

FILE No:

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

**BY**

**READER'S DIGEST (AUSTRALIA) PTY LIMITED (ABN 81 000 565 471)**

**PERSON GIVING UNDERTAKING**

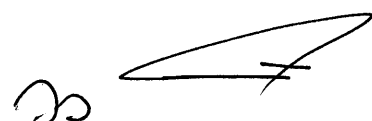
1. This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Reader's Digest (Australia) Pty Limited (ABN 81 000 565 471) of 26 Waterloo Street, Surry Hills, New South Wales 2010 ("RD") under section 87B of the Trade Practices Act 1974 ("the Act").

**BACKGROUND**

2. RD sells by mail order throughout Australia magazines, books, audio tapes and video tapes to consumers. Its processes are intended to ensure that no goods are supplied unless an order has been received for them.
3. The Commission has received complaints from customers about the supply of unsolicited goods by RD and about demands by RD for payment for unsolicited goods.
4. RD accepts that due to a failure in its processes, RD has contravened sections 52, 53 and 64 of the Act with the result that RD sent some customers goods that they had not ordered. Then RD demanded payment for those unsolicited goods when it did not have reasonable cause to believe that it was entitled to payment.
5. RD has asked the Commission to accept pursuant to section 87B of the Act, the following undertakings from RD in connection with the matter.

**UNDERTAKINGS**

6. In consequence of the matters referred to above, RD undertakes to the Commission, pursuant to section 87B of the Act, that RD, by itself, its servants and agents:
  - A. for a period of 3 years from the date of the Commission's acceptance of these undertakings,
    - (i) until the Commission has approved the compliance program pursuant to paragraph 5 of Annexure "A" hereto and until all Recommendations made under the Probation Program described in Annexure "B" hereto have been implemented pursuant to paragraph 4 of that Annexure, will ensure, so far as is practicable, that; and



- (ii) after the compliance program has been approved and all Recommendations have been implemented as aforesaid, will ensure, except in the case of reasonable mistake or error, that:

it will not assert a right to payment including by:



- (i) making a demand for payment or asserting a present or prospective right to payment;
- (ii) threatening to bring any legal proceedings with a view to obtaining payment;
- (iii) placing or causing to be placed the name of a person on a list of defaulters or debtors, or threatening to do so, with a view to obtaining payment; or
- (iv) invoking or causing to be invoked any other collection procedure, or threatening to do so, with a view to obtaining payment; or
- (v) sending any invoice or other document stating the amount of the payment or setting out the price of the goods and not stating as prominently (or more prominently) that no claim is made to the payment or price, as the case may be;

for any magazine, book, cassette tape, video tape, compact disc and or DVD ("RD Goods") unless RD has received a request for the RD Goods, from or on behalf of the person to whom the assertion of a right to payment is sent or made, which request is not to be implied or inferred from any silence or inaction on the part of such a person. In this regard, if RD becomes aware of a circumstance that it regards as a "reasonable mistake or error" it will notify the Commission and the Commission may request, and RD must provide, reasons and evidence to explain how the mistake or error occurred;

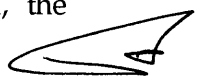

- B. for a period of 3 years from the date of the Commission's acceptance of these undertakings:

- (i) until the Commission has approved the compliance program pursuant to paragraph 5 of Annexure "A" hereto and until all Recommendations made under the Probation Program described in Annexure "B" hereto have been implemented pursuant to paragraph 4 of that Annexure, will ensure, so far as is practicable, that; and
- (ii) after the compliance program has been approved and all Recommendations have been implemented as aforesaid, will ensure, except in the case of reasonable mistake or error, that:

it will not, in trade or commerce, make a representation to the effect that RD has a right to payment from a person for RD Goods, unless RD has received a request for the RD Goods, from or on behalf of the person to whom the representation is made, which request is not to be implied or inferred from any silence or inaction on the part of such a person;

