

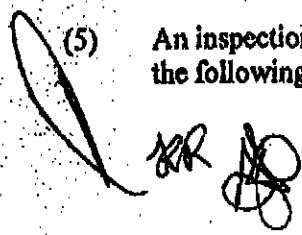
**UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION GIVEN PURSUANT TO SECTION 87B OF THE TRADE
PRACTICES ACT 1974**

BY

COLONEL CLINTS CRAZY BARGAIN STORES PTY LTD (ACN 003 038 702)

BACKGROUND

- (1) COLONEL CLINTS CRAZY BARGAINS STORES PTY LTD (ACN 003 038 702) (Clints) is incorporated in the state of New South Wales and its principal activities include the supply of goods by retail to consumers in Australia through a chain of gift ware and novelty item stores in Victoria, New South Wales, Queensland and the Australian Capital Territory.
- (2) From 1 June 1999 to 29 July 1999 Clint's retailed to the public a wall mounted reproduction antique telephone ("the phone") for \$89. The phone was available in two slightly different styles, both predominantly in an oak finish appearance with brass fittings.
- (3) Clint's also distributed a catalogue to households across the eastern states and the ACT during the month of June that included the a picture of the phone on the front cover. A copy of the front page of the advertisement is included at Annexure A. Apart from a photograph depicting a woman "using" the phone, the advertisement contained the following representations:
 - a) "working antique telephone"
 - b) "tone or pulse feature"
 - c) "redial" and "touch dial"
 - d) "Australian Standards Approved".
- (4) During the period 25 July to 28 July 1999, Australian Competition and Consumer Commission ("the Commission") staff made inquiries at various Clint's stores in Melbourne, Canberra and NSW concerning the suitability of the phone for domestic use. On each occasion shop assistants at the Clint's stores stated that the phone was suitable for use on the standard domestic telephone network ("the PSTN").
- (5) An inspection of the box in which the phone was sold and its contents reveals the following:



- a) a note on the outside of the box -

CAUTION: DO NOT USE BEFORE READING INSTRUCTIONS ;

- b) inside the packaging a statement on a piece of paper inserted into the instruction booklet and also on a loose piece of paper inside the box appeared the following statement -

DO NOT CONNECT THIS CUSTOMER EQUIPMENT TO A CARRIER OR CARRIAGE SERVICE PROVIDER'S TELECOMMUNICATIONS NETWORK OR FACILITY UNLESS:

- (a) **YOU HAVE THE WRITTEN CONSENT OF THE NETWORK FACILITY MANAGER, OR**
- (b) **THE CONNECTION IS IN ACCORDANCE WITH A CONNECTION PERMIT OR CONNECTION RULES.**

CONNECTION OF THIS CUSTOMER EQUIPMENT MAY CAUSE A HAZARD OR DAMAGE TO THE TELECOMMUNICATIONS NETWORK OR FACILITY, OR PERSONS, WITH CONSEQUENTIAL LIABILITY FOR SUBSTANTIAL COMPENSATION. ;

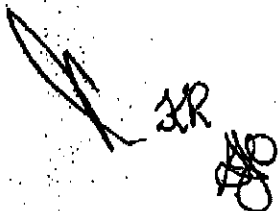
- c) Two labels affixed to the back panel of the phone, one a "C tick" and the other an "A cross".

Copies of these labels and warnings are attached as Annexure B.

- (6) The Australian Communications Authority (the "ACA"), pursuant to section 407 of the *Telecommunications Act, 1997* is empowered to make binding rules, amongst other things, in relation to the labelling of telephony equipment. The ACA has confirmed to the Commission that the warnings and notices set out at point (6) above and attached as Annexure B comply with the relevant requirements of the *Telecommunications Labelling (Customer Equipment and Customer Cabling) Notice No.2 of 1997*.

- (7) The ACA has advised the Commission:

- a) that in accordance with the type of labelling and the warning notes, the phone has not gained approval for general network connection use as the phone has not passed various technical performance and safety tests;

Handwritten signature and initials, possibly "JR" and "AB", are visible at the bottom left of the page.

