



TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B

BY

TELE CHOICE PTY LTD

ACN. 075 225 660

BACKGROUND

1. Tele Choice Pty Ltd (ACN 075 225 660) ("Telechoice") sells telecommunications products and services in all States and Territories of Australia.
2. In March 2001, Telechoice began offering a "free" bicycle ("the bicycle") to consumers who entered into a contract to purchase a mobile phone. The bicycle was made in China and imported by Telechoice. The bicycle was supplied partially-assembled (still in its cardboard carton) directly to consumers, or, for those wanting an assembled bicycle, assembled and supplied by various bicycle stores around Australia (acting as agents for Telechoice).
3. Sometime in May 2001, Telechoice became aware of the mandatory Standard for pedal bicycles and submitted an example of the bicycle for testing to ETRS Pty Ltd, an independent product-testing company. ETRS' report on the bicycle dated 22 May 2001 indicated that the bicycle failed to comply with various requirements of the mandatory standard; the most serious failings being insufficient seat-clamp strength, lack of front-wheel retention when wheel bolts loosened, sharp edges on headset, lack of a warning device such as a bell, lack of a manual and lack of a warning label that the bicycle not be used off-road.
4. Telechoice ceased supplying the bicycle in early June 2001, after it became aware of the bicycle's failure to comply with the standard. Approximately 2229 units had been supplied to consumers.
5. On 9 July 2001, the Hobart office of the ACCC wrote to Telechoice seeking its advice as to whether the bicycle had been tested for compliance with the Standard. In its response, Telechoice provided the Hobart office with a copy of the ETRS test report on the bicycle dated 22 May 2001.

6. Shortly afterwards, the matter was referred to the Melbourne office of the ACCC. Telechoice advised the Melbourne office that it was working closely with "Ray's Bikes" to modify the bicycle to make it comply with the Standard. On 23 July 2001, the ACCC wrote to Telechoice seeking its urgent action in recalling the bicycle. In its response to the ACCC, Telechoice advised that it would be conducting a recall of the bicycle via SMS messages and direct mail to all customers who had been supplied with the bicycle.
7. On 2 August 2001, the ACCC acquired an example of the bicycle from a Telechoice customer. The bicycle was submitted to ETRS on 6 August 2001 for testing for compliance with the mandatory Standard. In its report on the bicycle dated 15 August 2001, ETRS noted that the bicycle failed to comply with Australia/New Zealand Standard 1927:1998 Pedal Bicycles – Safety Requirements as notified and modified in the *Commonwealth of Australia Gazette* No. S 396, Consumer Protection Notice No. 8 of 1999, 27 August 1999 (the Standard) in the following areas:
 - Clause 1.5 – Marking – The bicycle was not marked with the name of the manufacturer/importer;
 - Clause 1.6.5 – Informative Labelling – Pseudo off-road or stunt bicycles - The bicycle, being one styled or constructed to appear suitable for off-road or stunt use, but not being so suited, was not marked with a warning statement that it is not designed for off road use or for stunting.
 - Clause 2.5.1 – Control cable end – Two of the four cable ends were removed by a force lesser than 20N.
 - Clause 2.8.1 (d) – Wheels – Positive retention – Front hubs – When the front hub nuts on the threaded axle were loosened a single turn, the wheel hub pulled away from the forks under its own weight. The test was carried out in accordance with Appendix C of the Standard and the bicycle failed to comply with the specification.
 - Clause 2.8.3 – Tyres – The tyre pressure is specified in psi on the sidewall of the tyres. No conversion from psi to kPa was supplied by the manual and thus the bicycle failed to comply with the requirements of 2.8.3 of the Standard.
 - Clause 2.16 – Warning Device – A warning device was not fitted in accordance with the requirements of clause 2.16 of the Standard.
8. On the basis of the above ETRS test reports dated 22 May and 15 August 2001, the Australian Competition and Consumer Commission ('the Commission'), reached the view that Telechoice had contravened section 65C(1)(a) of the Trade Practices Act 1974 ('the Act') in that Telechoice had supplied a product (the bicycle) in respect of which there is a prescribed consumer product safety standard, and which did not comply with that standard.
9. On 6 August 2001, Telechoice commenced the first phase of its recall of the bicycle by sending an SMS message to all those customers who had been supplied with the bicycle, advising them not to use the bicycle and await further instructions regarding the return of the bicycle for modification to compliance with the Standard.

