

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

**BY
COPPERART PTY LIMITED AND AART VAN ROEST;**

ACN 005 272 604

BACKGROUND

1. Copperart Pty Limited ACN 005 272 604 ('Copperart') is a trading corporation for the purposes of the *Trade Practices Act 1974* ('the Act'), and duly incorporated pursuant to the laws of the State of Victoria. Copperart has displayed exchange and refund policies on cash register receipts and in store signage at over 100 Copperart outlets around Australia.
2. Mr Aart Gerard Van Roest, a Director of Copperart, designed, created, settled or otherwise procured the display of exchange and refund policies on cash register receipts and in store signage.
3. The Australian Competition and Consumer Commission ('the Commission') is a body corporate established by section 6A of the Act, and is responsible for taking action to enforce Part V of the Act, including sections 52 and 53.
4. Copperart and Mr Van Roest displayed or caused to be displayed exchange and refund policies on cash register receipts and in store signage concerning the conditions under which customers could exchange or obtain a refund for goods purchased at Copperart stores.
5. The in store signs of concern to the Commission represented to the public that:
 - (a) a \$2 fee was payable on all goods exchanged; and
 - (b) exchanges must be made within 7 or 14 days of purchase;
 - (c) exchanges were unavailable unless prior arrangement was made.
6. The cash register receipts represented to the public that:
 - (a) cash refunds were unavailable;
 - (b) exchanges would only be made within 7 days of original purchase.

7. Following an investigation by the Commission, the Commission reached the view that:
 - (i) Copperart had contravened the Act by making false and misleading or deceptive representations on cash register receipts and in store signage in contravention of sections 52 and 53(g) of the Act; and
 - (ii) Mr Aart Gerard Van Roest had contravened the Act by aiding or abetting or being directly or indirectly knowingly concerned in or parties to contraventions of sections 52 and 53(g) of the Act by Copperart.
8. The Commission considers Copperart contravened section 52 of the Act by:
 - (a) engaging in conduct in trade or commerce that is misleading or deceptive, or is likely to mislead or deceive, by making the representations set out in paragraph (5) in instore signage.
 - (b) engaging in conduct in trade or commerce that is misleading or deceptive, or is likely to mislead or deceive, by making the representations set out in paragraph (6) on it's cash register receipts.
 - (c) engaging in conduct in trade or commerce that is misleading or deceptive, or is likely to mislead or deceive, by making contradictory representations on in store signage and cash register receipts.
9. The Commission considers Copperart contravened section 53(g) of the Act, in connection with the sale of goods, by:
 - (a) representing on in store signage that certain conditions as set out in paragraph (5) above applied to the return of goods purchased at Copperart stores; and
 - (b) representing on cash register receipts that certain conditions as set out in paragraph (6) above applied to the return of goods purchased at Copperart stores.
10. The Commission considers Mr Van Roest also contravened section 52 of the Act by:
 - (a) aiding or abetting, or being directly or indirectly knowingly concerned in or parties to the making of representations set out in paragraph (5) above on in store signage; and
 - (b) aiding or abetting, or being directly or indirectly knowingly concerned in or parties to the making of representations set out in paragraph (6) above, on cash register receipts.
11. The Commission considers Mr Van Roest also contravened section 53(g) of the Act by:
 - (a) aiding or abetting, or being directly or indirectly knowingly concerned in or parties to the making of representations on in store signage as set out in paragraph (5) above that conditions not permitted by the Act applied to the return of goods; and
 - (b) aiding or abetting, or being directly or indirectly knowingly concerned in or parties to the making of representations on cash register receipts as set out in paragraph (6) above that that conditions not permitted by the Act applied to the return of goods.
12. On or about 4 September 1999 the Commission brought to Copperart's attention its view that the representations referred to in paragraphs (5) and (6) above contravened sections 52 and 53(g) of the Act.

13. On or about 4 September 1999 the Commission brought to Mr Van Roest's attention its view that the representations referred to in paragraphs (5) and (6) above contravened sections 52 and 53(g) of the Act and that they had contravened those sections of the Act by aiding or abetting or being directly or indirectly knowingly concerned in or parties to the making of those representations.
14. Without making admissions, Copperart has agreed to provide to the Commission an undertaking pursuant to section 87B of the Act, as set out below.
15. Without making admissions, Mr Van Roest has agreed to provide to the Commission an undertaking pursuant to section 87B of the Act, as set out below.

OBLIGATIONS UNDER THE UNDERTAKING

I. CORRECTIVE COMPONENT

- (1) Copperart Pty Ltd and Aart Van Roest hereby undertake for the purposes of section 87B of the Act:
 - (a) that they will not hereafter, whether by themselves, their servants, agents or otherwise, in trade or commerce, either verbally or in writing, represent that:
 - (i) Copperart does not give cash refunds;
 - (ii) exchanges, other than change of mind exchanges, are only available for a certain period of time;
 - (iii) a service fee of any amount applies to exchanges, other than change of mind exchanges;
 - (iv) exchanges, other than change of mind exchanges, are only available if prior arrangements have been made;
 - (b) that they will:
 - (i) within twenty one (21) days of the giving of this undertaking, cause the corrective advertisement at attachment "A" to be published in the Canberra Times, the Herald Sun in Melbourne, the Daily Telegraph in Sydney, the West Australian in Perth, The Advertiser in Adelaide, the Courier Mail in Brisbane and The Mercury, in Hobart.
 - (ii) (Ii)The corrective advertisements (being the corrective advertisements referred to in sub-paragraph (i) hereof), in a size and format and content agreed to by the Commission, will offer consumers the opportunity to exchange, or obtain a refund, for goods subject to the statutory warranty provisions of the *Trade Practices Act 1974*, purchased during the period of the policy. The advertisements will also offer consumers the opportunity to exchange goods (other than change of mind exchanges) where they were misled as to Copperart's exchange and refund policies by the contradictions between the exchange and refund policies (other than change of mind exchanges) displayed instore and on the cash register receipt from the same store.

