



TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF:

SECTION 87B

BY:

FORRESTER KURTS PROPERTIES LTD ACN 010 729 950

BACKGROUND

1. Forrester Kurts Properties Ltd (ACN 010 729 950) ("Forrester Kurts") is incorporated in the State of Queensland. Its principal trading activities are property development and the sale of real estate, including residential apartments.
2. Forrester Kurts represented to potential purchasers of real estate that up to 500,000 Qantas Frequent Flyer Points could be earned for the purchase of an apartment ("the Frequent Flyer Points Promotion").
3. Forrester Kurts also represented to potential purchasers of real estate that it was possible to purchase various apartments in Queensland, including Brisbane, for \$49.00 per week with a 10% deposit and an income of \$40,000 per annum ("the \$49.00/week promotion").
4. These representations were made by advertisement in the Courier Mail on 11 November 2000 and 18 November 2000 and in the Sunday Mail on 12 November 2000 and 26 November 2000 (the latter Sunday Mail advertisement appearing due to the Sunday Mail's error after Forrester Kurts had withdrawn the advertisement).
5. In November 2000, it was brought to the Commission's attention that there were various conditions associated with the Frequent Flyer Points Promotion that were not revealed in the advertisement. It was also alleged that the \$49.00/week promotion was based on certain negative gearing calculations that may have used unrealistic figures.
6. It was considered that the advertisement had the potential to mislead or deceive consumers about the terms and conditions relating to the Frequent Flyer Points Promotion and was therefore at risk of contravening s.52 of the *Trade Practices Act 1974* ("the Act").
7. It was also considered that the representations made in the \$49.00/week promotion were at risk of contravening s.52 of the Act as well as s.53(e) of the Act prohibiting false or misleading representations about price.
8. Forrester Kurts acknowledges the concerns raised in respect of the above and that its conduct contravened the Act and, upon becoming aware of these concerns, Forrester Kurts

withdrew the advertisement from publication and also implemented remedial steps to address the deficiencies in Forrester Kurts' procedures revealed by these concerns.

The Commission acknowledges that Forrester Kurts has cooperated with it to ensure that any aggrieved purchasers who may have relied upon the advertisement are given the appropriate opportunity for redress.

COMMENCEMENT OF UNDERTAKING

9. This undertaking comes into effect when:-

- (a) The undertaking is executed by Forrester Kurts; and
- (b) The Commission accepts the undertaking so executed.

UNDERTAKINGS

10. Forrester Kurts undertakes to the Commission that:-

- (a) Within seven days of the date of this undertaking it will write to the purchasers identified as likely to have seen or responded to the advertisement referred to in paragraph 4 of this undertaking advising that:
 - (i) A complaint has been made that various conditions associated with the Frequent Flyer Points promotion were not revealed in the advertisement;
 - (ii) The \$49.00 per week statement in the advertisement was arguably based on certain negative gearing calculations which did not necessarily apply to every one of the projects referred to in the advertisement;
 - (iii) The Australian Competition and Consumer Commission is assisting Forrester Kurts in developing procedures to ensure the conduct does not occur again;
 - (iv) Forrester Kurts would like them to complete a questionnaire to know whether they saw the advertisement and whether it influenced their decision to purchase an apartment.
- (b) Within seven days of receiving responses from the purchasers, it will provide copies of those responses to the Commission, and will meet and confer with the Commission about the terms of those responses;
- (c) Within thirty days of identifying purchasers who claim to have been misled by the subject advertisements and wish to terminate their contracts (and upon Forrester Kurts being reasonably satisfied as to the veracity of those claims), it will offer such purchasers the opportunity:
 - (i) To rescind their contracts; and
 - (ii) To receive a refund of all moneys paid for the purchase of their apartment/s;
- (d) In all promotional material relating to the Frequent Flyer Points Promotion the following information will appear:

- (i) In order to obtain the points, purchasers must join the Qantas Frequent Flyer Program at their own expense prior to settlement if they are not already members;
 - (ii) No points will be earned if the purchaser does not acquire the property at the advertised retail price; and
 - (iii) In order to earn points the sale must be made by a Forrester Kurts employee;
- (e) It will not make statements as to the period cost of a property (for example, on a weekly or monthly basis) unless:
- (i) The figures used in negative gearing calculations arriving at a periodic cost are based on realistic estimates of expenses and income;
 - (ii) Figures used by Forrester Kurts, including those provided by third parties, are verified to ensure that they are realistic estimates of expenses and income, paying particular attention to the rates and rental estimates used in negative gearing calculations; and
 - (iii) Negative gearing calculations (together with the source of any estimates used in those calculations and assumptions made) are provided to prospective purchasers who make enquiries about a property;
- (f) It will implement a Trade Practices Compliance Program for staff with regard to Part V of the Act that is in accordance with the Australian Standard for Compliance Programs AS3806 – 1998 (“the Program”):
- (i) The Program will aim to create a culture of compliance within Forrester Kurts and to prevent, so far as is reasonably possible, any contraventions of the Act by Forrester Kurts or by its officers and employees;
 - (ii) Forrester Kurts will appoint an appropriately qualified senior officer as the compliance officer with overall responsibility for trade practices compliance;
 - (iii) The Program will cover all officers and employees of Forrester Kurts whose duties could result in their being concerned in conduct that might breach Part V of the Act;
 - (iv) Forrester Kurts will submit a draft of the Program to the Commission within sixty days of the date of this undertaking;
 - (v) Forrester Kurts will incorporate into the Program, and implement as part of the Program, any reasonable changes to the draft Program that are recommended by the Commission in writing;
 - (vi) Forrester Kurts will implement the Program within thirty days of the Commission advising whether any changes are required to the draft Program, as referred to in sub-paragraph (v) above;
 - (vii) The Program will remain in force for a minimum period of three years from the date of its implementation.

ACKNOWLEDGEMENTS

- 11. Forrester Kurts acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission may, at its absolute discretion, from time to time publish and publicly refer to this undertaking.
- 12. Forrester Kurts acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct referred to in paragraphs 2, 3 and 4 hereof.



IN WITNESS OF THIS UNDERTAKING AND ITS AGREEMENTS

THE COMMON SEAL OF Forrester Kurts Properties Ltd ACN 010 729 950 was hereunto affixed by the authority of the Board of Directors this *4th* day of *July* 2001 in the presence of:

.....
 Director/Secretary **Rodney Thomas Forrester**

[Signature]
 Director/Secretary **Trevor Phillip Toner**

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

[Signature]

 (~~Professor Allan Fels~~) **SITESH BHOTANI**
 Chairman

Acting

This *30th* day of *July* 2001.