

TRADE PRACTICES ACT 1974

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

BY

HIRERE PTY LTD

trading as

VIVIEN'S MODEL AND THEATRICAL MANAGEMENT

ACN. 001 799 926

## BACKGROUND

1. In the Statement of Claim filed in proceedings number G862 of 1995 in the Federal Court on 16 November 1995, a copy of which is annexed hereto and marked "A", the Australian Competition and Consumer Commission ("the Commission") has alleged that Hirere Pty Ltd trading as Vivien's Model and Theatrical Management ACN 001 799 926 ("Vivien's") engaged in the conduct of price fixing as set out in paragraph 3 and 4 below.
2. Vivien's is engaged in the arranging of the supply of the services of models, among other services, throughout Australia but predominantly in Sydney and Melbourne and to a lesser extent in Brisbane ("the market"). Vivien's is in competition with the other agents ("the Model Agents") named in the Statement of Claim, in the supply of such services in that market.
3. During a meeting of the Model Agents in May 1995 in Sydney an arrangement was made or an understanding arrived at by the Model Agents that each of the Model Agents would require all of their clients who had not previously paid an agency booking or service fee ("ASF") to pay an ASF on the arranging for supply by them of male and female models, for visual advertisements. Although not present at the meeting, between the meeting and 15 June 1995 Kevin Smith, a director and shareholder in Vivien's, agreed that Vivien's would participate in the arrangement or understanding.
4. Vivien's gave effect to the arrangement or understanding by making statements to its customers between June and 15 July 1995 to the effect that the ASF would be insisted on from 1 July 1995 and that it could no longer be ignored.
5. Following an investigation by the Commission, it reached the view that Vivien's had contravened the Trade Practices Act 1974 ("the Act"). The Commission contends that the conduct described above and in the Statement of Claim had the purpose of fixing, controlling or maintaining the price for services to be supplied by the Model Agents in competition with each other, and that the arrangement therefore had the purpose or was likely to have the effect of substantially lessening competition within the meaning of s 45A of the *Trade Practices Act 1974* ("the Act"). In making, and giving effect to the agreement Vivien's contravened sections 45(2)(a)(ii) and 45(2)(b)(ii) of the Act.

6. Vivien's had admitted in the above proceedings, for the purposes of sections 76 and 80 of the Act, that it engaged in conduct of the type described, in contravention of sections 45(2)(a)(ii) and 45(2)(b)(ii) of the Act and has now ceased the conduct. Kevin Smith has admitted in the above proceedings that his conduct contravened section 76 of the Act.

## **UNDERTAKING**

Vivien's undertakes for the purposes of section 87 B of the Act that it will:

1. within four (4) months of signing this Undertaking, develop a Trade Practices Compliance Program with the following characteristics:

- (a) Aim

To create a culture of compliance throughout Vivien's and to prevent, so far as is reasonably possible, any contraventions of the Act by Vivien's, its directors, employees or agents.

- (b) Policy

The formal adoption by Vivien's, of a policy of strict compliance with both the letter and spirit of the Act within Vivien's.

- (c) Compliance Infrastructure

The appointment of Mr Kevin Smith as the Vivien's Compliance Officer, with overall responsibility for Trade Practices compliance.

- (d) Coverage

The compliance program is to cover all directors, employees and agents of Vivien's whose duties could result in them being concerned in conduct that might breach the Act ("relevant staff").

(e) Education

Develop and implement an education program using the Commission's training program known as "Best and Fairest", calculated to have the relevant staff conversant with the provisions of the Act to a level where:

- (i) general staff can avoid obvious contraventions and can identify more complex potential trade practices problems for referral to the appropriate person in the Vivien's compliance infrastructure; and
  - (ii) the Vivien'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 which require referral to Vivien's' solicitors.
2. implement the Trade Practices Compliance Program within four (4) months of the signing of this Undertaking and that the Trade Practices Compliance Program will remain in force, for a minimum period of three years from the signing of this Undertaking.
  3. Kevin Smith, as the compliance officer will certify, by way of statutory declaration, that the following steps have been taken:
    - during the first year, all relevant Vivien's personnel completed those parts of "Best and Fairest" appropriate to the nature of Vivien's business;
    - all relevant Vivien's personnel who have not completed "Best and Fairest" prior to commencement of that year, have done so during the year;
    - that all other relevant personnel have attended a seminar/talk given by Kevin Smith re: the Act during that year, and in particular those provisions relating to individual pecuniary penalty; and
    - that all personnel have been made aware or reminded that it is Vivien's corporate policy to comply with all provisions of the

