

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN UNDER SECTION 87B**

BY

DIMMEYS STORES PTY LTD (ACN 073 979 781)

PERSON GIVING UNDERTAKING

- 1) This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Dimmeys Stores Pty Ltd (ACN 073 979 781) of Level 1, 140 Swan Street, Richmond, in the State of Victoria under section 87B of the *Trade Practices Act 1974* ("the Act").

BACKGROUND

- 2) Dimmeys Stores Pty Ltd ("Dimmeys") is incorporated in Australia and carries the business of retailing clothing, food items, homewares and other products. Dimmeys operates as part of a group of companies ("the Group") carrying the businesses of *Dimmeys, Best Buys Pty Ltd, Forges of Footscray* and *Home Zone*. The Group is linked by way of common Directors. The Group, in total comprises 43 outlets.
- 3) Dimmeys maintains an outlet in the Flinders Street Mall, Townsville, North Queensland ("Dimmeys Townsville").
- 4) In February 2000, the Commission became aware of a sign posted within Dimmeys Townsville which in effect stated that *No refunds or exchanges were available on swimwear and intimate apparel* at Dimmeys Townsville ("the Original Dimmeys Representation").
- 5) Divisions 2 and 2A of the Act provide that corporations engaging in contracts for the supply of goods or services to consumers have statutory obligations to ensure that:
 - (i) Goods are of merchantable quality, are fit for their purpose, match any sample provided to a consumer and are free from defects;
 - (ii) Services are carried out with due care and skill.

Where the goods or services supplied do not meet these warranties and conditions, consumers are entitled to return them to the place of purchase for refund, repair or replacement as is deemed appropriate in the circumstances.

- 6) The Commission is of the opinion that attempts to limit or restrict the obligations referred to above, are likely to amount to false or misleading representations and contravene the fair trading provisions of the Act. Generally speaking, section 52 of the Act prohibits corporations, in trade or commerce, from engaging in conduct which is likely to mislead. Section 53(g) of the Act generally prohibits a corporation, in trade or

commerce, from making false or misleading representations in relation to conditions, warranties, guarantees, rights or remedies.

- 7) On 16 February 2000 the Commission wrote to Dimmeys Stores Pty Ltd raising concern over the Original Dimmeys Representation and alerting it to the Commission's position that the representations may have been misleading contrary to section 52 of the Act or may have constituted a false representation under section 53(g) of the Act.
- 8) After being informed by the Commission of the possible contravention of section 52 and section 53(g) in respect of the Original Dimmeys Representation, Dimmeys undertook to:
 - remove the Original Dimmeys Representation immediately;
 - display apologies within Dimmeys Townsville;
 - amend its refund policy; and
 - prepare and implement a Trade Practices Compliance Program.

A copy of the corrective apology posted within Dimmeys Townsville is attached at **annexure A**. A copy of the Dimmeys Refunds Policy is attached at **annexure B**.

- 9) On 11 May 2000 the Commission became aware of a sign in Dimmeys Townsville. This sign was in the Ladies intimate apparel section and stated:

"Please Note No Refund or Exchange is given on Ladies Underwear, Swimwear, Bras or Briefs"

"The Second Dimmeys Representation". A photograph of the Second Dimmeys Representation is attached at **annexure C**.
- 10) The Second Dimmeys Representation raised similar concerns to the earlier representation. On 12 May 2000 the Commission raised these concerns with Dimmeys in writing seeking comment and a suitable undertaking.
- 11) On 16 May 2000 Dimmeys responded to the Commission's letter. Dimmeys offered its cooperation and offered to provide these undertakings as a means to resolving the matter.
- 12) Further, on 30 May 2000 Mr Brian Swersky, Joint Managing Director and Mr John Maguire, Operations Director, both from Dimmeys, met with the Townsville Staff of the Commission to discuss the proposed Undertaking.

ADMISSIONS

- 13) Dimmeys admits that in making the Original Dimmeys Representation and the Second Dimmeys Representation it may have contravened sections 52 and 53(g) of the Act.

COMMENCEMENT OF UNDERTAKING

- 14) This undertaking comes into effect when:

- (i) the undertaking is executed by Dimmeys; and
- (ii) the Commission accepts the undertaking so executed.

UNDERTAKINGS

15) Dimmeys gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-

Conduct Undertakings

- (i) Dimmeys will ensure that Dimmeys management attends and inspects each of the outlets operated by the Group to ensure any in-store representations are unlikely to mislead consumers as to their statutory rights under the *Trade Practices Act 1974*.
- (ii) Dimmeys will take all reasonable steps to ensure that neither it nor any of its servants or agents cause to be displayed, by any representation which states or implies "No Refund or Exchange" with respect to goods supplied or ordinarily supplied to consumers.