10. On 17 August 2001, Telechoice implemented a voluntary consumer product safety recall of the bicycle by directly mailing all those Telechoice customers who had acquired the bicycle - advising them not to use the bicycle and return it for assembly or modification to any of the bicycle stores named in a list that accompanied the letter.
11. Telechoice admits that the bicycle, as originally supplied to the public, did not comply with the Standard, and as such, in supplying the bicycle, its conduct contravened the Act. It has ceased the conduct referred to in paragraph 8 above.

UNDERTAKINGS

12. Telechoice hereby undertakes for the purposes of section 87B of the Act:

- (a) it will take steps to ensure that all the bicycles it has supplied comply with the Standard. Where a customer is located a significant distance from any of the bicycle stores contracted to modify/assemble the bicycle, it will make provision for alternative arrangements for the return of bicycle;
- (b) that it, or any of its subsidiaries will, in any future supply of bicycles, satisfy itself, through testing by an authorised testing agency, and modification if necessary, that such bicycles comply with the Standard;
- (c) in respect of the recall of the bicycle referred to in paragraph 10, it will instruct the bicycle stores carrying out the modifications to the bicycle to maintain records indicating the name of the bicycle store the bicycle has been returned to, the date it was returned, the repairs or modifications carried out on the bicycle and the name and address of the owner of the bicycle;
- (d) it will provide the Commission with any additions or deletions to the list it faxed the ACCC's Melbourne office on 16 August 2001 of bicycle stores carrying out the modifications to the bicycle. It will allow the Commission to contact the bicycle stores on the list to ascertain the effectiveness of the recall;
- (e) in respect of the records described in paragraph 12(c), it will provide copies of such records to the ACCC within one month of the signing of this undertaking and copies of any further records thereafter as they become available;
- (f) it will take note of those customers who have not responded to the recall letter referred to in paragraph 10 within two months of the commencement date of the recall and send a further letter to those customers, repeating the advice that the bicycle does not comply with the Standard and that Telechoice is prepared to make alternative arrangements for the return of the bicycle to one of the listed bicycle repairers for modification or assembly in order to ensure that it complies with the Standard. It will provide the Commission with a copy of this subsequent letter;

Compliance Program

- (g) it will within 3 months of the signing of this undertaking, develop for consideration by the Commission, a Trade Practices Compliance program with the following characteristics and attributes:

(A) Aim

To create a culture within Telechoice of compliance with the Consumer Protection provisions (Part V) of the Trade Practices Act 1974 (the "Act") with the aim of preventing, so far as possible, any further breaches of section 65C(1)(a) of the Trade Practices Act 1974 ("the Act") by Telechoice or by its directors, employees or agents. Design of the Program should have regard to Australian Standard AS 3806-1998 **Compliance Programs**.

(B) Policy

The formal adoption or reaffirmation by Telechoice of a policy of strict compliance with both the letter and spirit of Part V of the Act within Telechoice and the adoption or reaffirmation and enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of that section of the Act.

(C) Compliance infrastructure

The appointment of a senior executive as the Compliance Officer with overall responsibility for compliance with the Program.

(D) Coverage

The Program is to cover all directors, employees and agents of Telechoice whose duties could result in them being concerned in conduct that might breach Part V of the Act ("the relevant staff"). The Program will include a specific reference to the duty of care of company directors in respect of Part V of the Act and compliance with prescribed consumer product safety standards.

