

**UNDERTAKING  
TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
GIVEN FOR THE PURPOSES OF SECTION 87B OF  
THE TRADE PRACTICES ACT 1974**

**BY**

**CUTCO (AUSTRALIA), INC. (ARBN: 073 860 787)**

**1. PURPOSE**

- 1.1 Cutco (Australia), Inc. has contravened sections 52 and 53B of the *Trade Practices Act* 1974 (the 'Act') in that its Division Manager (Vic., S.A., and Tas.) and staff of the Hobart Office engaged in conduct which had the effect of misleading and deceiving jobseekers arising variously from the wording and placement of advertisements in newspapers and the making of subsequent telephone representations. The purpose of this undertaking is to ensure that Cutco (Australia), Inc. implements specific measures as well as a general program to ensure compliance with the Act.

**2. PERSON GIVING THE UNDERTAKING**

- 2.1 This undertaking is given to the Australian Competition and Consumer Commission by Cutco (Australia), Inc. pursuant to section 87B of the Act.

**3 BACKGROUND**

- 3.1 Cutco Corporation is an international corporation with its headquarters based in New York, USA. Cutco (Australia) Inc. (Cutco) is an Australian registered body of Cutco Corporation and commenced in Australia in 1996. Its main office is in NSW and there are currently 15 Sales Offices throughout Australia including one in Tasmania based in Hobart. Cutco direct markets a range of knives and kitchen preparation tools through independent commission salespeople.
- 3.2 In late October 1998, the Australian Competition and Consumer Commission ('the Commission') received complaints from persons seeking employment about classified advertisements appearing in the Hobart Mercury newspaper's 'Employment' section during October 1998 placed by Cutco's Division Manager responsible for Victoria, South Australia and Tasmania and its Tasmanian Branch Manager. Similar advertisements were placed in other Tasmanian newspapers. The impression the complainants received from the advertisements being placed in the Employment section and from subsequent oral representations was that the positions were salary or wage based rather than being commission based. The complainants were not interested in commission based positions. In addition to the complaints received in October 1998, in November 1997 a similar complaint concerning misleading newspaper advertising by the Division Manager responsible for Vic., S.A. and Tas. was received by the Commission.

- 3.3 Following an investigation, the Commission reached the view that Cutco's conduct in relation to misleading newspaper advertisements and subsequent oral representations had contravened the Act in that the company had engaged in conduct, in trade or commerce, that was misleading or deceptive or likely to mislead or deceive (section 52) and that it had in relation to employment, engaged in conduct that was liable to mislead persons seeking employment as to the nature, terms and conditions of the employment (section 53B).
- 3.4 Cutco accepts that persons seeking employment have been misled by the newspaper advertising and subsequent oral representations. Cutco agrees to ensure that such misleading conduct ceases and to abide by the following undertaking given to the Commission pursuant to section 87B of the Act.

#### **4. COMMENCEMENT OF UNDERTAKING**

- 4.1 This undertaking comes into effect when:
- (a) executed by Cutco; and
  - (b) being so executed, is accepted by the Commission.

#### **5. UNDERTAKING FOR THE PURPOSE OF SECTION 87B**

##### **5.1 *Advertising Undertaking***

That Cutco throughout Australia, undertakes to ensure the cessation of the placing or distributing of misleading job advertisements in newspapers, other media or by other means. Advertisements will be worded so that they do not mislead prospective job seekers as to the nature or conditions of the positions being offered, and be placed in the appropriate advertising section. The effective implementation of this policy is the responsibility of the Trade Practices Compliance Manager.

(Refer to paragraph 5.3 of this undertaking.)

##### **5.2 *Oral Representations Undertaking:***

That Cutco, throughout Australia, undertakes to ensure the cessation of misleading oral representations in relation to recruitment of Independent Sales Representatives. Cutco will give enquirers on first telephone contact an accurate description of the nature and conditions of the positions being offered including the requirement to purchase a demonstration kit of samples or leave a bond until the kit is returned.

### 5.3 *Undertaking to Nominate a Trade Practices Compliance Manager:*

That Cutco undertakes to nominate a senior executive of the company to be a national Compliance Manager in respect of the *Trade Practices Act 1974* and advise the Commission of the nominated executive by Monday 8 March 1999.

### 5.4 *Undertaking to Develop a Trade Practices Compliance Policy:*

That Cutco undertakes to develop a national Trade Practices Compliance Policy to be approved by the Commission. Cutco's proposed Compliance Policy should be submitted to the Commission for approval by Friday 16 April 1999. On approval of a Compliance Policy by the Commission, Cutco's nominated national Compliance Manager will be responsible for ensuring on a continuing basis that all Cutco employees and people working on behalf of Cutco such as Independent Sales Representatives are conversant with the Compliance Policy.

### 5.5 *Training Undertaking*

That Cutco's nominated national Compliance Manager undertakes to develop and implement throughout the company a practical and easily understood compliance training system based on *Australian Standard 3806 Compliance Programs*. The training will cover all Cutco employees and people working on behalf of Cutco such as Independent Sales Representatives and will be:

- Integrated into induction courses
- Conducted every six months for all employees and people working for Cutco
- Verified for understanding
- Framed to reflect areas of risk
- Integrated into management development, and;
- The content of training should include, but not be limited to, the Misleading Jobs Manual.

### 5.6 *Reporting Undertaking:*

Cutco will be required to have an annual report prepared at its cost regarding the implementation of this undertaking and Cutco's compliance with it, such a report to be undertaken by an independent trade practices expert approved by the Commission. Reports to be lodged with the Commission by 31 December 1999 and 2000.

## 6. ACKNOWLEDGMENTS

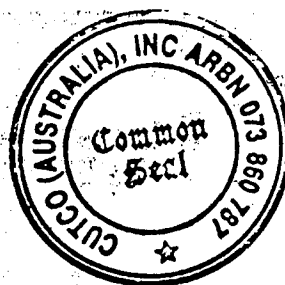
- 6.1 Cutco acknowledges that the Commission will make this undertaking available for public inspection.
- 6.2 Cutco further acknowledges that the Commission may from time to time publish and publicly refer to this undertaking at its discretion.

- 6.3 Cutco further acknowledges that this undertaking in no way derogates from the rights and remedies available to any person arising from the alleged conduct.
- 6.4 Cutco further acknowledges that reports arising from this undertaking will be held on the Commission public register.

IN WITNESS of these undertakings )

THE COMMON SEAL OF )  
 CUTCO (AUSTRALIA), INC. )  
 was hereunto affixed by authority )  
 of the Board of Directors in the )  
 presence of : )

.....  
 Director



This 8 day of MARCH 1999

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

.....  
 (Professor Allan Fels)

Chairperson

This 9 day of March 1999