Corrective Advertisement Undertaking

- (iii) Dimmeys will, at its own expense, place a corrective advertisement ('the Corrective Advertisement') on or before page 15 of the Townsville Bulletin in the first possible Saturday edition after these undertakings come into effect, in the same terms, font size, form, design and content of **annexure D**.
- (iv) The Corrective Advertisement will:
 - (a) be no less than 13cm in width by 15cm in depth; and
 - (b) be located on an odd numbered page.

Trade Practices Compliance Program

- (v) Dimmeys will implement a trade practices compliance program ('the Program') in accordance with **annexure E**.

ACKNOWLEDGMENTS

- 16) Dimmeys acknowledges the Commission's right to make this undertaking available to the public including placing it on a register, publicising it and allowing third parties to publish it;
- 17) Dimmeys further acknowledges that the Commission may issue a media release about this undertaking and may, from time to time, publicly refer to this undertaking.
- 18) Dimmeys acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Dimmeys.

- 19) Dimmeys further acknowledges that the compliance program as in force from time to time will be held with this undertaking on the public register.

Annexure B**Copy of In-store Refunds Policy**

Refund Policy

You will always be given a refund (no questions asked) as follows:

The goods are returned within one month of purchase

and

The goods are returned in a saleable condition

and

You have a receipt.

You will always be given a refund (no questions asked) if:

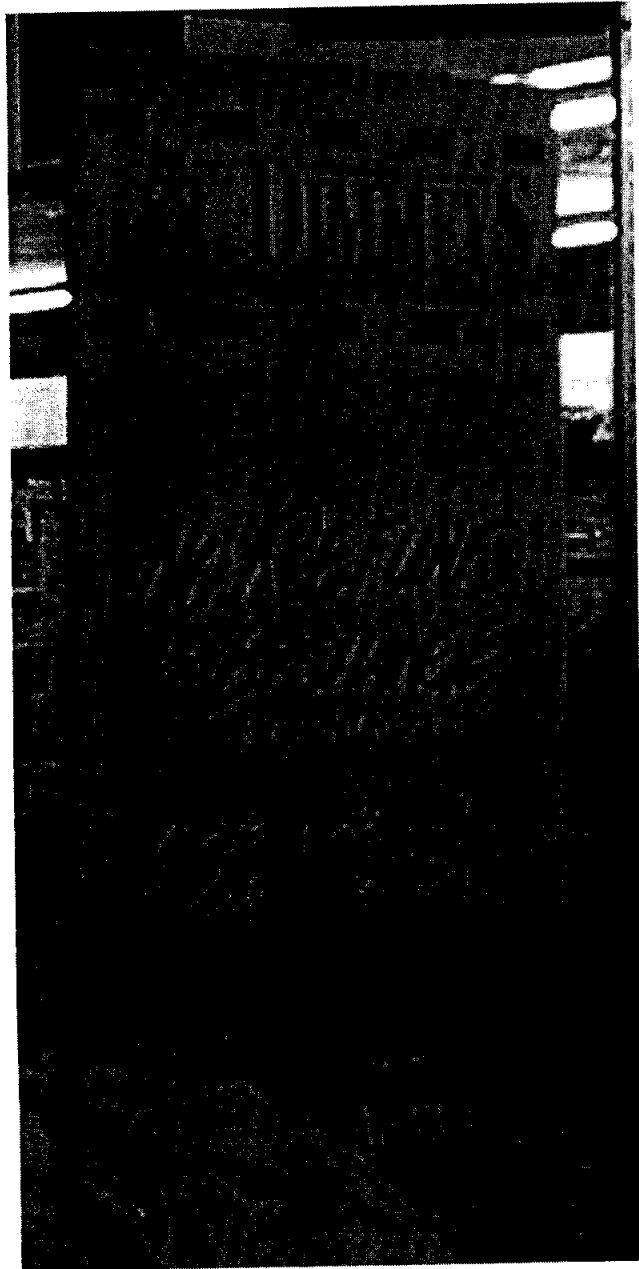
- The goods were faulty (but were not sold as faulty, gradings or seconds)
- The goods were wrongly described
- The goods were different from the sample shown
- The goods do not do what they were supposed to do
- You have a receipt

If you do not have a receipt we will require identification and at our discretion may refuse a refund or offer an exchange or credit voucher.

Dimmeys Stores Pty Ltd
ACN 073 979 781

Annexure C

Photograph of Signage – 11 May 2000



Annexure D

Corrective Advertising

An apology from Dimmeys

[INSERT DIMMEYS LOGO]

Earlier this year, in the Dimmeys Store in Flinders Mall, we displayed signs which represented that we would not provide Refunds or Exchanges on products such as Underwear and Swimwear.

The Australian Competition and Consumer Commission has raised concerns that these signs may have mislead consumers as to their rights under the *Trade Practices Act*. Dimmeys agrees.

Where a product is faulty, not fit for its purpose or does not match its description, consumers are entitled to have the problems remedied which may include a refund or exchange.

Dimmeys would like to apologise to anyone misled by the signs.

