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TRADE PRACTICES ACT 1974**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF
SECTION 87B OF THE TRADE PRACTICES ACT 1974 (CTH)**

BY
NATIONAL INTERNET REGISTRATION ARBN: V5543429
STATE RESOURCES PTY LTD ACN: 083033603
JEFFREY WORBOYS
AND
RETRIEVER QUICK SEARCH

BACKGROUND

- (1) The Australian Competition and Consumer Commission ('the Commission') is a body corporate established by section 6A of the *Trade Practices Act 1974* ('the Act'), and is responsible for taking action to enforce Part V of the Act, including sections 52 and 64(2A) 64(3).
- (2) State Resources Pty Ltd ACN 083033603 is a trading corporation for the purposes of the Act, and duly incorporated pursuant to the laws of the State of New South Wales. National Internet Registration (NIR) ARBN V5543429 is a business name registered by State Resources Pty Ltd on 31 May 1999.

During 1999 NIR distributed invoices to businesses in New South Wales seeking payments of \$47 for registration on an internet service directory. The registrations were to be effected by means of inclusion in an online data base.

- (3) Mr Jeffrey Worboys, the Director and Secretary of State Resources Pty Ltd, designed, created, settled or otherwise procured the production, publication and distribution of invoices ("the invoices") seeking payments of \$47 from businesses for registration on an Internet services directory.
- (4) Complaints have been made by some businesses that their registration was unsolicited and that they were charged for provision of a service which they did not request.

- (5) The invoices issued by NIR and Mr Jeffrey Worboys represented to each of the businesses to which they were addressed, that the business:
- 5.1 had subscribed to NIR for listing on an Internet directory;
 - 5.2 was listed on the NIR directory;
 - 5.3 had an account with NIR;
 - 5.4 could contact a 'help desk' on (02) 99571499 for information;
 - 5.5 was liable to pay a fee of \$47 for these services.
- (6) Following an investigation by the Commission, the Commission reached the view that:
- (i) State Resources Pty Ltd trading as NIR had contravened sections 52, 64(2A) and 64(3) of the Act in that NIR asserted a right to payment from businesses for the making in a directory of an entry relating to the business, without having reasonable cause to believe that the business had authorized the making of that entry.
 - (ii) Mr Jeffrey Worboys had contravened the Act in that he aided or abetted or was directly or indirectly knowingly concerned in or party to the contravention of sections 52 and 64 of the Act by NIR.
- (7) The Commission considers State Resources Pty Ltd trading as NIR contravened section 52 of the Act by engaging in conduct in trade or commerce that is misleading or deceptive, or is likely to mislead or deceive, by making the representations set out in paragraph (4) above on invoices sent to businesses;
- (8) The Commission considers State Resources Pty Ltd trading as NIR contravened section 64(2A) of the Act by asserting a right to payment from a person for unsolicited services.
- (9) The Commission considers State Resources Pty Ltd trading as NIR contravened section 64(3) of the Act by asserting a right to payment from businesses of a charge for the making in a directory of an entry relating to the business, without having reasonable cause to believe that the business had authorized the making of the entry.
- (10) The Commission considers Mr Jeffrey Worboys contravened section 52 of the Act by aiding or abetting, or being directly or indirectly knowingly concerned in or party to the making or representations set out in paragraph (4) above on invoices sent to businesses;
- (10) On 9 September 1999 the Commission brought to NIR and Mr Jeffrey Worboys' attention its view that the representations referred to in paragraph (4) above contravened sections 52 and 64 of the Act.

- (11) On 15 September 1999 19 July 1999 NIR and Mr Jeffrey Worboys agreed to provide to the Commission an undertaking pursuant to section 87B of the Act, as set out below.

OBLIGATIONS UNDER THE UNDERTAKING

I. CORRECTIVE COMPONENT

(12) State Resources Pty Ltd trading as NIR hereby undertakes for the purposes of section 87B of the Act:

- 12.1 that it will not hereafter, whether by itself, its servants, agents or otherwise, in trade or commerce assert a right to payment from any person, business or company, of a charge for the making in a directory, or an Internet site, of an entry relating to the person or to his or her profession, business, trade or occupation unless that person, business or company has authorised the making of an entry;
- 12.2 that all personal, business or company cheques received after 13 September 1999 will be returned to the sender with a covering letter;
- 12.3 that all persons, businesses or companies who have forwarded \$47 for listing on the NIR directory will be contacted by ~~31 December 1999~~ ^{31 JANUARY 2000} advising of the name change of NIR to Retriever Quick Search and seeking new authorisation to transfer registration from NIR to Retriever Quick Search;
- 12.4 that if a person, business or company does not provide new written authorisation to transfer from NIR to Retriever Quick Search, that the client will be refunded the full charge of \$47 by 31 January 2000.

