and domestic consumers, and asked them to participate in a survey. At the completion of the survey, the MT representative asked the consumer if they would like to be in the draw to receive a complimentary digital mobile phone. If the consumer replied in the affirmative, their name was passed onto another MT representative who contacted the consumer and advised that they were one of the lucky people selected to receive a complimentary digital mobile phone. MT representatives represented to consumers that they had won a mobile phone. A two page facsimile was then transmitted to the consumer by the MT representative outlining the mobile phone specifications, and referring to two mobile phone access plans. The MT representative then rang the consumer again to inquire as to which plan they wished to join. If the consumer agreed to join a plan, the MT representative faxed the front page of an application form for mobile services ('the Application') from one of the service providers for execution and return by the consumer. If the Application was subsequently accepted by the service provider, a contract for the provision of mobile telephone services was formed between the consumer and the service provider on the terms and conditions appearing on the reverse side of the Application. Consumers were not provided with a mobile phone by MTC unless and until they had entered into such a contract.

- (5) Between February 1999 and October 1999, MT Representatives endeavouring to obtain the signature of potential customers on the Application observed a practice whereby they faxed only the front page of the Application to the customer, failing to fax customers the reverse side of the Application containing the terms and conditions. During this period approximately 1600 customers' Applications were accepted by the various service providers and such customers thereby entered into contracts with the service providers for the provision of mobile telephone services without sighting the terms and conditions attaching to the contract.
- (6) Following an investigation, the Australian Competition and Consumer Commission ('the Commission') has reached the view that Raymond Moore, in his role as Director of MTC, has been knowingly concerned in the contravention of sections 52, 53(e), 53(g), 53C, 54, 51AB and 51AC of the *Trade Practices Act 1974* ('the Act'), through MTC's telemarketing activities which misled consumers as to the nature of the promotion and by failed 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.
- (7) Raymond Moore acknowledges that:
- (i) section 52 of the Act prohibits conduct that misleads or deceives;
 - (ii) section 53(e) prohibits false or misleading representations with respect to the price of goods or services;
 - (iii) section 53(g) prohibits false representations concerning the existence, exclusion or effect of any condition, warranty, right or remedy;
 - (iv) section 53C prohibits a corporation in relation to the possibly supply of goods or services or in connection with the promotion of the supply or use of good or services, from making a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the corporation also specifies the cash price for the goods and services;
 - (v) section 54 prohibits a corporation, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered; and
 - (vi) 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.
- (8) Raymond Moore admits to being knowingly concerned in the conduct of MTC which has contravened sections 52, 53(e), 53(g), 53C, 54, 51AB and 51AC the

Act. Raymond Moore has advised the Commission that the conduct referred to in paragraphs (4) and (5) above has ceased.

- (9) Raymond Moore consents to the Federal Court making orders at the application of the Commission injuncting the conduct in contravention of sections 52 and 53 in the terms of attachment "A" hereto.
- (10) Raymond Moore acknowledges that RSL COM Personal Communications Pty Ltd, Signal Telecommunications Pty Ltd and One.Tel Limited have undertaken to write to consumers affected by the conduct referred to in paragraph (5) above in the terms of attachments B, C and D respectively granting the consumers the opportunity to cancel their contract.

Undertakings

- (11) This undertaking takes effect at the time the Commission's acceptance of it is communicated to Raymond Moore.
- (12) Raymond Moore undertakes for the purposes of section 87B of the Act that he will not, in his position as Director of MTC or otherwise, fail to provide potential customers with a copy of the terms and conditions appearing on the reverse of the Application, in legible form, prior to obtaining the signature of a potential customer on the Application.

Acknowledgments

- (13) Raymond Moore acknowledges that:
 - (i) The Commission will make this undertaking available for public inspections;
 - (ii) The Commission may from time to time publicly refer to this undertaking; and
 - (iii) This undertaking in no way derogates from the rights and remedies available to any person arising from the alleged conduct.

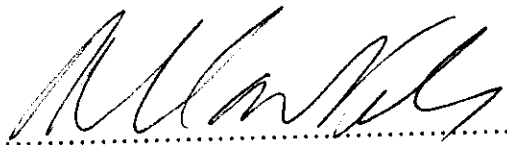
SIGNED on the 28th day of July 2000

R Moore
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RAYMOND MOORE

BEFORE ME:


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Justice of the Peace/Solicitor
(Print Name) **DUNCAN MAURICE STITT**
SOLICITOR

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


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(Professor Allan Fels)
Chairman

This 16 day of August 2000