

TRADE PRACTICES ACT 1974



UNDERTAKINGS TO THE TRADE PRACTICES COMMISSION
GIVEN FOR THE PURPOSES OF SECTION 87B

BY

STANILITE ELECTRONICS PTY LTD (ACN 002 978 403)

BACKGROUND

Stanilite Electronics Pty Ltd ("Stanilite") is a company duly incorporated in the State of New South Wales. Stanilite is a service provider for Vodafone Pty Limited ("Vodafone") under s. 209 of the Telecommunications Act 1991. Stanilite has advertised for sale and has sold mobile telephones and Vodafone airtime to consumers and business customers.

Stanilite placed a series of advertisements in the Mosman Daily and Manly Daily newspapers during August 1994. These advertisements related to the sale of Nokia 1011 Digital mobile telephone at \$666. The mobile telephone depicted in the advertisement was the more expensive Nokia 2110. These advertisements also contained the words "Conditions of Sale: A valid 12 months airtime with Foneplus (A division of Stanilite Electronics Pty Ltd. ACN 002 978 403). This offer is valid until 31st August 1994."

The Commission's concerns in particular related to the following:

- (a) Clause 12 of Stanilite's Terms and Conditions of Service stated that "The initial term of the contract will be 12 months. This contract will then continue until the expiry of 90 days prior written notice of termination". The Commission contends that the true effects of this clause was to make the minimum period of any airtime contract with Stanilite 15 months.

- (b) These advertisements related to the sale of Nokia 1011 Digital mobile telephone at \$666. The mobile telephone depicted in the advertisement was the more expensive Nokia 2110.

The Trade Practices Commission ("the Commission") alleged that the advertisements contained representations that were misleading and deceptive or likely to mislead or deceive. Commission staff raised these concerns with an officer of Stanilite and the company's legal adviser, who gave oral undertakings to amend all advertisements published in the future by or for Stanilite to:

- depict the correct picture of a mobile telephone with the correct price; and
- advise customers that the minimum duration of the contract to be 12 months, with the requisite period of notice of termination prior to the elapsing of that minimum period.

Stanilite has noted the Commission's contention concerning the representation of a picture of the Nokia 2110 with the words relating to a Nokia 1011 as misleading or deceptive or likely to be misleading or deceptive, but has stated that it was not Stanilite's intention to publish an incorrect picture. Stanilite has stated that, in future promotions, it would not use the picture depicting the Nokia 2110, to illustrate the Nokia 1011, and that it would ensure that adequate checking procedures would be put into place for future promotions.

Stanilite has noted the Commission's contention concerning the minimum term under the contract as misleading or deceptive, or likely to be misleading or deceptive, but has stated that it was not Stanilite's intention to have the contract in effect for 15 months. Stanilite has stated that it would notify all customers with an airtime contract that the true effects of this clause was to make the minimum period of any airtime contract with Stanilite 12 months.

The Commission contends that Stanilite has breached provisions of the Trade Practices Act 1974 ("the Act") in the following ways:

- by engaging in misleading or deceptive conduct, or conduct likely to be misleading or deceptive, in supplying or offering to supply goods or services, by stating in the advertisements that the initial term of the contract was 12 months, however, as the contract provided for an expiration period of 90 days after the 12 month period, the Commission contends the true effects of the clause was that the length of time for the contract was for a period of 15 months;
- by engaging in misleading or deceptive conduct, or conduct likely to be misleading or deceptive, in advertising the sale of the Nokia 1011 Digital Mobile Telephone at \$666, while depicting a picture of the Nokia 2110, a more expensive mobile telephone;
- by engaging in misleading or deceptive conduct, or conduct likely to be misleading or deceptive, in supplying or offering to supply goods or services, being the mobile telephone handsets, network access and/or packages of mobile telephone handsets together with network access, by not stating the full conditions and associated additional costs of an offer, in breach of s 52 of the Act;
- by making misleading representations in breach of section 52 and 53(a) of the Act in that the depiction of the Nokia 2110 with the words relating to the Nokia 1011 as a misleading representation that the goods were of a particular standard, quality, value, grade, composition, style or model;
- by making misleading representations concerning the existence of effect of conditions, in breach of section 52 and 53(g) of the Act, by advertising mobile telephone handsets, network access and/or packages of mobile telephone handsets together with network

