



## TRADE PRACTICES ACT 1974

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

BY

**HOTELCHEQUE PTY LTD ACN 095 618 894**

#### BACKGROUND

- (1) Hotelcheque Pty Limited ACN. 095 618 894 ("Hotelcheque") sells vouchers for accommodation at various nominated hotels.
- (2)
  - (a) In March 2001 and April 2001 Hotelcheque offered for sale in a television advertisement a product described as the "Great Escape", the product consisting of a book of ten vouchers costing \$99 plus \$9.95 postage and handling. The advertisement stated that each voucher entitled the purchaser to one night's accommodation for two persons twin share at a cost of less than \$5 dollars per person, at any one of a number of nominated hotels. The advertisement included text appearing on the screen, stating that the entitlement was subject to a condition, stated as: "*Subject to availability and minimum spend on Breakfast and Dinner at Hotel of your choice as detailed in the directory.*"
  - (b) In August 2001 Hotelcheque offered for sale in a radio advertisement the product referred to in (2)(a) above. The advertisement stated that each voucher entitled the purchaser to one night's accommodation for two persons twin share at a cost of less than \$5 dollars per person, at any one of a number of nominated hotels. The advertisement stated that the entitlement was subject to a condition that: "*Once you purchase your Hotelcheque book, you have to spend a minimum on breakfast and dinner at the hotel during your stay.*"
- (3) Following an investigation by the Australian Competition and Consumer Commission ("the Commission"), the Commission reached the view that Hotelcheque had contravened the Trade Practices Act 1974 ("the Act") in that Hotelcheque made false or misleading representations in the advertisements in contravention of sections 52, 53(aa), 53(e), 53(g) and 53C of the Act. The Commission considers Hotelcheque contravened sections 52, 53(aa), 53(e), 53(g) and 53C of the Act by:
  - (a) a misleading or deceptive representation that purchasers are entitled to accommodation at the rate of less than \$5 per person per night when in fact the total price with meal purchase averages approximately \$55.50 per person per night; and

- (b) a misleading or deceptive representation that the purchase of the book of vouchers entitles purchasers to accommodation at the rate of less than \$5 per person per night when in fact there are significant conditions that apply to the take-up of the offer; and
  - (c) a false representation that services are of a particular value, namely that accommodation is available at less than \$5 per person per night when in fact the average minimum outlay with meal purchase is approximately \$55.50 per person per night; and
  - (d) a false representation that services are of a particular value, namely that accommodation is available at approximately 10% of the normal rate when in fact the minimum outlay significantly exceeds that percentage; and
  - (e) a false or misleading representation with respect to the price of services, namely that accommodation is available at the rate of less than \$5 per person per night when in fact the average minimum outlay with meal purchase is approximately \$55.50 per person per night; and
  - (f) a false or misleading representation with respect to the existence or effect of conditions, namely that the accommodation is available at less than \$5 per person per night when in fact the provision of the accommodation component is conditional on a minimum spend on meals averaging approximately \$55.50 per person per night; and
  - (g) a false or misleading representation with respect to the existence or effect of conditions, namely that the accommodation is available at less than \$5 per person per night when in fact the offer is "subject to availability"; and
  - (h) the corporation, in connection with the supply of accommodation services, has made a representation with respect to an amount (less than \$5 per person per night) that, if paid, would constitute a part of the consideration for the supply of the accommodation (an average minimum of \$55.50) and has not specified the cash price for the accommodation.
- (4) In late April 2001 (with regard to the television advertisement) and late August 2001 (with regard to the radio advertisement) the Commission notified Hotelcheque of its concerns that the representations referred to in paragraph (3) above contravene sections 52, 53 and 53C of the Act.
- (5) Hotelcheque admits that its conduct contravenes the Act and has now ceased the conduct referred to in paragraph (3).

## **UNDERTAKINGS**

- (6) Hotelcheque undertakes to the Commission that:
- (a) Within 7 days of the date of this undertaking, it will write to all purchasers who entered into contracts for the \$99 "Great Escape" offer (for which customers purchase 10 accommodation vouchers)

advertised on television in March and April 2001 and on radio in August 2001 advising that:

