

**UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER  
COMMISSION GIVEN PURSUANT TO SECTION 87B OF THE TRADE  
PRACTICES ACT 1974**

**BY**

**LOYALTY PACIFIC PTY LTD (ACN 057 931 334)**

**BACKGROUND**

1. Loyalty Pacific Pty Ltd (Loyalty Pacific) is a company incorporated in the State of Victoria and has its registered office at Level 11, 1 Spring Street, Melbourne in the said State.
2. Loyalty Pacific operates the Fly Buys customer loyalty program. The program, which operates throughout Australia, involves the award of Fly Buys points to members of the program who make purchases of goods or services at participating retailer companies. When a sufficient number of Fly Buys points are collected the member may surrender these in exchange for *awards*, such as airline flights, accommodation, movie passes and store vouchers.
3. On 13 September 2000, the Australian Competition and Consumer Commission ('the Commission') received a complaint in relation to a Fly Buys promotion which ran from 15 May 2000 to 31 July 2000 inclusive. The promotion was targeted to specific Fly Buys members. The promotion offered an award of 2000 bonus points for members to *Shop with Shell and Best Western*. The terms and conditions of the promotion stated in part:

*Minimum expenditure at Best Western to qualify for bonus points is \$100 cumulative spend during the promotional period. Minimum expenditure at Shell to qualify for bonus points is \$100 cumulative spend during the promotional period; and*

*The maximum number of bonus points per promotion, per membership is 2000.*

A copy of the full text of the promotion is provided as Attachment A to this Undertaking.

The substance of the complaint was that a member of the Fly Buys program had spent \$100 at participating Shell outlets during the relevant period and was not credited with the 2000 bonus points. The complainant states the matter was raised with Loyalty Pacific and they were advised that in order to qualify for the award of the 2000 bonus points, members were required to spend a minimum of \$100 at participating Shell outlets and a minimum of \$100 with Best Western.

4. The Commission formed the view that a Fly Buys member reading the terms and conditions of the promotion would be entitled to conclude that expenditure of \$100 at either Shell or Best Western would qualify the member for the award of the bonus 2000 points. Accordingly, on 22 September 2000, the Commission wrote to Loyalty Pacific

seeking its comments in respect of the complaint and pointing out that if the complaint was correct, Loyalty Pacific was at risk of having contravened section 52 of the Trade Practices Act 1974 ('the Act').

Section 52 of the Act provides:

*A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.*

5. Loyalty Pacific acknowledges that the wording of the promotion could be regarded as ambiguous. As a result, Loyalty Pacific acknowledges that the representations made to Fly Buys members in the promotion and the circumstances under which members would qualify for the award of the 2000 bonus points, namely to require expenditure at both Shell and Best Western, may have potentially misled some members. However, Loyalty Pacific has advised the Commission of its view that only those members who actually relied upon the promotion could have suffered any loss, and that any loss that may in fact have been suffered was not necessarily the 2000 bonus points.
6. The Commission notes that prior to its acceptance of this Undertaking Loyalty Pacific advised it had:
  - reviewed its processes for the review and sign off of promotional material used in its laser (printed) offers. The reviewing group has been extended to include senior Loyalty Pacific management;
  - resolved that any member who had previously contacted Loyalty Pacific and who felt that they had been misled by the offer (and had spent \$100 or more at either Shell or Best Western during the promotional period) would be credited with 2000 points on an ex gratia basis; and
  - credited all Fly Buys members who had previously complained in writing regarding this aspect of this promotion with the 2000 points, again on an ex gratia basis.
7. Notwithstanding Loyalty Pacific's action referred to in paragraph 6 of this Undertaking the Commission remained concerned to ensure that all Fly Buys members who may have made purchases of \$100 or more at either Shell or Best Western on the basis they would be awarded the bonus 2000 points be credited with these points. To that end Loyalty Pacific has provided the Commission with analyses of the class of members who may have placed reliance on this promotion and who therefore could claim to have been disadvantaged because they had not been awarded the 2000 bonus points. Loyalty Pacific acknowledges that there may be some Fly Buys members outside the class of members identified who may also have placed reliance on this promotion.
8. To address the Commission's concern that Loyalty Pacific's conduct may have breached section 52 of the Act and to provide for all affected Fly Buys members to receive an award of 2000 bonus points, Loyalty Pacific has offered the Commission an Undertaking in accordance with section 87B of the Act.

## **COMMENCEMENT OF UNDERTAKING**

10. This Undertaking comes into effect when:

- (i) the Undertaking is executed by Loyalty Pacific; and
- (ii) The Commission accepts the Undertaking so executed.

