



## TRADE PRACTICES ACT 1974

### UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN UNDER SECTION 87B

BY

**FLIPSTOCK PTY LTD (ACN 010 488 721), ROSS MYLREA AND ARTHUR  
CLARKE**

#### PERSONS GIVING UNDERTAKING

- 1) This undertaking is given to the Australian Competition and Consumer Commission ('the Commission') by Flipstock Pty Ltd (ACN 010 488 721) of 22 Gladstone Road, Rockhampton in the State of Queensland, Mr Ross Mylrea, director of Flipstock Pty Ltd and Mr Arthur Clarke, wholesale manager, under section 87B of the *Trade Practices Act 1974* ('the Act').

#### BACKGROUND

- 2) Flipstock Pty Ltd ('Flipstock') trading as 'A Man's Toyshop' is incorporated in Queensland and carries on business as a supplier of hardware, machinery and parts to business and non-business consumers.
- 3) Flipstock operates a store at 22 Gladstone Road, Rockhampton and attends agricultural field days in Queensland. Customers are able to purchase Flipstock's products at its store, at agricultural field days, or by placing orders by telephone or post or via the internet.
- 4) Flipstock advertises its products using various media, including labels on products and signs in stores and at agricultural field days, newspapers, radio, internet and in catalogues and brochures.
- 5) In the period from 1 July 2000 to the date of this undertaking, Flipstock has, in its store and at agricultural field days, displayed the prices of its products without stating the total price payable. Flipstock used the following formats to display its prices:
  - i) \$W plus GST
  - ii) \$W plus tax
  - iii) \$W + GST
  - iv) \$W + tax

and did not state the amount of GST payable on each product offered for sale.

- 6) In the same period, Flipstock, from time to time, created and distributed catalogues by post, at agricultural field days and in its store to VIP club members (being defined by Flipstock as very important trade customers of the business who receives mailouts from Flipstock as well as various discounts on Flipstock's product range) and members of the public. The prices quoted in those catalogues were not total prices and did not include the amount of GST payable. The catalogues also contained the notation "*All prices plus GST*" in fine print. Some of the recipients of the catalogues were non-business consumers.
- 7) Not all VIP club members are business consumers, nor are they all entitled to claim input tax credits on their purchases.
- 8) Flipstock also advertises its products by placing advertisements in newspapers such as the *Morning Bulletin* and *Rural Weekly*. Flipstock placed advertisements in those publications in the periods from 1 July 2000 to 28 July 2000 and 29 July 2000 respectively, which only stated the GST exclusive price. Those advertisements contained the notation '*All prices plus GST*' in fine print. The Commission notes Flipstock's advice that it has quoted the total price payable (including GST) in such advertisements since 29 July 2000.
- 9) Flipstock has operated a web site at <http://www.manstoyshop.com.au> since at least 1 July 2000. The notation 'All prices are in Australian Dollars plus GST' appears at the bottom of one of the pages in the web site. The prices of products displayed on this web site from 1 July 2000 to about 31 August 2000 did not include the amount of GST payable. The Commission notes, however, Flipstock's advice that the prices of products displayed on the web site since 31 August 2000 have been the total prices (including GST) and that the notation was not corrected due to an oversight.
- 10) Flipstock also submitted transcripts of advertisements to be aired by radio station 4CC which stated GST exclusive prices. The statements 'All prices plus GST' appeared towards the end of the advertisements.
- 11) Mr Ross Mylrea, one of Flipstock's directors, and Mr Arthur Clarke, wholesale manager, were the persons responsible for Flipstock's advertising and the way in which prices were displayed or represented.
- 12) The Commission received a number of complaints from members of the public concerning Flipstock's failure to state the total prices of its products in its advertising and product displays. The Commission, after investigating these complaints, reached the view that Flipstock has contravened sections 52, 53(e) and 53C of the Act.
- 13) The Commission is concerned that non-business customers, in particular, may not realise that Flipstock's prices in its catalogues, brochures and fliers are GST exclusive. The Commission is also concerned that customers may not be able to readily ascertain what price they are required to pay Flipstock given the pricing formats used by Flipstock in its store and at agricultural field days.

- 14) The Commission has previously asked Flipstock on a number of occasions to change its price displays and advertising so that it is very clear to potential customers what is the total GST inclusive price payable.
- 15) Flipstock, Ross Mylrea and Arthur Clarke accept that Flipstock has contravened sections 52, 53(e) and 53C of the Act. Ross Mylrea and Arthur Clarke also accept that they were knowingly concerned in or party to Flipstock's contraventions. Flipstock, Ross Mylrea and Arthur Clarke give these undertakings to redress the Commission's concerns.