As a result of the ACCC's concerns, we have provided undertakings to the ACCC agreeing not to repeat the claims and to place this apology. We will also implement a trade practices compliance program to ensure our in-store signs and advertising won't mislead consumers in the future.



This advertisement has been placed by Dimmeys Stores Pty Ltd as part of undertakings provided to the ACCC in relation to possible breaches of the Trade Practices Act.

Annexure E

Trade Practices Compliance Program

Within three months of the commencement of the undertaking, Dimmeys will create and maintain at its own expense, a trade practices compliance program ("the Program"). The Program will be made available to the Group. In summary the Program will:

General

- 1) Comply with Australian Standard on Compliance Programs AS 3806-1998 and be tailored to suit the circumstances of Dimmeys.
- 2) Demonstrate commitment to a policy of compliance and embed a culture of compliance throughout the organisation.
- 3) Analyse and respond to trade practices matters resulting in this undertaking.
- 4) Identify risk areas for trade practices breaches and develop systems to eliminate or minimise these risks.
- 5) State that the company will take action internally against those responsible for breaches and will not indemnify them.
- 6) Provide practical and verifiable training for all relevant staff and management so that breaches and potential breaches may be prevented or otherwise detected, referred and acted upon.

Specifics

In particular the Program will include the following steps:

- 7) Commitment
 - i) Form a compliance committee of the Board or ensure that compliance matters are standing items on the Audit Committee and/or Board meetings.
 - ii) Appoint a Compliance Manager or Senior Manager with overall responsibility for compliance systems.
 - iii) Implement adequate procedures to check for trade practices compliance.
 - iv) Ensure that compliance procedures are understood by staff and other relevant parties eg agents, distributors and advertising representatives.
- 8) Policies and Procedures
 - i) Produce a written policy of commitment to compliance and articulate how this will be

carried out; set in place procedures so that the policy is well understood throughout the company; ensure procedures are laid down to assess compliance against predetermined objectives and assessment criteria.

9) Management Responsibility

- i) Detail the process involved in establishing, implementing and maintaining the compliance program and the roles and responsibilities of management, staff and other stakeholders.
- ii) Ensure that line managers are responsible for compliance in their immediate area.

10) Resources and Authority

- i) Ensure that the senior executive responsible for compliance systems has:
 - a) authority, recognition and support within the organisation;
 - b) access to all levels in the organisation to ensure compliance;
 - c) overall responsibility for design, integrity and updating of the program; and
 - d) access to the board when required.
- ii) Ensure that staff have access to the necessary materials including compliance manuals and training, reference material and databases.
- iii) Ensure that any external compliance service providers have the resources and expertise to carry out the required tasks.

11) Continuous Improvement

- i) Put in place procedures to ensure the program has regular ongoing reviews.

12) Operating Procedures for Compliance

- i) Integrate compliance considerations into:
 - a) computer systems;
 - b) forms;
 - c) contracts;
 - d) administrative procedures;
 - e) financial evaluations; and
 - f) management performance evaluations (line & senior)

13) Training

- i) Develop and execute a practical and easily understood compliance training system throughout Dimmeys. Training will be:
 - a) integrated into induction courses;
 - b) reviewed every twelve months;
 - c) participatory;

- d) verifiable by third parties;
- e) framed to reflect areas or risk;
- f) integrated into line and senior management development.

14) Complaints handling system

- i) Implement a visible and accessible complaints handling system which complies with Australian Standard AS 4269.

15) Record Keeping

- i) Keep an accurate record of compliance failures and complaints and of the rectification of such failures and complaints.

16) Employee Compliance

- i) Develop a disciplinary policy for breaches of the Act by employees and ensure the policy is widely disseminated.
- ii) Ensure that compliance is integrated into performance reviews for employees.

17) Identification and Rectification

- i) Develop a system to identify and classify compliance failure so that systemic and recurring problems are rectified.

18) Reporting

- i) Ensure that compliance problems are rapidly reported to the Compliance Manager.

19) Monitoring and Review

- i) Introduce a system to monitor and review the effectiveness of the compliance program.

20) Accountability

- i) Ensure that the Compliance Manager is accountable to the Board for compliance issues.

21) Review of the Program

Dimmeys will cause, at its own expense, an independent audit of its compliance program to be conducted twelve months from the date of the implementation of the Program. The audit will be carried out by an independent external auditor with appropriate experience in trade practices law. The auditor should review and report on:

- i) Dimmey's adherence to the undertaking;
- ii) the implementation of the compliance program and the achievement of its objectives over the preceding twelve months; and

iii) recommend changes to the compliance program that may be necessary to ensure achievement of its objectives.

22) Dimmeys will implement the recommendations of the audit referred to above within two calendar months of the provision of the audit.

Duration

23) The Program will remain in place for at least three years following its implementation.

The Commission

24) Dimmeys will provide a copy of the Program to the Commission within two weeks of its implementation.