  
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- C. will establish, implement and maintain for a period of 3 years a Trade Practices Compliance Program, in accordance with Annexure "A" hereto;
- D. will revise the internal operation of its business which led to RD's contraventions of the Act, in accordance with Annexure "B" hereto;
- E. will, within each of the time periods set out below, after the date of acceptance of these undertakings by the Commission, at its own expense:
- (i) within 28 days cause to be published in one major newspaper in each capital city of Australia, a notice substantially in the form of Annexure "C";
  - (ii) cause to be placed in an edition of Reader's Digest magazine as soon as is practicable after acceptance by the Commission of this undertaking (and no later than 90 days after that date) a notice substantially in the form of Annexure "D";
  - (iii)
    - (a) within 10 days of RD's receipt of the auditor's report to be provided under Annexure "B", RD will provide the report to the Commission, together with the proposed wording of Annexure E;
    - (b) subject to the format of Annexure "E" being finalised by RD and the Commission within 21 days of RD's receipt of the auditor's report, will within a reasonable period, not to exceed three months from the date of finalisation of Annexure "E", mail the letter comprising Annexure "E" to all persons on RD's current mailing list including those persons not on RD's active customer file;
  - (iv) within 28 days post a notice, which shall appear for a period of 3 months from first publication, substantially in the form of Annexure "F", on its web-site located at URL: [www.readersdigest.com.au](http://www.readersdigest.com.au) (or if that URL is replaced or changed, the website located at the replacement URL) with a prominent link to the notice on its home page;
- F. will produce a training video at its own expense within 6 months of the date of acceptance by the Commission of these undertakings, which explains how ss 52, 53, 64 and 65 of the Act operate in relation to unsolicited goods and services, as well as how those provisions affect the business practices of direct marketing;
- G. will make a viewing of the training video compulsory for all its staff in Australia;
- H. will make the training video accessible to members of the general public for a period of 6 months on its website located at URL: [www.readersdigest.com.au](http://www.readersdigest.com.au) (or if that URL is replaced or changed, the

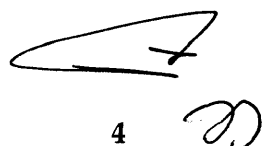
  


website located at the replacement URL) with a prominent link to the video on its home page;

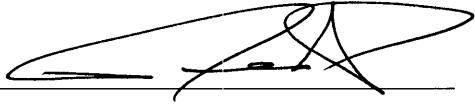
- I. will provide at least one copy of the training video to all current members of the Australian Direct Marketing Association; and
- J. will pay refunds of \$1,019.40 to Dorothy May Petty and \$418.43 to Harold Phillip Hawkins.

## **ACKNOWLEDGEMENTS**

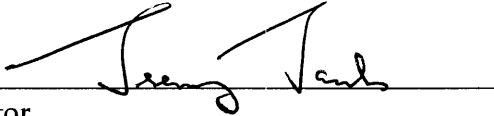
- 7. RD acknowledges and accepts:
  - A. the Commission's right to make this undertaking available to the public including by placing it on the public register, publishing it and allowing third parties to publish it;
  - B. that the Commission may issue media releases referred to therein, and may, from time to time, publicly refer to the undertaking; and
  - C. that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct of RD.

Handwritten signature and initials in the bottom right corner of the page.

Executed by Reader's Digest (Australia) Pty Limited )  
in accordance with s127 of the Corporations Act 2001 (Cth) )



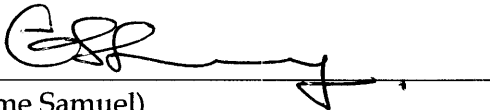
Director



Director

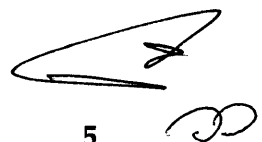
This 17th day of December 2003

Accepted by the Australian Competition and Consumer Commission pursuant to Section  
87B of the Trade Practices Act 1974



