

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

BY

**EARL ERIC WOOLLEY**



**BACKGROUND**

1) Earl Eric Woolley is the sole Director of Instant Document Retrieval Pty Ltd ("IDR") (ACN 065 847 949).

*It is ALLEGED THAT*

2) *ME* In July and August 1997, IDR, via Mr Woolley and others, made certain representations in Brisbane and Townsville respectively, concerning the sale of "Master Distributorships" for the "DocTrieve" computer software product. *E*

*ME* 3) The said representations were made in newspaper advertisements and verbally. *ALLEGED* In essence, the *ALLEGED* representations were to the effect that:

- (a) the purchaser of a master distributorship or other distributorship ("a DocTrieve Distributorship") by which the computer software program called DocTrieve ("DocTrieve") is distributed will take over a number of existing major accounts of IDR's;
- (b) the current annual income of a DocTrieve Distributorship is in excess of \$75,000.00;
- (c) the existing accounts of IDR will enable the purchaser of a DocTrieve Distributorship to generate an annual income in excess of \$75,000.00;
- (d) the purchase price for a DocTrieve Distributorship is all the money that the purchaser is required to expend in order to carry on the distributorship;
- (e) all training sufficient to enable a purchaser of a DocTrieve Distributorship to carry on the distributorship will be provided by IDR;
- (f) the work required to be performed in a DocTrieve Distributorship does not require experience and knowledge in the use of computers;
- (g) Hewlett Packard Australia Ltd is a distributor of DocTrieve;
- (h) businesses trading as "Compaq" or "Digital" are distributors of

DocTrieve;

- (i) Hewlett Packard Australia Ltd has agreed to produce DocTrieve compact discs;
- (j) Hewlett Packard Australia Ltd's distributors send out a DocTrieve compact disc with any hardware product sold by them;
- (k) all Hewlett Packard Australia Ltd's distributors will be distributors of DocTrieve;
- (l) there is an agreement or arrangement between IDR and each of Hewlett Packard Australia Ltd, Ausdoc Information Management Pty Ltd and the Australian Society of Certified Practising Accountants whereby each of those entities has agreed to sell and to promote DocTrieve;
- (m) each of Hewlett Packard Australia Ltd, Ausdoc Information Management Pty Ltd and the Australian Society of Certified Practising Accountants has agreed to become an agent for IDR;
- (n) each of Hewlett Packard Australia Ltd, Ausdoc Information Management Pty Ltd and the Australian Society of Certified Practising Accountants has agreed to become a distributor of DocTrieve;
- (o) the purchaser of a DocTrieve Distributorship is not required to sell DocTrieve to members of the public;
- (p) the Queensland Department of Education and Queensland Health Pathology and Scientific Services use DocTrieve throughout their organisational structures;
- (q) the purchaser of a DocTrieve Distributorship can expect to earn in the vicinity of Eighty Seven Thousand Nine Hundred and Twenty Dollars (\$87,920.00) during the first year of operation or any year of operation;
- (r) the Australian Society of Certified Practising Accountants has endorsed or has agreed to endorse DocTrieve;
- (s) the Australian Society of Certified Practising Accountants has made a decision to recommend DocTrieve to its members;
- (t) there is or will be a substantial demand for DocTrieve in Townsville;
- (u) the Australian Army uses or will use DocTrieve extensively;
- (v) the Townsville General Hospital has agreed to acquire DocTrieve

throughout its organisational structure;

- (w) IDR has an agreement or arrangement with each of Drake Personnel Ltd and Price Waterhouse whereby each of those entities has agreed to promote DocTrieve;
  - (x) the Department of Administrative Services has acquired or has agreed to acquire DocTrieve.
- 4) In April 1999, the Australian Competition and Consumer Commission ("the Commission") instituted legal proceedings against IDR, Earl Eric Woolley and William Colin Enas McIntosh, in the Brisbane Registry of the Federal Court of Australia. In the proceedings the Commission alleged that in making the representations referred to in paragraph 3 above, IDR had engaged in misleading and deceptive conduct in contravention of sections 52 and 59 of *the Trade Practices Act 1974* ("the Act"). The Commission also alleged that Earl Eric Woolley was knowingly concerned in the alleged contraventions of section 52 and 59 of the Act.
- 5) As part of an overall settlement by IDR and Earl Eric Woolley, the later gives the following undertaking to the Commission for the purposes of section 87B of the Act.