access, for sale at a particular price, without disclosing in the advertisement that in order to obtain the telephone for that price the purchaser had to enter into a network access contract with Stanilite for a period of 15 months, with a minimum connection fee and an additional network fee;

- making false or misleading representations with respect to price, in respect of section 52 and 52 and 53(e) of the Act, by advertising mobile telephones for sale at a particular price without disclosing the additional costs that the customer was required to pay for network access, connections fees, and delivery fees and minimum call charges where applicable; and
- making a representation about an amount that if paid would constitute a part of the consideration for the supply of goods without also specifying the cash price for the goods, in breach of section 52 and 53C of the Act. This was by reason of Stanilite's representing in its advertising that the cost of mobile telephone handsets without disclosing the total minimum cost to obtain the mobile telephone and access to the mobile telephone network through Stanilite under the particular package being advertised.

Subsequent to the Commission's raising of its concerns with Stanilite's in relation to Stanilite's conduct in placing the advertisements in the Mosman Daily, the Commission also raised its concerns with Stanilite in regard to other conduct. Stanilite has noted the Commission's opinion that Stanilite's conduct has resulted in contraventions of the Act and has agreed to give the following undertakings for the purpose of section 87B of the Act.

UNDERTAKINGS

Stanilite Electronics Pty Limited, trading as Foneplus, ("Stanilite"), undertakes, for the purposes of section 87B of the Act, on behalf of itself and any and all subsidiaries of Stanilite, and any business entities controlled by Stanilite or its subsidiaries, that:-

1. It will not, by itself, its servants, agents or otherwise howsoever, represent a particular price for the purchase of a mobile telephone (where the obtaining of the mobile telephone at a particular price is conditional upon the entering into of a service contract or arrangement for access to a mobile telephone network) without clearly and prominently disclosing:
 - (a) that the particular price is conditional upon the purchaser entering into a service contract or arrangement for access to a mobile telephone service network;
 - (b) the minimum duration of the service contract or arrangement for access to the mobile telephone service network;
 - (c) the cost of access to the said mobile telephone service network;
 - (d) the nature of all minimum call requirements under the service contract arrangement for access to the mobile service network;
 - (e) the cost of any connection fee payable under the service contract or arrangement for access to the mobile telephone service network;
 - (f) the cost of any delivery fee payable under the service contract or arrangement for access to the mobile telephone service network;
 - (g) any other costs or charges payable under the service contract or arrangement for access to the mobile telephone service network;

- (h) the total minimum cost of purchasing the mobile telephone and entering into the service contract or arrangement for access to the mobile telephone service network.

- 2. It will not, by its servants, agents or otherwise howsoever, in connection with the supply or possible supply or promotion of the supply a mobile telephone (where the obtaining of the mobile telephone at a particular price is conditional upon the entering into a service contract or arrangement for access to a mobile telephone network) represent contrary to section 52 and 53C of the Act, that part of the consideration for the supply of the mobile telephone and the mobile telephone services is the advertised price of the mobile telephone without clearly and prominently disclosing:
 - (a) the minimum cost to obtain access to the mobile telephone network; and
 - (b) the total minimum cost to obtain the mobile telephone and access to the mobile telephone network.

- 3. Stanilite, if it has not already done so, will send to each and every person and company that purchased on or before 26 September 1994, a digital mobile telephone from Stanilite, its subsidiaries, servants or agents or otherwise howsoever, a letter in a form acceptable to the Commission, within twenty one (21) days of the date of signing these Undertakings or such further period as the Commission allows. The letter is to advise each and every person and company that purchased on or before 26 September 1994, a digital mobile telephone from Stanilite, its subsidiaries, servants or agents or otherwise howsoever, that the minimum duration of the contract is to be 12 months, with the requisite period of notice of termination prior to the elapsing of that minimum period.

