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TRADE PRACTICES ACT 1974

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

SECTION 87B

BY

CONTIKI HOLIDAYS (AUSTRALIA) PTY LTD ACN 002 525 340

PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Contiki Holidays (Australia) Pty Ltd ("Contiki Australia") of 'Travel House', Level 1, 35 Grafton Street, Woollahra, in the State of New South Wales, under section 87B of the *Trade Practices Act 1974* ("the Act")

BACKGROUND

2. Contiki is an international travel group of companies offering tours to 18 – 35 year olds. Companies operate in several countries of the world including Europe, Australia, New Zealand, and America.
3. One of the Contiki group of companies, Contiki Travel Europe Limited ("Contiki Europe") advertises, organises and operates Contiki European tours. Contiki Australia distributes Contiki Europe advertising material in Australia.
4. As part of the Contiki Europe tour in 1999, there were certain "free days" during which passengers were able to engage in optional excursion activities not included in the tour price nor operated by any of the Contiki group of companies. Australian passengers were able to pre-book some of these activities through Contiki Europe. Contiki Europe chose the Swiss company Adventure World to recommend to its passengers as a provider of optional excursion activities whilst at Interlaken in Switzerland. Contiki Europe entered into a commercial agreement with Adventure World to regulate the various activities offered and to determine pricing.
5. One of the optional excursions offered to Contiki Europe passengers by Adventure World was the adventure sport of canyoning which involves swimming and sliding down fast-flowing rivulets wearing padded wetsuits, life jackets and helmets, as well as abseiling down cliffs along waterfalls.
6. On 27 July 1999, a fatal accident occurred in the Saxetenbach River canyon near Interlaken in Switzerland. Twenty-one persons lost their lives and five persons were injured in that accident.
7. Those who died were in a group of 47 Contiki Europe passengers taking part in the adventure sport of canyoning, organised by Adventure World.

8. Three victims were tour guides and the rest Contiki Europe passengers, mostly Australians.
9. The accident occurred when water built up in the gorge as a result of heavy rainfall and produced a two-metre wave, which flooded the canyon where the tourists were located.
10. Preliminary investigations and reports showed that the wave was a recognised phenomenon, there were warnings from the local fire brigade to Adventure World guides not to proceed and another tour company had cancelled its trip. The Adventure World guides ignored the warnings.
11. On 12 December 2001, six members of Adventure World were found guilty of manslaughter through culpable negligence. Included in the reasons for this judgement was the finding that there had been "no preventative explanation of dangers".

COMPLAINTS TO THE COMMISSION

12. Several parents of the victims lodged complaints with the Commission alleging Contiki Europe advertising, which had been distributed by Contiki Australia, had contravened the Act through representations as to future safety and care, and may have induced their children to undertake a Contiki Europe tour. The alleged representations, included the following:
 - (i) The Contiki website advertises the 'Contiki Charter', formulated by its Tour Managers. This states that Contiki Europe tours operate in "An environment where my personal safety and security is never compromised". This is the representation complainants were the most concerned about.
 - (ii) On page 7 of the 1999/2000 brochure, there is a statement that Contiki Europe has a full-time quality control system. It says a "constant check is being made on standards of accommodation, food, transportation and every element of your holiday". It was alleged that neither the activity of canyoning, nor Adventure World, were properly investigated by Contiki Europe.
 - (iii) On page 67 of the 1999/2000 Contiki Europe brochure, point 5.5 of "your responsibilities" states "There may be times when the Contiki Tour Manager ... has to make a decision in the interest of your safety and well being" and requires guests to comply with such decisions. It was alleged that a decision to discontinue with the canyoning excursion, given the weather, should have been made by the Contiki Tour Manager.
 - (iv) The Contiki 10 commandments on page 48 of the Contiki Europe 'Traveller's Checks' booklets. The second commandment states that "Thou shalt not take things too seriously, for a carefree mind is the beginning of a carefree holiday". The fifth commandment states that "Thou shalt not worry, for he that worrieth hath no pleasure. There are few things that are fatal". This was alleged to be a representation designed to encourage guests to



leave safety concerns with the Contiki Europe tour manager.

- (v) On page 26 of the Contiki Europe 'Traveller Checks' booklets, representations are made as to quality of tour-guides; ie, that they are well trained and are able to make decisions on behalf of the group as a whole. It was alleged that the Contiki tour guides provided were unaware of local weather patterns or the likelihood of the canyon flooding, a factor said to be well known to inhabitants of the area.

13. Complainants alleged that canyoning was an activity promoted by Contiki Europe as an optional excursion available on its European tour without warning consumers of the potential risks involved. Complainants alleged that there is evidence showing that canyoning is regarded as an extreme sport and is potentially life threatening, the dangers of which Contiki Europe should have made consumers aware.
14. The complainants also claimed that the 'here one day, gone the next' nature of Contiki Europe tours pressured Adventure World guides to continue excursions. They alleged that Contiki Europe advertising promoted the excursion and that Adventure World paid commissions for bookings. The complainants alleged that Contiki Europe tour guides "had not even looked at the actual canyoning course."
15. In summary, the complainants alleged that Australian consumers, including their deceased children, may have been induced by the representations to leave safety concerns to Contiki Europe tour guides while they were on tour.