### **COMMENCEMENT OF UNDERTAKING**

- 16) This undertaking comes into effect when:
- i) This undertaking is executed by Flipstock, Ross Mylrea and Arthur Clarke.
  - ii) The Commission accepts the undertaking so executed.

### **UNDERTAKINGS**

- 17) Flipstock, Ross Mylrea and Arthur Clarke jointly and severally give the following undertakings to the Commission for the purposes of section 87B of the Act.

#### ***Conduct Undertakings***

- 18) Flipstock will, at its own expense, within 14 days of the date of the acceptance of this undertaking, remove the notation 'All prices are ... plus GST' from the web site at <http://www.manstoystore.com.au>
- 19) Flipstock will, within 45 days of the acceptance of this undertaking, change all pricing displays (including labels and signs) in the Rockhampton store such that the prices of products offered for sale only appear in **one or more** of the following formats:
- i) **\$X**, where X is the total price payable (including the amount of GST);
  - ii) **\$V + \$W GST = \$X**, where X is the total price payable (including the amount of GST), \$W is the amount of GST and \$V is the price exclusive of GST;
  - iii) **\$V + GST = \$X**, where X is the total price payable (including the amount of GST) and \$V is the price exclusive of GST;
  - iv) **\$X (including 10% GST)**, where X is the total price payable (including the amount of GST):

and \$X is displayed with at least equal prominence to the display (if any) of the components of that total price. Flipstock may also choose to show a GST exclusive price, of equal prominence, on the same labels and signs for its customers who are able to claim input tax credits (dual pricing).

- 20) Flipstock will, at its own expense, throughout the period in which it is converting its prices in accordance with paragraph 19) above, display public notices in its Rockhampton store in accordance with **Annexure A**.
- 21) Flipstock will, at its own expense, within 2 days of changing its pricing displays in accordance with paragraph 19) above, display public notices in its Rockhampton store in accordance with **Annexure B**. Flipstock will not remove those signs for a period of sixty (60) days from the day the pricing displays have been altered in accordance with paragraph 19).
- 22) Flipstock will not, from 45 days of the date of acceptance of this undertaking, advertise, display or otherwise promote its products in the Rockhampton store, on the internet, by radio or television, in newspapers, magazines, catalogues, fliers, at agricultural field days or howsoever without stating the total price payable (including GST) in at least equal prominence to the display (if any) of the components of the total price.
- 23) Flipstock will, at its own expense, within 45 days of the date of the acceptance of this undertaking, send a letter to each of its VIP club members and any persons on Flipstock's mailing list to whom Flipstock has sent a catalogue, brochure or other promotional material since 30 June 2000 stating:
- 'A Man's Toyshop's prices are now 'GST inclusive'. We have changed the way we display our prices as part of a settlement with the Australian Competition and Consumer Commission to ensure our price display does not contravene the Trade Practices Act 1974'.
- 24) Flipstock will, at its own expense, within 7 days of completing each of the matters in paragraphs 18), 19), 20) 21) and 23) above advise the Commission in writing of the date on which each of these matters was completed.
- 25) Flipstock will, at its own expense, within 7 days of completing the matters in paragraphs 20) and 21) above provide the Commission with copies of the signs placed in the store and six (6) examples of the amended labelling on products.
- 26) Flipstock will, at its own expense, within 7 days of completing the matter in paragraph 23) above provide the Commission with a copy of the letter sent to each type of customer and a list of the names and addresses of those persons to whom each of the letters was sent.
- 27) Mr Mylrea and Mr Clarke will make all reasonable endeavours to ensure that Flipstock complies with this undertaking.

### ***Trade Practices Compliance Training***

- 28) Mr Mylrea and Mr Clarke undertake that:
- i) they will, within 30 days of the acceptance of this undertaking, nominate to the Commission for its approval a form of trade practices compliance training which they will undertake at their own expense, such training to deal, at a minimum, with the responsibilities of small businesses under Part

V of the Act. The training will be carried out by a suitably qualified compliance professional who meets the criteria provided in **Annexure C**;

- ii) they will, unless advised by the Commission within 21 days of their nomination that the nominated training is not acceptable, participate in the nominated trade practices compliance training within 90 days of the date of acceptance of this undertaking; and
- iii) they will, if advised by the Commission that the nominated training is not acceptable, participate in trade practices compliance training nominated by the Commission, within 90 days of such notification.