II. COMPLIANCE COMPONENT

Copperart Pty Ltd shall create and maintain, at its own expense, a trade practices compliance program consistent with Australian Standard 3806 1998 – *Compliance Programs* and to prevent, so far as is reasonably possible, any contraventions of the Act by Copperart Pty Ltd or by its directors, employees or agents. In summary Copperart Pty Ltd will

- (1)
 1. demonstrate commitment to a policy of compliance and embed a culture of compliance throughout the organisation;
 2. analyse and respond to the trade practices issue resulting in this undertaking;
 3. take action internally against those responsible for breaches and will not indemnify them; and
 4. provide practical and verifiable training for all those involved in the business of Copperart Pty Ltd so that breaches and potential breaches may be prevented or otherwise detected, referred and acted upon.

In particular Copperart Pty Ltd shall implement the following steps –

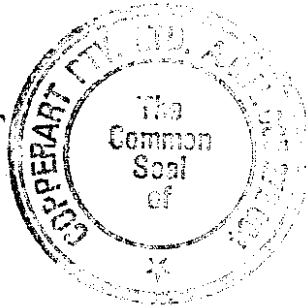
- (2) Implement this compliance program within ninety (90) days of the signing of the undertaking.
- (3) Ensure that the compliance program covers all directors, employees and agents of Copperart Pty Ltd whose duties could result in their being concerned in conduct that might breach the Act.
- (4) Appoint a director of Copperart Pty Ltd as Compliance Manager with overall responsibility for compliance.
- (5) Ensure that the Compliance Manager is accountable to Copperart Pty Ltd for compliance issues.
- (6) Ensure that all compliance breaches are reported to the Compliance Manager immediately, with appropriate training and steps to prevent failure.
- (7) Keep an accurate record of compliance failures and complaints (where those failures and complaints have been brought to the attention of the company) and of the rectification of such failures and complaints .
- (8) Where compliance issues or concerns are complex, ensure that the Compliance Manger immediately brings them to the attention of Copperart’s solicitors.
- (9) Ensure, for the period of three (3) years and thirty (30) days from the signing of the undertaking, that the Commission is notified within thirty (30) days of any appointment of a new Director to the position of Compliance Manager.
- (10)
 - (i) Arrange for all zone managers and equivalent persons employed by Copperart Pty Limited to be trained by a suitable qualified compliance professional(s) acceptable to the Commission and in a form approved by the Commission and such training shall include the training of such zone managers or equivalent employees to instruct all store managers and other store employees whether permanent, part-time or casual, with respect to the matter set out in sub-paragraph (ii) hereof.
 - (ii) The training shall include, inter alia, the rights and obligations of Copperart and its employees under the Trade Practises Act, including Sections 52 and 53 of the Act.

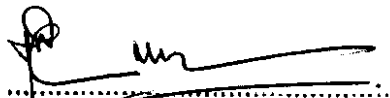
(3) Copperart Pty Ltd further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.


(4) Copperart Pty Ltd further acknowledges that the reports referred to in paragraph (1) of the Audit Component above, will be held with this undertaking on the Commission's public register.

DATED: 29th NOVEMBER 1999

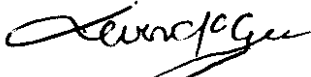
THE COMMON SEAL of COPPERART PTY LIMITED was hereunto affixed in the presence of:

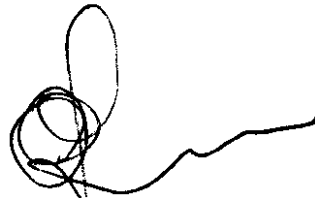



Secretary


Director

SIGNED by AART VAN ROEST in the presence of:


KEVIN MCGEE



* 

**CORRECTIVE
ADVERTISEMENT**

**An Apology From
Copperart**

**Our Exchange and Refund
Policies Were Misleading**

Shoppers – you are entitled to a refund if you buy goods or services that are defective, do not match the description or sample provided or do not do what they are supposed to do or what the seller said they would do.

The ACCC is concerned that Copperart's exchange and refund policies may have misled or deceived consumers as to their right to exchanges and refunds under the Trade Practices Act 1974.

Copperart customers who were misled by receipts stating 'we do not give cash refunds. Exchanges....only within 7 days' are invited to apply for exchanges (other than change of mind exchanges) or, in the circumstances listed above, refunds, from your Copperart store.



Australian Competition & Consumer Commission

This corrective advertisement has been placed by Copperart Pty Limited at the request of the Australian Competition and Consumer Commission (ACCC for the assistance of Copperart customers.