COMMISSION'S CONCERNS

16. Following an investigation, the Commission has reached the view that there may not have been reasonable grounds for representations in advertising material promoting the European Tour for July 1999, to the effect that Contiki Europe would provide a safe environment where a customer's personal safety and security would never be compromised. The Commission considers that Contiki Australia's conduct in relation to the advertising material involved a risk of contravening sections 52, 53(aa) and 53(c) of the *Trade Practices Act 1974* ("the Act").
17. In particular, the Commission formed the view that there may not have been reasonable grounds for Contiki Europe's promotional representations, which were made in Australia by Contiki Australia, because:
 - (i) The nature, risks or safety of the activities involved in the canyoning excursion offered by Adventure World had not been thoroughly and adequately investigated;
 - (ii) Adventure World had not been thoroughly and adequately investigated with regard to the safety measures it had in place;
 - (iii) Travellers undertaking the Contiki Europe tour in July 1999 may not have been provided with sufficient information in respect of canyoning and its risks;



- (iv) Adventure World were not required to cease or restrict excursions likely to be jeopardised by a storm or other event.

CONTIKI AUSTRALIA'S ACKNOWLEDGMENT

18. Contiki Australia acknowledges the Commission's concerns, and has offered this undertaking to address those concerns.
19. The Commission acknowledges the cooperation of Contiki Australia in addressing these matters, and has agreed to accept the undertaking from Contiki Australia under section 87B of the Act.

COMMENCEMENT OF UNDERTAKING

20. This undertaking comes into effect when:

- (i) the undertaking is executed by Contiki Australia; and
- (ii) the undertaking so executed is accepted by the Commission.

UNDERTAKINGS

Review of Safety Procedures

21. Contiki Australia undertakes to the Commission:

- (i) It will implement a quality assurance system aimed at providing reasonable and verifiable grounds for any representations concerning safety and wellbeing of Contiki travellers that are contained in advertising material distributed by it, including references to third party operators.
- (ii) Appoint a Quality Assurance Officer ("QA Officer") with overall responsibility for quality assurance systems including the following:
 - (a) To be satisfied as to the accuracy of all claims and representations concerning safety issues made by Contiki Tour suppliers in advertising material including promotional and marketing brochures or pamphlets before the distribution by Contiki Australia of any such material;
 - (b) To take reasonable steps to investigate excursions offered as optional "free day" activities on Contiki tours in any of the advertising material distributed by Contiki Australia, and to be satisfied that an appropriate risk assessment has been carried out before any such excursion is able to be booked by consumers through Contiki;
 - (c) To take reasonable steps to ensure that any third party provider of any optional excursion offered in advertising material is required to adhere to mandatory safety measures and



standards applying where the excursion is conducted, to have in place a comprehensive monitoring system to ensure compliance with safety requirements and to maintain staff who are properly trained to the appropriate level for the excursion concerned;

- (d) To take reasonable steps to ensure that any third party provider of any optional excursion offered in any Contiki advertising material is required to consider any advance warning, regardless of its source, concerning weather or any other potential hazard or event likely to compromise the safety of Contiki tourists undertaking any optional excursion;
- (e) To take reasonable steps to educate and inform Contiki Australia staff about any optional excursions offered in Contiki advertising material so that they are in a position to inform and advise members of the public likely to participate in any such optional excursion and, in particular, of the potential risks involved;
- (iii) It will implement an auditing process in relation to its quality assurance system.
- (iv) It will not make representations concerning standards of safety and quality control unless they can be or have been verified by its quality assurance system or auditing process.
- (v) It will refrain from distributing any new advertising and promotional materials containing representations concerning issues of safety until such time as the quality assurance and auditing systems are in place.
- (vi) It will provide written confirmation that these procedures have been implemented to the Brisbane office of the Commission by 30 November 2002.

Trade Practices Compliance Program

22. Contiki Australia undertakes to the Commission:

- (i) It will implement a trade practices compliance program for staff that is in accordance with the Australian Standard for Compliance Programs AS3806-1998, with particular regard to Part V of the Act ("the Program").
- (ii) The Program will aim to create a culture of compliance within Contiki Australia and to prevent, so far as is reasonably possible, any contraventions of the Act by Contiki Australia or by its officers, employees or agents.



- (iii) Contiki Australia will appoint an appropriately qualified senior officer as the compliance officer with overall responsibility for trade practices compliance.
- (iv) The Program will cover all officers, employees and agents of Contiki Australia whose duties could result in their being concerned in conduct that might breach the Act.
- (v) Contiki Australia will submit a draft of the Program to the Commission within 30 days of the date of this undertaking.
- (vi) Contiki Australia 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.
- (vii) Contiki Australia will implement the Program within 30 days of the Commission advising whether any changes are required to the draft program, as referred to in subparagraph (vi) above.
- (viii) The Program will remain in force for a minimum period of three years from the date of its implementation.

ACKNOWLEDGEMENTS

- 23. Contiki Australia 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.
- 24. Contiki Australia 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 Contiki Australia.

IN WITNESS OF THIS UNDERTAKING AND ITS AGREEMENTS

THE COMMON SEAL of)

Contiki Holidays (Australia) Pty Ltd)

(ACN 002 525 340) was hereunto affixed)

by the authority of the Board of Directors)

in the presence of:)

Leon Smith

 Print Name (Director/Secretary)

David D Hosking



Signature



This 28th day of Oct. 2002.

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


(Professor Allan Fels)
Chairman

This 28 day of Nov. 2002.