(Graeme Samuel)  
Chairperson

This 17th day of December 2003



## ANNEXURE 'A'

### Trade Practices Corporate Compliance Program

- 1 Within 60 days of the date of the acceptance of these Undertakings by the Commission, RD shall establish and implement for all of its officers, employees, representatives and agents in Australia:
  - (a) a Trade Practices Corporate Compliance Program ("**Compliance Program**") in relation to ss.52, 53, 64 and 65 of the Trade Practices Act 1974 (the "**Act**"); and
  - (b) will use reasonable endeavours to ensure that the Compliance Program is tailored to suit RD's circumstances and consistent with the Australian Standard AS-3806-1998.
- 2 RD shall:
  - (a) maintain the Compliance Program for a period of 3 years from the date of its implementation; and
  - (b) place responsibility for the implementation, maintenance and effectiveness of the Compliance Program with senior management.
- 3 The Compliance Program shall be designed to ensure that the officers, employees, representatives and agents of RD who perform duties in Australia are aware of the application of ss.52, 53, 64 and 65 of the Act to RD's business. For these purposes, the Compliance Program will make provision for training of all staff in Australia to be conducted on at least two occasions per year ("**Staff Training Seminars**"). The first of these Staff Training Seminars will be conducted by a solicitor or compliance professional with expertise in trade practices law and is to be completed within 90 days of the date of acceptance of these undertakings by the Commission.
- 4 The Compliance Program shall be designed to incorporate an appropriate complaints handling mechanism, with specific attention given to complaints regarding unsolicited goods and assertions of a right to payment in respect of such goods.
- 5 Prior to the implementation of the Compliance Program, RD will ensure that the Compliance Program is approved by a firm of solicitors or compliance professionals with expertise in trade practices law and approved in writing by the Commission.
- 6 RD shall, at its own expense, cause an audit of the Compliance Program to be undertaken annually, with a view to identifying deficiencies and implementing improvements to the Compliance Program ("**Audits**").
- 7 The Audits shall be performed by a firm of solicitors or compliance professionals with expertise in trade practices law that is acceptable to, and approved in writing by, the Commission ("**Auditor**").



- 8 The findings in relation to each of the Audits are to be set out in a written report to be provided to RD by the Auditor ("**Reports**"). The Reports are to include a record of any potential contraventions of ss.52, 53 and 64 of the Act that were identified during the Audits and the action taken to address the potential contraventions.
- 9 RD shall, at its own expense, cause to be produced and provided to the Commission copies of each of the Reports within 10 days of RD receiving them.
- 10 Should any of the Reports identify deficiencies in the Compliance Program, RD will make the necessary alterations to the Compliance Program within 28 days of receiving the Reports. Such alterations and their implementation are to be notified to the Commission within 10 days of implementation.

## ANNEXURE 'B'

### Probation Program

- 1 RD must, within 60 days of the acceptance of these Undertakings by the Commission, revise the internal operations of its business for a period of 3 years, so as to ensure, so far as is practicable, that:
  - (a) no goods are sent to its customers or other members of the general public, unless:
    - (i) prior to the date on which the goods are sent, RD has received a request for the goods, from or on behalf of the person to whom the goods are sent, which request is not to be implied or inferred from any silence or inaction on the part of such a person; or
    - (ii) RD states prominently, in writing and in a document sent in the same package as the goods, that no claim is made to payment for the goods and the recipient has no liability in respect of the goods;
  - (b) no invoices or other documents asserting a right to payment for goods are sent to a customer or other member of the general public unless, at the time the invoice or document is sent, RD has received a request for the goods, from or on behalf of the person to whom the invoice or document is to be sent, which request is not to be implied or inferred from any silence or inaction on the part of such a person; and
  - (c) RD's employees and agents do not, orally or in writing, assert a right to payment for goods from a customer or other member of the general public unless, at the time the assertion is made, RD has received a request for the goods, from or on behalf of the person to whom the assertion is made, which request is not to be implied or inferred from any silence or inaction on the part of such a person;
  - (d) complaints as to the receipt of unsolicited goods are resolved expeditiously; and
  - (e) requests from customers or other members of the general public to the effect that no goods be sent to that person without a prior request are complied with expeditiously (collectively, "**Revised Internal Operations**").
- 2 RD will appoint a senior officer to manage the implementation of the Revised Internal Operations ("**Internal Operations Revision Manager**"). The Internal Operations Revision Manager will be appointed within 1 month of the date of acceptance of these Undertakings by the Commission. RD will ensure that the Internal Operations Revision Manager has experience in change management.
- 3 Within 1 month of the appointment of the Internal Operations Revision Manager, RD must retain an independent Management Auditor to:



