

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

**BY**

**ERGOLINE (AUSTRALIA) PTY LIMITED  
ACN 069 015 096**

D01/46143



**BACKGROUND**

An Undertaking offered by Ergoline (Australia) Pty Limited ('Ergoline') in accordance with section 87B of the Trade Practices Act 1974 ('the Act') was accepted by the Australian Competition and Consumer Commission ('the Commission') on 8 August 2001.

Ergoline has met all the requirements of the Undertaking. However, there has been some confusion concerning the placing of warning notices in 'advertising or promotional material' as stated in paragraph (6)(b)(iii). Ergoline has asked the Commission if Yellow Pages listings fall within this definition. In accepting the Undertaking, the Commission's primary focus was on promotional brochures.

To clarify this situation, Ergoline has offered the Commission this Variation to the Undertaking of 8 August 2001 in accordance with section 87B(2).

**Commencement Of The Variation Of Undertaking**

This Variation comes into effect when:

- i. the Variation is executed by Ergoline; and
- ii. the Commission accepts the Variation so executed.

**VARIATION TO THE UNDERTAKING**

Paragraph (6)(b)(iii) to be modified from:

- (6)(b)(iii) include in any advertisement or promotional material published by it in respect of indoor tanning solarium, in the period of three years after the date hereof, a statement to the effect "**WARNING: Tanning in sunlight or under tanning lamps even without burning can cause skin cancer and premature skin aging**" or a warning to similar effect which warns of the risk of skin cancer and premature skin aging;

to

(6)(b)(iii) include in any advertisement or promotional material published by it that promotes the use or intended use of indoor tanning solarium equipment (as distinct from the promotion of the sale, hire purchase or leasing of solarium equipment), in the period of three years after the date hereof, a statement to the effect “**WARNING: Tanning in sunlight or under tanning lamps even without burning can cause skin cancer and premature skin aging**” or a warning to similar effect which warns of the risk of skin cancer and premature skin aging; (emphasis added)

In all other respects the Undertaking shall remain unchanged.

#### **ACKNOWLEDGEMENTS**

Ergoline acknowledges the Commission’s right to make the Undertaking and this Variation available for public inspection.

Ergoline acknowledges and accepts that the Undertaking and this Variation in no way derogate the rights and remedies available to any person arising from Ergoline’s alleged conduct.

<sup>ll</sup>  
IN WITNESS of this Variation and its agreement, the common seal of Ergoline (Australia) Pty Limited (<sup>AS</sup> CAN 069 015 096) was hereunto affixed by its sole director and secretary in accordance with s.127 Corporations Law:

*T.M.*  
.....  
Tina Maier – Sole Director & Secretary

This *eleventh* day of *September* 2001



I, Tina Maier, Sole Director and Secretary of Ergoline (Australia) Pty Limited (ACN 069 015 096) <sup>give</sup> the Variation of Undertakings set out above. <sub>accept *TM*</sub>

*T.M.*  
.....  
Tina Maier

This *eleventh* day of *September* 2001

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B(2) OF THE TRADE PRACTICES ACT 1974.

*A.F. Shogren*  
.....  
~~Professor Allan Fels~~ **R.F. SHOGBREN**  
Chairman

*A/F*  
This *15<sup>th</sup>* day of *October* 2001