4. Stanilite will within twenty one (21) days of the date of signing these Undertakings furnish to the Commission a list of the names and addresses of all persons referred to in paragraph 3 above.

5. Stanilite, if it has not already done so, will within twenty one (21) days of the date of this Undertaking, amend the wording of all its terms and conditions of service, so as to ensure that, where provision is made for a minimum duration of the contract, the customer can give the requisite period of notice of termination prior to the elapsing of that minimum period. Stanilite will within twenty one (21) days of the date of these Undertakings, furnish to the Commission the amended terms and conditions of the contract.

6. Stanilite will within three (3) months of the date of these Undertakings develop and institute a three year Trade Practices Compliance Program, in a form approved by the Commission, for Stanilite, and all of its Australian subsidiaries and all business entities controlled by Stanilite ("The Group") with the following characteristics:

(a) Aim

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

(b) Policy

The formal adoption, or reaffirmation, by The Group, of a policy of strict compliance with both the letter and spirit of the Act throughout The Group and

adoption, or reaffirmation, and enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act.

(c) Compliance Infrastructure

The appointment of an appropriately qualified senior executive as The Group compliance officer with overall responsibility for Trade Practices Compliance. The creation within The Group of suitable audit referral procedures to enable potential Trade Practices problems to be identified and dealt with appropriately.

(d) Coverage

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

(e) Education

Development and implementation of an education program calculated to have the relevant staff conversant with the provisions of the Act to a level where:

- (i) general staff can avoid the obvious contraventions and can identify more complex potential Trade Practices Act problems for referral to the appropriate person in The Group's compliance infrastructure;
- (ii) persons with responsibilities within the Group compliance infrastructure can effectively carry out those responsibilities; and

(iii) the Group 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 The Group's legal advisers.

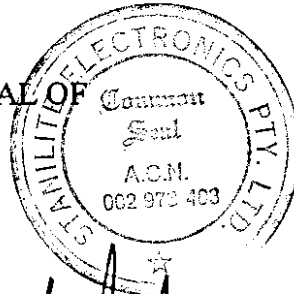
ACKNOWLEDGEMENTS

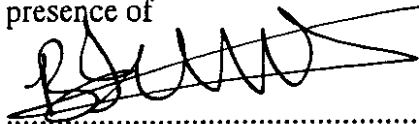
In addition to giving these undertakings, Stanilite acknowledges and accepts that this undertaking will be placed on the Commission's public register and agrees that the Commission may otherwise publish and refer to this document at its discretion.

Stanilite also acknowledges that this Undertaking in no way derogates from the rights or remedies available to any other person arising from the alleged conduct.

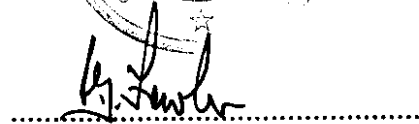
IN WITNESS OF THESE UNDERTAKINGS
AND ITS AGREEMENT THE COMMON SEAL OF
STANILITE ELECTRONICS PTY LIMITED

was hereunto affixed by authority of the
Board of Directors previously given in the
presence of




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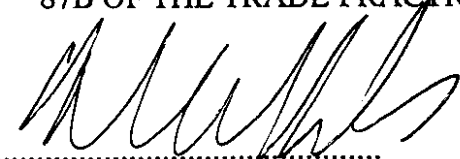
Director


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Secretary

This 27th day of April 1995

ACCEPTED BY THE TRADE PRACTICES COMMISSION PURSUANT TO SECTION
87B OF THE TRADE PRACTICES ACT 1974


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Professor Allan Fels
Chairman

This 1st day of June 1995