- (a) review RD's internal operations for compliance with sections 52, 53 and 64 of the Trade Practices Act 1974 (the "**Act**"); and
- (b) provide a written report of the review which includes recommendations to implement the Revised Internal Operations and otherwise revise RD's internal operations with a view to assisting RD's compliance with sections 52, 53 and 64 of the Act ("**Recommendations**").

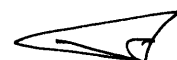
RD will use its reasonable endeavours to ensure that the Management Auditor will provide the Recommendations within 2 months of being retained. RD must provide a copy of the Recommendations to the Commission within 10 days of RD receiving it. Upon appointment, RD will notify the Commission of the identity of the independent Management Auditor, and acknowledges that the Commission may communicate with the auditor concerning the review to be undertaken.

- 4 RD will implement the Recommendations within 3 months of the provision of the Recommendations.
- 5 RD will retain the Management Auditor to:
  - (a) conduct an audit of the implementation of the Recommendations 3 months after the implementation, and on the first 2 anniversaries of that audit;
  - (b) within 1 month of each audit, provide a written report in relation to each of the audits ("**Audit Report**").
- 6 RD must provide a copy of each of the Audit Reports to the Commission within 10 days of RD receiving them.

## ANNEXURE 'C'

1. The notice:
  - (a) shall appear on the right hand side of a right hand-page within the first 7 pages of the newspaper, occupying a space not less 280mm x 4 columns; and
  - (b) shall include the logo of Reader's Digest (Australia) Pty Ltd as appearing in the draft notice in paragraph 2 below; and
2. The notice shall be as set out below.

PUBLIC DISCLOSURE
<p style="text-align: center;"><b>READER'S DIGEST (AUSTRALIA) PTY LTD</b></p> <p style="text-align: center;"><b>[Reader's Digest Logo]</b></p> <p>Reader's Digest has provided an enforceable undertaking to the Australian Competition and Consumer Commission. In this undertaking we acknowledge that due to a failure in our processes we sent to some customers products which they had not requested, then demanded payment for those unsolicited goods when we did not have reasonable cause to believe that we were entitled to payment, conduct which is contrary to sections 52, 53(g) and 64 of the Trade Practices Act, 1974 ("Act").</p> <p>We have undertaken to take steps to review our systems and processes to ensure that the same conduct does not occur in the future.</p> <p>We have undertaken to implement a trade practices compliance program and have engaged an independent auditor to check our processing systems to ensure future compliance with the Act.</p> <p><i>This advertisement has been paid for by Reader's Digest and placed because of an enforceable undertaking given by Reader's Digest to the Australian Competition and Consumer Commission (ACCC). [ACCC Logo]</i></p>



## ANNEXURE 'D'

1. The notice:
  - (a) shall be inserted in the page immediately following the contents page/s of the magazine; and
  - (b) shall be no smaller than one page of the magazine; 2. The notice shall be as set out below.

### PUBLIC DISCLOSURE

#### READER'S DIGEST (AUSTRALIA) PTY LTD

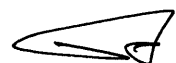
#### [Reader's Digest Logo]

Reader's Digest has provided an enforceable undertaking to the Australian Competition and Consumer Commission. In this undertaking we acknowledge that due to a failure in our processes we sent to some customers products which they had not requested, then demanded payment for those unsolicited goods when we did not have reasonable cause to believe that we were entitled to payment, conduct which is contrary to sections 52, 53(g) and 64 of the Trade Practices Act, 1974 ("Act").

We have undertaken to take steps to review our systems and processes to ensure that the same conduct does not occur in the future.