## **UNDERTAKING**

Earl Eric Woolley undertakes to:

- A. Ensure that any corporation of which he is entitled pursuant to its constitution to exercise the majority of the voting rights in its decisions or of which he is the manager ("the Corporation"), and which also sells the "Doctrieve", or similar, software product as part of its nature of business, shall have in place the Trade Practices Corporate Compliance Program ("the Program"), as outlined in Annexure "A" to this undertaking.

## **ACKNOWLEDGMENTS**

1. Earl Eric Woolley 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. Earl Eric Woolley acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from his conduct.

IN WITNESS OF THIS UNDERTAKING

Signed by Earl Eric Woolley )  
On this 20<sup>th</sup> day of SEPTEMBER 1999. )



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

  
CHAIRMAN

This 30 day of April 1999.

## ANNEXURE "A"

### TRADE PRACTICES CORPORATE COMPLIANCE PROGRAM

The Program to be undertaken by the Corporation will have the following features:

1. The Corporation will place responsibility for the implementation and effectiveness of the Program with Mr Earl Eric Woolley. The Program will be implemented within two calendar months of the date of this undertaking, the date of Mr Earl Eric Woolley obtaining a majority of the issued share capital in the Corporation, the date of Mr Earl Eric Woolley acquiring the entitlement pursuant to the Corporation's constitution to exercise the majority of the voting rights in its decisions or the date on which Mr Earl Eric Woolley is appointed manager of the Corporation, whichever occurs last.
2. The Corporation will appoint a senior officer as a Trade Practices Compliance Officer. The Trade Practices Compliance officer will be appointed within two calendar months of this undertaking, or the date of Mr Earl Eric Woolley obtaining a majority of the issued share capital in the Corporation, the date of Mr Earl Eric Woolley acquiring the entitlement pursuant to the Corporation's constitution to exercise the majority of the voting rights in its decisions or the date on which Mr Earl Eric Woolley is appointed manager of the Corporation, whichever occurs last .
3. The Corporation will require the Trade Practices Compliance Officer to review all advertising (by any medium) to ensure that it complies with Part V of the Trade Practices Act 1974 ("the Act"), prior to its publication or broadcast.
4. The Corporation will require the Trade Practices Compliance Officer to maintain a documentary record of the compliance reviews of all advertising. Such documentary record will include:
  - (a) a description of the advertisement;
  - (b) a description of the publication (including name, date, page(s) and publisher);
  - (c) a copy of the advertisement;
  - (d) written advice that the advertisement had been reviewed and cleared by the Trade Practices Compliance Officer (including the date on which advertisement was reviewed); and
  - (e) written advice of any possible contraventions of Part V of the Act that were identified by the Trade Practices Compliance Officer and the action taken to address these possible contraventions.
5. The Corporation will ensure that the documentary records of the

compliance reviews of all advertising are available to the Australian Competition and Consumer Commission to be reviewed from time to time. Such records are to be available from one week after the date of publication of the advertisement, for a period of 3 years after that date. Such records shall be provided to the Australian Competition and Consumer Commission within 5 working days of a written request for those records.

6. The Corporation will ensure that the Program incorporates an appropriate complaints handling mechanism.
7. The Corporation will ensure that the Program is approved by an independent external auditor who is a legal practitioner practicing in trade practices law, with more than 3 years experience in trade practices law, prior to implementation.
8. The Corporation will ensure that an independent external auditor with experience in trade practices law, conduct training on Part V of the Act to the Corporation's staff, on two occasions over the 2 years following the implementation of the Program. The first of these training programs to be completed within 3 calendar months of the implementation of the Program and the remaining training program 12 months thereafter.
9. The Corporation will ensure that an independent external auditor with expertise in trade practices law, conduct an audit of the program with a view to improving its effectiveness, annually for a period of two years. Such audits to be completed at 12 months and 24 months following the implementation of the Program.