(E) Education

In conjunction with a trade practices consultant having expertise in trade practices law, develop and implement an education program calculated to have the relevant staff conversant with Part V of the Act and compliance with prescribed consumer product safety standards for bicycles to a level where:

- (i) relevant staff can avoid obvious contraventions of Part V of the Act and can identify more complex potential trade practices problems arising from those provisions for referral to the Compliance Officer;
- (ii) persons with responsibilities within Telechoice can effectively carry out those responsibilities; and
- (iii) Telechoice's Compliance Officer can address more complex trade practices issues and (if that person is not legally qualified and able to give the relevant advice) identify issues that require referral to its solicitors.

(F) Approval of Compliance Program

Telechoice will ensure that prior to implementation of the Compliance Program a person or firm of practitioners with expertise in trade practices corporate compliance programs provides written confirmation to Telechoice that the Compliance Program possesses all the characteristics and attributes set out herein.

(J) Reports of an Independent Third Party

At the end of each twelve (12) month period following the implementation of the Compliance Program, until the second anniversary of the Program, Telechoice will cause a suitably qualified compliance professional (“the Independent Third Party”) to review and report on:

- (i) the implementation of the Compliance Program and the achievement of its objectives over the preceding twelve (12) months; and
- (ii) any recommended changes to the Compliance Program that may be necessary to ensure achievement of its objectives.

(K) Selection of the Independent Third Party

The Independent Third Party will be selected on the basis that he or she has a knowledge of the Act and experience in implementing or auditing trade practices compliance programs.

(L) The Independent Third Party will qualify as independent on the basis that he or she

- is not a present or past staff member or director of Telechoice;
- has not acted or does not act for Telechoice;
- is not retained by Telechoice in any other capacity;
- has not and does not provide consultancy or other services for Telechoice; and
- has no substantial shareholding or other interest in Telechoice.

(M) Extent of review by the Independent Third Party

The review conducted by the Independent Third Party may be based on but not limited to:

- (i) Telechoice’s records;
- (ii) Telechoice’s complaints register;
- (iii) any documents recording attendance by Telechoice’s staff at training seminars on Part V of the Act and compliance with prescribed consumer product safety standards;

- (iv) documents created by Telechoice's consultants and solicitors for use in Telechoice's compliance program;
- (v) any documents relevant to Telechoice's training or induction program;
- (vi) any other relevant documents; and
- (vii) a select number of oral reports sought from Telechoice's staff.

It is not necessary for the Independent Third Party to attend training seminars or induction programs in order to conduct the review.

(N) Reports to the ACCC

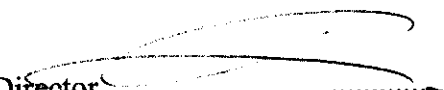
Telechoice will cause the Independent Third Party to complete the review and provide a copy of its report to Telechoice and to the ACCC within one month of the end of each twelve (12) month period.

- (h) The Trade Practices Compliance Program referred to in paragraph 12(g) above is to be implemented by Telechoice within 3 months of approval having been given by the Commission as to its form and content, and is to remain in force for a minimum period of 2 years from the signing of this undertaking; and
- (i) Telechoice will make whatever changes the Commission may reasonably suggest in relation to the Trade Practices Compliance Program referred to in paragraph 12(g) above.

ACKNOWLEDGMENTS

13. Telechoice acknowledges that the Commission will make the undertaking available for public inspection.
14. Telechoice further acknowledges that the Commission may from time to time publicly refer to this undertaking.
15. Telechoice further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

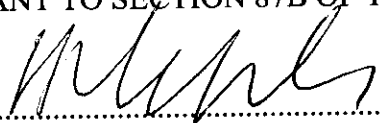
IN WITNESS of these undertakings
and its agreement the common seal of
Tele Choice PTY LTD (ACN 075 225 660)
was hereunto affixed by authority of the
Board of Directors in the presence of:

Secretary/Director.....

Director.....

This third (3rd) day of September 2001

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


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(Professor Allan Fels)
Chairperson

This 12 day of April 2001