## **UNDERTAKING**

Loyalty Pacific hereby gives the following undertakings for the purposes of section 87B of the Act:

- (i) that it will not by itself, its directors, servants or agents or howsoever, in trade or commerce, engage in misleading or deceptive conduct or conduct that is likely to mislead or deceive in relation to the Fly Buys customer loyalty program;
- (ii) that by no later than 19 February 2001 it will award the class of Fly Buys members identified to the Commission by Loyalty Pacific with the 2000 bonus points;
- (iii) that, if it has not already done so, it will award forthwith 2000 bonus points to all Fly Buys members who had previously complained in writing or by telephone regarding their failure to be credited with the 2000 bonus points under the promotion;
- (iv) that it will award the 2000 bonus points to any other Fly Buys member who may not otherwise have been identified in the preceding paragraphs of this Undertaking where that member demonstrates to the satisfaction of Loyalty Pacific that he or she spent \$100 at either Shell or Best Western in reliance on the promotion;
- (v) that it will place a notice in the form of schedule 1 to this Undertaking on the laser offer page to be sent with the February points summary statements addressed to all members who received the promotion and who spent \$100 or more at either Shell or Best Western during the promotional period.;
- (vi) that within four (4) months of this Undertaking taking effect it will design, implement and make provision to maintain and audit, at its own expense, a trade practices corporate compliance program which complies with Australian Standard Australian Standard AS 3806-1998 *Compliance Programs* relating to those provisions of the Act which are relevant to the conduct of its business and in particular having regard to Part V of the Act;

- (vii) within four (4) months of this Undertaking taking effect it will review its existing complaints handling system and, where necessary, design and implement modifications to that system, and audit, at its own expense, that system so that it complies with the provisions of Australian Standard AS 4269-1995 *Complaints Handling*;
- (viii) that the audit of the corporate compliance program and complaints handling system will be undertaken on an annual basis on the anniversary of this Undertaking or such other time as the Commission may agree for a period of three (3) years by an independent auditor who is a suitably qualified compliance professional. The auditor will review and report in writing to Loyalty Pacific in relation to the particulars of the compliance program and complaints handling system, its implementation, the achievement of its objectives and any recommended changes that may be necessary to ensure achievement of its objectives. The first audit report shall also contain details regarding Loyalty Pacific's compliance with respect to sub paragraphs (ii)-(v) inclusive.

A copy of the audit report shall be provided to the Commission within fourteen (14) days of its completion.

## **ACKNOWLEDGEMENTS**

1. Loyalty Pacific acknowledges the Commission's right to make this Undertaking available for public inspection and notes that the Commission will, at its discretion, from time to time, publish and publicly refer to this Undertaking.
2. Loyalty Pacific acknowledges and accepts that this Undertaking in no way derogates from any rights and remedies otherwise available to any person arising from Loyalty Pacific's alleged conduct.

## **SCHEDULE**

Following discussions with the Australian Competition & Consumer Commission, Fly Buys has identified a group of Fly Buys members most likely to have been disadvantaged by an ambiguity that appeared in the Shell/Best Western promotion sent with the May 2000 points summary pack regarding the need to purchase at both outlets to obtain the award of bonus points. Those members have now been credited with the appropriate points.

**IN WITNESS TO THIS UNDERTAKING**

The common seal of **LOYALTY PACIFIC PTY LTD** (ACN 057 931 334) was hereunto affixed by authority of its Board of Directors and in accordance with its Articles of Association in the presence of:

Director: *[Signature]*

Director/Secretary: *[Signature]*



DATED this 22nd day of December 2000

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

Acting Chairman: *[Signature]*

DATED this second day of January 2001

ACTING CHAIRMAN: *[Signature]*

DATE : 8-1-01

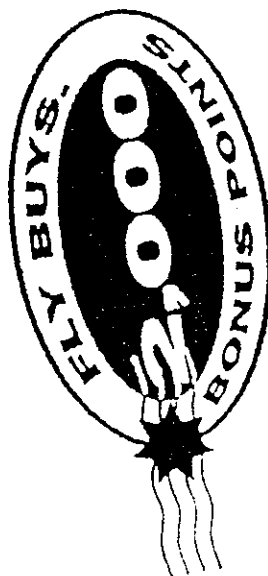
*REA*

**ATTACHMENT "A"**  
**TO THE UNDERTAKING**

**GIVEN BY**

**LOYALTY PACIFIC PTY LTD**

# **Shop with Shell and Best Western ...Collect 2000 bonus points.**



## **Terms & Conditions**

Present your Fly Buys card each time you make a purchase of \$5 or more. Minimum expenditure at Best Western to qualify for bonus points is \$100 cumulative spend during the promotional period. Minimum expenditure at Shell to qualify for Bonus Points is \$100 cumulative spend during the promotional period. At participating Shell outlets displaying the Fly Buys sign. This offer is not transferable. Bonus points will appear as Fly Buys points in your August 2000 Points Summary statement. The maximum number of bonus points per promotion, per membership is 2000.

Offer valid between

Monday 15 May 2000 to Monday 31 July 2000 inclusive.