### ACKNOWLEDGEMENTS

29) Flipstock, Mr Mylrea and Mr Clarke acknowledge the Commission's right to make this undertaking available to the public including placing it on a register, publicising it and allowing third parties to publish it.

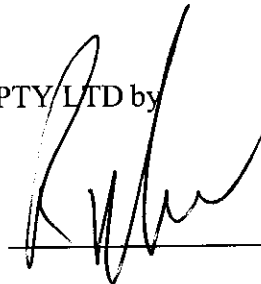
30) Flipstock, Mr Mylrea and Mr Clarke further acknowledge that the Commission may issue a media release about this undertaking and may, from time to time, publicly refer to this undertaking.

31) Flipstock, Mr Mylrea and Mr Clarke acknowledge and accept that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct.

Signed on behalf of FLIPSTOCK PTY/LTD by

ROSS EWAN MYLREA

Print Name (Director/~~Secretary~~)



Signature

20-11-01

Date

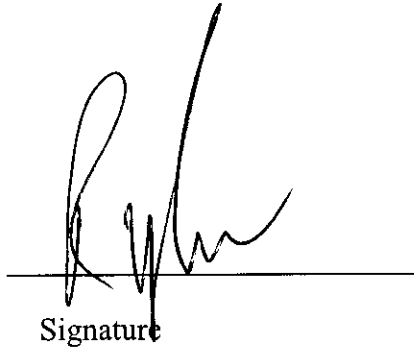
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Company Seal

20-11-01

Date

Signed by Ross Mylrea

ROSS EWAN MYLREA



20-11-01

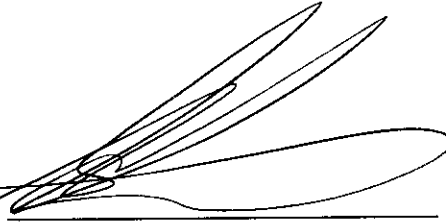
Print Name

Signature

Date

Signed by Arthur Clarke

ARTHUR CLARKE



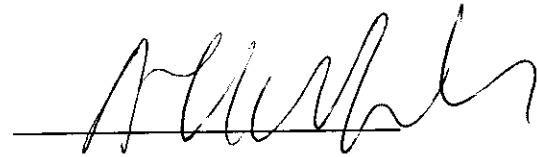
20/11/2001

Print Name

Signature

Date

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



Professor Allan Fels  
Chairman

This 5 day of July 2001.

## Annexure A

### Public Notices – In Store DURING Pricing Display Change

The public notices will:

- Be located immediately above the cashier's counter, on the store manager's door and at the top of each product aisle;
- Have print no smaller than 48 point;
- Be no smaller than 60 centimetres X 40 centimetres or 40 centimetres X 60 centimetres;
- Be in the form and wording as appears below; and
- Remain on display until the pricing display has been altered as per paragraph 20).

#### **An Apology by A Man's Toyshop**

A Man's Toyshop's prices are now changing to be 'GST inclusive'. We are changing the way we display our prices as part of a settlement with the Australian Competition and Consumer Commission to ensure our price display does not contravene the *Trade Practices Act 1974*.



**Australian  
Competition &  
Consumer  
Commission**

Australian Competition and Consumer Commission

## **Annexure B**

### **Public Notices – In Store AFTER Pricing Display Change**

The public notices will:

- Be located immediately above the cashier's counter, on the store manager's door and at the top of each product aisle;
- Have print no smaller than 48 point;
- Be no smaller than 60 centimetres X 40 centimetres or 40 centimetres X 60 centimetres;
- Be in the form and wording as appears below; and
- Remain on display for the length of time specified in paragraph 21).

#### **An Apology by A Man's Toyshop**

A Man's Toyshop's prices are now 'GST inclusive'. We have changed the way we display our prices as part of a settlement with the Australian Competition and Consumer Commission to ensure our price display does not contravene the *Trade Practices Act 1974*.



**Australian  
Competition &  
Consumer  
Commission**

Australian Competition and Consumer Commission



## **Annexure C**

### **Criteria for the appointment of a suitably qualified compliance professional**

The training shall be carried out by a suitably qualified compliance professional that has extensive experience in the training of *Trade Practices Act 1974* issues, in particular Part V issues and who is entirely independent of Flipstock. Such a professional will qualify as independent on the basis that he or she:

- is not a present or past staff member or director of Flipstock;
- has not acted or does not act for Flipstock;
- is not retained by Flipstock in any other capacity;
- has not and does not provide consultancy or other services for Flipstock; and
- has no substantial shareholding or other interest in Flipstock.