- b) in particular, the phone does not adequately insulate the user from a power surge of up to 7000 volts; a threshold requirement in relation to Telecommunications Standard TS 001 which permits a device to be connected to the general telephone network;
 - c) the phone also failed preliminary testing in relation to its technical performance as against mandated network standards. These network standards protect against instances of "cross calls", the creation of faulty billing information and incorrect dialling commands; and
 - d) it would be illegal to plug the phone into the PSTN.
- (8) The Commission considers that the use by Clint's in its catalogue of the description "working antique telephone", the depiction of a person "using" the phone, the use of the terms "Tone or Pulse Feature, Redial and Touch Dial" are misleading and deceptive or are likely to mislead or deceive consumers into a belief that the phone is able to be lawfully used on the PSTN and would therefore be in breach of sections 52, 53 and 55 of the *Trade Practices Act, 1974* ("the Act").
- (9) The Commission considers that the statements, by Clint's store attendants, to the effect that the phone was able to be used in homes "just like a normal phone" are false representations as to the standard or quality of the phones and in breach of sections 52, 53 and 55 of the Act.
- (10) The Commission considers that the inclusion of the statement "Australian Standards Approved" together with the statements, by Clint's store attendants, to the effect that the phone was able to be used in homes "just like a normal phone" are false representations that the phones have the approvals to be connected to the PSTN and such statements would be in breach of sections 52, 53 and 55 of the Act.
- (11) The Commission considers that Clint's conduct evidenced by the wording and layout of its catalogue advertisement for the phone and the way in which it has been sold by Clint's store attendants is liable to mislead the public as to the suitability for the item to be used as a domestic telephone and is therefore in breach of sections 52, 53 and 55 of the Act.
- (12) Clint's acknowledges that its conduct described in paragraphs (3), (4) and (5) above may have contravened the Act and has:
- a) since 30 July 1999, withdrawn from sale all stock of the phones and ceased the conduct referred to in paragraph (4) and (5) above;
 - b) since 3 August 1999, placed a notice, a copy of which appears at Annexure C, at the main cash registers and at the entrance to each Clint's store alerting purchasers of the phone to return the phone for a full refund and warning them of the illegality of plugging the phone into the PSTN.
- Handwritten initials: JR*

- (13) Clint's gives the following undertakings to the Commission for the purposes of section 87B of the Act.

UNDERTAKING

Clint's undertakes to:

- A. Clint's will place corrective advertisements in store and in newspapers in accordance with the requirements of Annexure D.
- B. Not engage in conduct that is misleading or deceptive or likely to mislead or deceive in relation to the suitability for a particular use of a particular product.
- C. Not to falsely represent that a good is of a particular standard or quality.
- D. Not to falsely represent that goods have approvals, characteristics or are fit for a particular use.
- E. Not to engage in conduct, including conduct such as advertising or statements by in-store staff, that is liable to mislead the public as to the nature, the characteristic or the suitability for a particular purpose of a good.
- F. Refund the full purchase price of any phone (upon return of the product and proof of purchase) to any consumer who claims they were misled by any representation or conduct made by Clint's in relation to the phone.
- G. Institute and maintain, at its own expense, for Clint's in respect of Part V of the *Trade Practices Act, 1974*, a compliance program ("the compliance program") by a suitably qualified professional acceptable to the Commission, with the object of creating and maintaining compliance consistent with Australian Standard AS-3806.
- H. Provide a progress report on the institution of its trade practices compliance program to the Commission on or before 31 December 1999. This progress report will report on Clint's implementation of the compliance program.
- I. Cause, at its own expense, an audit of its compliance program to be conducted annually from the date of acceptance of this undertaking for a period of three years. A suitably qualified compliance professional ("the auditor") who is independent of Clint's and acceptable to the Commission shall carry out the first audit. Subject to the findings of the first audit, the Commission may permit the subsequent two audits to be conducted by Clint's.
- J. The audit shall include the review and reporting of:
 - 1. Clint's adherence to the undertaking;
 - 2. the implementation of the compliance program, its consistency with Australian Standard AS-3806 and the achievement of its objectives over the preceding twelve months; and

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AD

3. any recommended changes to the compliance program that may be necessary to ensure achievement of its objectives.