We have undertaken to implement a trade practices compliance program and have engaged an independent auditor to check our processing systems to ensure future compliance with the Act.

*This advertisement has been paid for by Reader's Digest and placed because of an enforceable undertaking given by Reader's Digest to the Australian Competition and Consumer Commission (ACCC). [ACCC Logo]*



## ANNEXURE 'E'

The letter:

- (a) shall be legible and the type shall be at least 12 point, Times New Roman font and right and left justified;
  - (b) shall have a bold type prominent heading in at least 18 point; and (c) shall display the Reader's Digest logo at the top;
2. The text of the letter shall be as set out below.
- 

Dear [Sir/Madam]

### **PROCESS FAILURE LEADING TO CONTRAVENTIONS OF THE TRADE PRACTICES ACT 1974 BY READER'S DIGEST (AUSTRALIA) PTY LIMITED**

At some time you may have received marketing material from us. You may also have received the Australian Reader's Digest magazine or purchased books, music or video products from us.

On 17 December 2003 we provided an enforceable undertaking to the Australian Competition and Consumer Commission acknowledging that due to a failure in our processes, contraventions of the Trade Practices Act 1974 (the "Act") occurred. It was due to this failure in processes that we sent to some customers products which they had not requested, then demanded payment for those unsolicited goods when we did not have reasonable cause to believe that we were entitled to payment. (The Act, in general terms, encourages competition and protects consumers. Section 52 prohibits a corporation from engaging in misleading or deceptive conduct in trade or commerce. Section 53 prohibits the making of false or misleading representations, including those concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy. Section 64 prohibits the assertion of a right to payment for unsolicited goods, where there is no reasonable cause to believe that a right to payment exists.)

The undertakings include a commitment by us to engage an independent expert to review our processes to ensure future compliance with the Act and that such contraventions do not occur again.

Further, we have undertaken to implement a compliance program, conduct training programs for all staff, revise our internal operations and review our marketing material.

We are pleased to undertake these measures, as it will ensure compliance with the Act and hence ensure that the rights of consumers like you are fully protected.

The results of the independent audit of our order processing systems and procedures are now available. The independent auditor found **[INSERT RESULTS]**.

Should you have any questions or concerns about this letter or any of our processes or marketing practices in the future, please write to us at the address above or contact our customer service centre on **[INSERT PHONE NO.]**.



## ANNEXURE 'F'

1. The web-site notice:
  - (a) shall be legible and the type shall be at least 12 point, Times New Roman font and right and left justified;
  - (b) shall have a bold type prominent heading in at least 18 point;
  - (c) shall display the Reader's Digest logo at the top;
  - (d) shall appear in an automatically generated active pop-up window or message box, whereby a member of the public is required to interact with the window or message box to close it;
  - (e) shall not be less than 50% of the size of the computer screen; and
  - (f) shall appear immediately upon access by a consumer to the website located at URL:www.readersdigest.com.au (or if that URL is replaced or changed, the website located at the replacement URL).
2. The notice shall be as set out below.

DISCLOSURE
<p style="text-align: center;"><b>READER'S DIGEST (AUSTRALIA) PTY LTD</b></p> <p style="text-align: center;"><b>[Reader's Digest Logo]</b></p> <p>Reader's Digest has provided an enforceable undertaking to the Australian Competition and Consumer Commission. In this undertaking we acknowledge that due to a failure in our processes we sent to some customers products which they had not requested, then demanded payment for those unsolicited goods when we did not have reasonable cause to believe that we were entitled to payment, conduct which is contrary to sections 52, 53(g) and 64 of the Trade Practices Act, 1974 ("Act").</p> <p>We have undertaken to take steps to review our systems and processes to ensure that the same conduct does not occur in the future.</p> <p>We have undertaken to implement a trade practices compliance program and have engaged an independent auditor to check our processing systems to ensure future compliance with the Act.</p> <p><i>This advertisement has been paid for by Reader's Digest and placed because of an enforceable undertaking given by Reader's Digest to the Australian Competition and Consumer Commission (ACCC). [ACCC Logo]</i></p>