(13) Mr Jeffrey Worboys hereby undertakes for the purposes of section 87B of the Act:

- 13.1 that he will hereafter not assert a right to payment from any person, business or company, of a charge for the making in a directory, or an Internet site, of an entry relating to the person or to his or her profession, business, trade or occupation unless he knows that the person, business or company has authorised the making of an entry;
- 13.2 that all personal, business or company cheques received after 13 September 1999 will be returned to the sender with a covering letter;
- 13.3 that all persons, businesses or companies who have forwarded \$47 for listing on the NIR directory will be contacted by ~~31 December 1999~~ ^{31 JANUARY 2000} advising of the name change of NIR to Retriever Quick Search and seeking new written authorisation to transfer registration from NIR to Retriever Quick Search;
- 13.4 that if a person, business or company does not provide new written authorisation to transfer from NIR to Retriever Quick Search, that the client will be refunded the full charge of \$47 by 31 January 2000.

COMMENCEMENT OF THE UNDERTAKING:

(14) This undertaking comes into effect when:

- 14.1 the undertaking is so executed by State Resources Pty Ltd and Mr Jeffrey Worboys; and
- 14.2 the undertaking is so accepted by the Commission.

ACKNOWLEDGMENTS

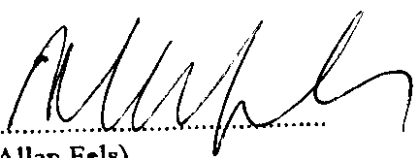
- (15) State Resources Pty Ltd and Mr Jeffrey Worboys acknowledge that the Commission will make the undertaking available for public inspection.
- (16) State Resources Pty Ltd and Mr Jeffrey Worboys further acknowledge that the Commission will from time to time publicly refer to this undertaking at its discretion.
- (17) State Resources Pty Ltd and Mr Jeffrey Worboys further acknowledge 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 these undertakings and its agreement the common seal of STATE RESOURCES PTY LTD (ACN 083033603) was hereunto affixed by authority of the Board of Directors in the presence of:

Secretary/Director  Director *SINGLE DIRECTOR Co.*

This *7th* day of *JANUARY* ~~1999~~ *2000*

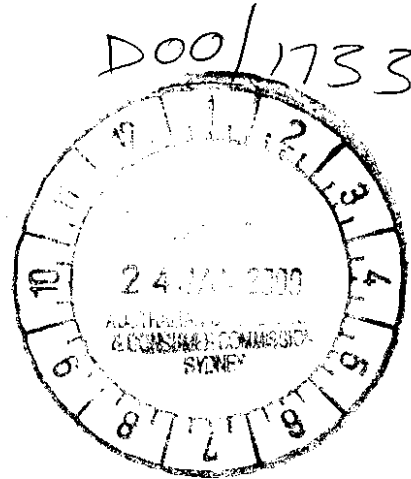
ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974



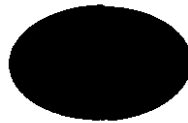
 (Professor Allan Fels)
 Chairperson

This *10* day of *February* ~~1999~~ *2000*

STATE RESOURCES PTY LIMITED
MUSEUM CHAMBERS,
ELIZABETH STREET
SYDNEY NSW 2000



REMOVE THIS TOP SECTION IF DESIRED, BEFORE FRAMING



DEPARTMENT OF **FAIR TRADING**
NSW Consumer Protection Agency

Certificate of Registration of Business Name

THIS IS TO CERTIFY that the undermentioned Business Name is registered in New South Wales under the Business Names Act, 1962.

Unless cancelled, registration will remain in force until the twenty fourth of December, 2002.

Issued and given under my hand this twenty fourth day of December, 1999.

D B O'Connor
Director - General

Business Name:	RETRIEVER QUICK SEARCH
Business Registration No:	BN83445576
Principal Place of Business:	MUSEUM CHAMBERS, ELIZABETH STREET SYDNEY NSW 2000
Name of Proprietor(s):	STATE RESOURCES PTY LIMITED