

## TRADE PRACTICES ACT 1974

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

BY  
RETRAVISION PTY LIMITED  
ACN. 001 377 000

#### BACKGROUND

- (1) RETRAVISION PTY LIMITED ACN. 001 377 000 ('Retravisision'), entered into a Heads of Agreement on 2 October 2001 with Ai Xin International Trading Pty Ltd ACN. 084 823 870 ('Ai Xin'), trading as Higher Electronics Australasia ABN. 15 084 823 870, in relation to the supply of Haier brand whitegoods to independently owned Retravisision stores throughout Australia. These whitegoods included Haier washing machine models XQJ 100-96 and XQJ 50-31.
- (2) Between August 2001 and November 2002 various independently owned Retravisision stores sold 425 units of Haier washing machine model XQJ 100-96 and 523 units of Haier washing machine model XQJ 50-31. Haier washing machine model XQJ 100-96 was represented by the various Retravisision stores to be 10kg in capacity with a 2-Star energy rating. Haier washing machine model XQJ 50-31 was represented by the various Retravisision stores to be 5kg in capacity with a 2-Star energy rating.
- (3) Between August 2001 and November 2002 Retravisision, via its website [www.retravisision.com.au](http://www.retravisision.com.au), represented that Haier washing machine model XQJ 100-96 was 10kg in capacity with a 2-Star energy rating and Haier washing machine model XQJ 50-31 was 5kg in capacity with a 2-Star energy rating. These representations were based on information supplied to Retravisision by Higher Electronics Australasia that the machines had satisfied the tests for a 2-Star energy rating as prescribed by the relevant Australian Standard.
- (4) The Australian Greenhouse Office has an agreement with the Australian Competition and Consumer Commission ('the Commission') to refer cases to the Commission of allegedly misleading conduct by electrical appliance suppliers in relation to energy labelling. The Australian Greenhouse Office referred information to the Commission regarding the failure of Haier washing machine models XQJ 100-96 and XQJ50-31 to satisfy the check-testing program. The tests were commissioned by the Office of Chief Electrical Inspector Victoria on behalf of the National Appliance and Equipment Energy Efficiency Committee. The testing program is conducted as part of the Committee's responsibility for coordinating the national energy efficiency labelling program. The test results for the XQJ100-96 recorded that the machine failed the energy consumption claim by a significant margin, failed wash performance requirements by a substantial margin (could not wash a 10kg load of washing) and its spin performance was highly variable under subsequent re-test. The test results for the XQJ50-31 recorded that the machine failed the energy consumption claim by a substantial margin and failed minimum wash performance requirements by a substantial margin (could not wash a 5kg load of washing). A consequence of these failures was that Haier washing machine models XQJ 100-96 and XQJ50-31 were

deregistered by the Queensland Electrical Safety Office (Department of Industrial Relations) on 5 April 2002 and 19 August 2002, respectively.

- (5) Following an investigation of this matter by the Commission, the Commission reached the view that Retravisio n had contravened the Trade Practices Act 1974 ('the Act') in that Retravisio n made false or misleading representations in contravention of sections 52, 53(a), 53(c) and 55 of the Act. The Commission considers Retravisio n contravened sections 52, 53(a), 53(c) and 55 of the Act by:
  - (a) falsely representing that Haier washing machine model XQJ 100-96 had a capacity of 10kg and would consume only the amount of energy consistent with the award of a 2-Star energy rating; and
  - (b) falsely representing that Haier washing machine model XQJ50-31 had a capacity of 5kg and would consume only the amount of energy consistent with the award of a 2-Star energy rating.
- (6) By letter dated 21 October 2002 the Commission communicated to Retravisio n its view that the capacity and energy rating representations in relation to Haier washing machine models XQJ 100-96 and XQJ 50-31 may contravene sections 52, 53(a), 53(c) and 55 of the Act.
- (7) By letter dated 6 November 2002 Retravisio n informed the Commission that Haier washing machine models XQJ 100-96 and XQJ 50-31 had been withdrawn from sale.

#### **COMMENCEMENT OF UNDERTAKINGS**

- (8) This undertaking comes into effect when:
  - a) the undertaking is executed by Retravisio n; and
  - b) the Commission accepts the undertaking so executed.