K. The Commission shall review the recommendations contained in each audit report. If reasonably practicable, Clint's shall implement those recommendations. In the event that Clint's does not implement a recommendation (including any part thereof) on the basis that it is not reasonably practicable, Clint's shall:

1. document to the Commission why it is not reasonably practicable to implement the recommendation; and
2. devise alternative means to achieve the objective upon which the recommendation was based and implement the same.

ACKNOWLEDGEMENTS

1. Clint's acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission will, at its discretion, from time to time, publish and publicly refer to this undertaking.
2. Clint's acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from Clint's conduct.

IN WITNESS TO THESE UNDERTAKINGS

The Common seal of COLONEL CLINT'S CRAZY BARGAIN STORES PTY LTD
ACN 003 034 702 was hereto affixed in the presence of:

Director: 

Director / Secretary: 

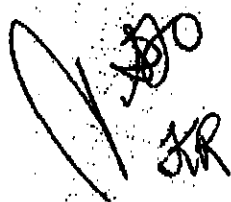
This 13 day of August, 1999.



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

Chairman: 

This day of August, 1999.

Handwritten initials, possibly "JR", with a large "1" and "30" written above them.

Annexure A

Clints **CRAZY** BARGAINS

100% AUSTRALIAN OWNED

ALL STORES
OPEN
7
DAYS

Multi-purpose
STORAGE TOWER
\$39



\$39

High Back
EXECUTIVE CHAIR
with Arm Rests
\$99

RECLINES



GAS LIFT
OR
WHEELS

Ready to
Assemble

CATALOGUE SALE
STARTS 8.30am
MONDAY
5th JULY
for 2 weeks only or
while stocks last!

\$179

THE
LOT!

5 Piece
DINING SETTING



STEEL FRAMED TABLE
PLUS
6 PADDED CHAIRS

Ready to Assemble

\$14.95

**ADJUSTABLE
SHELVES!**

**47cm
TALL!**

Working
Antique
TELEPHONE
Lamps

2
STYLES



\$89

Message Book
Tone or
Pulse Feature
Redial
Touch Dial

Australian Standards Approved

EXTANT
DESK
WITH
EXPANDING
SURFACE
12 Month
Replacement Warranty

Fibre Optic
DESK LAMP

Includes Low Voltage Pack

**TOP 40
SELECTIONS**

CASSETTES

Normally
\$7.95

ANY 3 TITLES



\$15

177 x 92 x 23cm
Ready to Assemble

Annexure B

LABELS & WARNINGS SUPPLIED WITH PHONE

A. Label affixed to rear of phone:

"C Tick" -



"A Cross" -



B. Label affixed to front of box:

CAUTION: DO NOT USE
BEFORE
READING THE INSTRUCTIONS

C. Warning note placed inside package (one copy inside instructions and one copy loose inside box)

Do not connect this customer equipment to a carrier or carriage service provider's telecommunications network or facility unless:

- (a) you have the written consent of the network facility manager, or
- (b) the connection is in accordance with a connection permit or connection rules.

Connection of this customer equipment may cause a hazard or damage to the telecommunications network or facility, or persons, with consequential liability for substantial compensation.

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Annexure C

WARNING NOTICE-
CLINTS CRAZY BARGAINS
WORKING ANTIQUE TELEPHONE



The telephone concerned is oak timber finish with brass fittings which was available from our stores from 30 June to 29 July 1999 for \$89.

Advice from the Australian Competition and Consumer Commission indicates that the telephone should not be connected to the Australian Telecommunications network.

If you purchased this product and you intend to connect it to the Australian Telecommunications network, then please return it for a full refund.

Plugging the telephone into the Australian Telecommunications Network is illegal and may be unsafe, please discontinue that use.

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