



TRADE PRACTICES ACT 1974

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

BY

TOTAL AQUA PTY LTD
A.C.N. 064 357 884

BACKGROUND

1. Total Aqua Pty Ltd, trading as Total Aqua, is incorporated in the State of Western Australia and operates from one outlet located in Perth. Total Aqua supplies the CCI undersink water purifier system.
2. In the Good Living section of *The Sunday Times* on 2 April 2000, Total Aqua caused to be published an advertising feature (the "advertorial") promoting its CCI undersink water purifier system. Appearing under the heading 'Health needs good water' the feature article claimed that,

'Alternatives are spring and bottled waters, but they are about to be hit hard when GST comes in'.
3. On 5 April 2000, the Australian Competition and Consumer Commission (the "Commission") received a complaint alleging that the representations made by Total Aqua about the application and effect of the GST on spring and bottled waters were false and misleading as these goods will not, in fact, be subject to the GST.
4. On 11 April 2000, the Commission wrote to Total Aqua and advised that it considered the representations made in the advertorial to be false and misleading and in possible breach of sections 52 and 53(e) of the *Trade Practices Act 1974* (the "Act").
5. Total Aqua acknowledges that by representing in the advertorial that spring and bottled waters will be 'hit hard when GST comes in' it has breached sections 52 and 53(e) of the Act.

UNDERTAKINGS

6. Total Aqua gives the following undertakings to the Commission for the purpose of section 87B of the Act. Total Aqua undertakes that it will:
 - (a) cease forthwith to engage, and at no time in the future engage, in misleading or deceptive conduct, or make false or misleading representations about the application and/or effect of GST to spring or bottled waters;
 - (b) offer refunds, or where appropriate, some other compensation agreed to between the parties, to any consumer who was misled by the representation, and can show

proof of purchase, into purchasing a Total Aqua CCI undersink water purifier in reliance of the belief that spring and bottled waters will be subject to the GST and that the price of such items will rise due to the GST's introduction;

- (c) within 14 days of the Commission's acceptance of this undertaking, cause a corrective advertisement in the form annexed at Attachment A and of the approximate size 11 cm by 2 columns, to be published within the same Good Living section, or equivalent, as the initial advertorial of *The Sunday Times*; and
- (d) within three months of the acceptance of the undertaking by the Commission, implement a trade practices compliance program ("program") that is consistent with Australian Standard 3806 Compliance Programs and have its external solicitors or accountants, and which are acceptable to the Commission, report to the Commission on the program's implementation and its effectiveness for a period of two years, the first such report to be provided on a date no later than fifteen months following acceptance of the undertaking by the Commission and the final report by no later than twenty seven months following acceptance of the undertaking by the Commission.

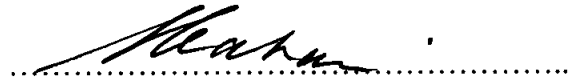
ACKNOWLEDGMENTS

7. Total Aqua acknowledges 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.
8. Total Aqua acknowledges that the Commission may issue a media release about this undertaking and may, from time to time, publicly refer to the undertaking.
9. Total Aqua acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.


IN WITNESS OF THIS UNDERTAKING

This 25th day of MAY 2000


THE COMMON SEAL of **TOTAL AQUA PTY LTD ACN 064 357 884** is affixed in accordance with its Articles of Association in the presence of


.....
Director




.....
Secretary

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


.....
Chairperson, Professor Allan Fels

This 31ST day of MAY 2000

An Apology from Total Aqua

(Company Logo)

In an advertising feature in the Good Living section of *The Sunday Times* on 2 April 2000, Total Aqua, promoting its CCI undersink water purifier system, claimed that

‘Alternatives are spring and bottled waters, but they are about to be hit hard when GST comes in’.

This claim was incorrect

This claim misrepresented that the GST would be applied to spring and bottled waters when, in fact, most of these products are exempt from the GST.

ACCC Concerns

The Australian Competition and Consumer Commission raised its concerns about Total Aqua’s claim because both spring and bottled waters will not be subject to the GST when it is introduced on 1 July 2000. Total Aqua accepts that its claim was wrong and that it may have breached the Trade Practices Act. Total Aqua sincerely apologises to consumers and competitors.

Refund Offer

Consumers who were misled by the claim and can show proof of purchase can contact Total Aqua for recovery of their CCI undersink water purifier system and associated full refund, or some other form of compensation. Total Aqua can be contacted at Unit 5/30 Peel Rd, O’Connor WA 6163 or by telephone on (08) 9314 5555

This corrective notice forms part of Total Aqua’s undertakings to the Australian Competition and Consumer Commission.