#### **UNDERTAKINGS**

Retravisio n hereby undertakes for the purposes of section 87B of the Act:

- (9) That it will facilitate the identification of all the consumers who purchased Haier washing machine models XQJ 100-96 and XQJ 50-31. Following such identification it will facilitate the extension of an offer to those consumers of a full refund for the machine purchased. This offer will be made by way of letter approved by the Commission, a copy of which is attached to this undertaking.
- (10) It will provide the Commission with a report on the progress of the actions required by paragraph 9 above, within 3 months of this undertaking coming into effect.
- (11) That it, and any of its, subsidiaries will not in trade or commerce make false or misleading representations concerning the capacity or energy ratings of any electrical appliances.

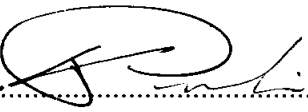
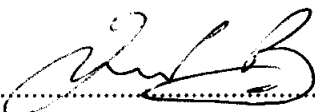
- (12) That it will ensure that where it creates agreements with new suppliers for electrical goods which have not been tested by the manufacturer at a National Association of Testing Authorities, Australia or an equivalent recognised or accredited testing laboratory indicating compliance with the relevant standard, it will provide for the random testing of those goods at such an accredited laboratory.
- (13) That it will, within 3 months of this undertaking coming into effect, develop a Trade Practices Compliance Program that is in accordance with the Australian Standard for Compliance Programs AS 3806-1998; the aim of which is to create a culture of compliance throughout Retravisio and to prevent, so far as reasonably possible, contraventions of the Act by itself, its directors, servants or agents. The compliance program will include appropriate consumer protection provisions as required by the Trade Practices Act. The Trade Practices Compliance Program will remain in effect for a minimum period of 3 years from the date on which the Trade Practices Compliance Program is implemented.
- (14) That it will, as part of the Trade Practices Compliance Program referred to in paragraph 13 above, appoint a senior staff member of Retravisio with responsibility for the implementation of the Trade Practices Compliance Program and overall trade practices compliance.
- (15) Retravisio will make the policy available to Retravisio State Companies and encourage them to influence all Retravisio stores to adopt the compliance program. Retravisio will arrange for information on compliance to be provided to all Retravisio State Companies.
- (16) That, once the Trade Practices Compliance Program referred to in paragraph 15 above has been developed, it will commission a report by a suitably qualified professional on the Trade Practices Compliance Program for consideration by the Commission and make whatever changes the Commission may reasonably suggest.
- (17) That it will commission an independent audit to be conducted of the Trade Practices Compliance Program 12 months after its implementation. A suitably qualified professional who is independent of Retravisio and acceptable to the Commission shall carry out the audit.
- (18) The auditor shall review and report in writing on:
  - (i) the implementation of the Trade Practices Compliance Program and the achievement over the preceding 12 months; and
  - (ii) identify any deficiencies and make recommendations as to any changes to the Trade Practices Compliance Program, if necessary, to ensure the achievement of its objective.
- (19) That it will provide a copy of the auditor's report to the Commission within 21 days of the completion of the audit and adopt, subject to the Commission's approval, any recommended changes made by the auditor to the compliance program.

## **ACKNOWLEDGMENTS**

- (20) Retravisio acknowledges that the Commission will make this undertaking available for public inspection.

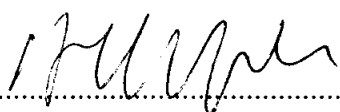
- (21) Retravision acknowledges that the Commission will from time to time publicly refer to this undertaking.
- (22) Retravision acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct.
- (23) Retravision acknowledges that the report referred to in paragraph 18 above will be held with this undertaking on the public register.

IN WITNESS of these undertakings  
and its agreement the common seal of  
**RETRAVISION PTY LIMITED ACN. 001 377 000**  
was hereunto affixed by authority of the  
Board of Directors in the presence of:

Secretary/Director.......... Director..........

This *SEVENTH* day of *APRIL* 2003

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

  
.....  
(Professor Allan Fels)  
Chairman

This *23* day of *April* 2003