- (i) The Commission has raised concerns that the \$99 "Great Escape" offer (for which customers purchase 10 accommodation vouchers) advertised by Hotelcheque on television in March and April 2001 and on radio in August 2001 is potentially misleading to consumers as the advertisements claim that the accommodation is offered for less than \$5 per person per night. The advertisements do not sufficiently alert the viewer to the existence of the condition that the voucher-holder must spend a required amount on breakfast and dinner at each hotel, and that on average, the expenditure required is \$55.50 per person per night, which over ten nights totals a required expenditure of \$1110 for two people;
  - (ii) The existence of the minimum meal expenditure condition significantly increases the minimum cost of using the vouchers;
  - (iii) Hotelcheque acknowledges that the condition was not sufficiently made clear to its customers, and it will offer a full refund of \$108.95 (being the total of \$99 plus \$9.95 postage and handling) to any purchasers who now wish to cancel their contract with Hotelcheque.
  - (iv) Payment of this refund will be made as soon as possible, and no later than 28 days from the date of the refund request.
- (b) It will, at its own expense, within 21 days of the date of this undertaking, place a corrective advertisement in each of the Sydney Morning Herald, The Courier Mail and The Herald Sun. The advertisement will:
- (i) be ~~at least three columns by 200mm in size;~~ <sup>PROMINANT AND OF A SIZE TO BE AGREED</sup> Bund  
(2)
  - (ii) be placed, on an odd numbered page, within the first 11 pages of a weekend edition of the said newspapers. If this is not possible, due to newspaper restrictions, then placed, on an odd numbered page as close as possible to the first 11 pages of the said newspapers;
  - (iii) be entitled "An Apology from Hotelcheque" which should appear in sufficiently prominent typeface, and include the detail of the text set out at (a) above.
  - (iv) provide a sufficiently prominent contact telephone number and address for customers to make their request to the company.

- (c) It will act to ensure that the advertisements are not further broadcast, including cancelling any booking for broadcast and refraining from making any booking for broadcast.
- (d) It will implement a trade practices compliance program for staff that is, as so far as it is relevant and practicable, in accordance with the Australian Standard for Compliance Programs AS3806 1998, with particular regard to Part V of the Act ("the Program"). It will utilise certain Modules of the publication "*Best & Fairest: Trade Practices Act Training Program*" ("*Best & Fairest*") and certain Commission publications in its education and training program, as indicated hereafter.
- (e) The Program will aim to create a culture of compliance within Hotelcheque and to prevent any contraventions of the Act by Hotelcheque or by its officers, employees or agents.
- (f) Hotelcheque will appoint the Managing Director as the compliance officer with overall responsibility for trade practices compliance.
- (g) The Program will cover all officers, employees and agents of Hotelcheque whose duties could result in their being concerned in conduct that might breach the Act.
- (h) The Program will include:
  - (i) a presentation by the Managing Director to all staff of Hotelcheque about the Act as relevant to Hotelcheque's business, including an introduction to the Program;
  - (ii) a director's mandate establishing the corporate philosophy requiring commitment by all;
  - (iii) a timetable for the Program;
  - (iv) the establishment and documentation of a Trade Practices related complaints handling regime;
  - (v) education and training, to be conducted by a designated solicitor or expert in Trade Practices law, at a minimum once per 12 month period,
    - A. of all staff including Directors and Managers, encompassing the contents of Modules Six and Seven of *Best & Fairest*, and the Commission publication "The Australian Competition and Consumer Commission – role and functions"; and
    - B. of all Directors and Managers encompassing the contents of Modules Two, Three, Four and Five of *Best & Fairest*.
  - (vi) external review by a suitably experienced legal practitioner of all new promotional campaigns, or where a campaign is identical to a

previously reviewed campaign, vetting of that campaign, the requirement for either review or vetting to be determined by the Commission;

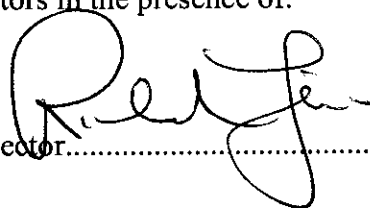
- (vii) a record keeping and reporting system, incorporating an annual external review and report on the implementation and maintenance of the Program, to be given to the Commission one year from the date of execution of this undertaking;
- (i) Hotelcheque will submit a draft of the Program to the Commission within 30 days of the date of this undertaking.
- (j) Hotelcheque will incorporate into the Program, and implement as part of the Program, any reasonable changes to the draft program that are recommended by the ACCC in writing.
- (k) Hotelcheque will implement the Program within 30 days of the ACCC advising whether any changes are required to the draft program, as referred to in subparagraph (j) above.
- (l) The Program will remain in force for a minimum period of three years from the date of its implementation.

#### ACKNOWLEDGEMENTS

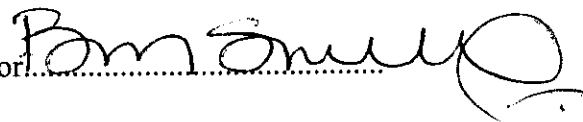
- (7) Hotelcheque acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission may, at its absolute discretion, from time to time publish and publicly refer to this undertaking.
- (8) Hotelcheque acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct of Hotelcheque.

IN WITNESS of these undertakings  
and its agreement the common seal of  
Hotelcheque Pty Limited ACN. 095 618 894  
was hereunto affixed by authority of the  
Board of Directors in the presence of:

Secretary/Director.....

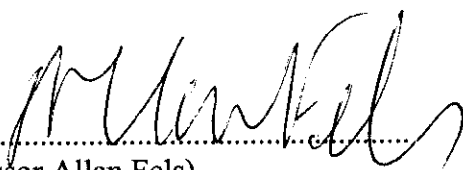


Director.....



This ELAVANTH day of FEBRUARY 2002

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

  
.....  
(Professor Allan Fels)  
Chairperson

This            1            day of    *March*    2002