

RegNo: 95.



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HARVEY NORMAN HOLDINGS LIMITED

and the

TRADE PRACTICES COMMISSION

UNDERTAKING

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SYDNEY MELBOURNE BRISBANE PERTH CANBERRA

TRADE PRACTICES ACT 1974

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

BY

HARVEY NORMAN HOLDINGS LIMITED
ACN 003 237 545

BACKGROUND

HARVEY NORMAN HOLDINGS LIMITED AND ITS SUBSIDIARIES, including YOOGALU PTY. LIMITED ("**Harvey Norman**") are companies whose principal activities include franchise retailing in the course of which proprietors of retail stores are licensed ("**the Proprietors**") to use the Harvey Norman name for purposes of their businesses ("**Harvey Norman Stores**"). Goods sold by the Proprietors are from time to time advertised for sale by Harvey Norman in catalogues, newspapers, radio and television ("**Harvey Norman Advertising**").

The Trade Practices Commission ("**the Commission**") brought to Harvey Norman's attention in late August 1994 several concerns that the Commission had with Harvey Norman's Electronics Today Catalogue released in or about August 1994 ("**the Catalogue**"), alleging that Harvey Norman breached the provisions of sections 52 and 53 of the Trade Practices Act 1974 ("**the Act**"). The allegations include:

- (a) the Catalogue, containing approximately twenty errors, was distributed by various means from about 4 August 1994. Two errors were corrected part way during the printing of the Catalogues. Limited Corrective newspaper advertisements were placed in the Sunday Telegraph and Telegraph Mirror newspapers on 7 August 1994 and 10 August 1994 respectively;
- (b) continued distribution of the Catalogue without correction of the majority of the errors, including distribution through the Sun Herald on 14 August 1994 without the correction of the remaining errors within the Catalogue or any accompanying corrective inserts or advertising;

- (c) within the three Harvey Norman stores sampled by Commission staff, no evidence of any in-store corrective advertising, and evidence that some staff were not aware of any mistakes or published corrective advertising;
- (d) an apparent absence of corrective advertising in a number of regional newspapers in which Catalogues were distributed;
- (e) an apparent absence within the Harvey Norman franchise system of an integrated and systematic complaints handling system resulting in a large number of consumer complaints remaining unresolved to the satisfaction of the consumers concerned.

Harvey Norman and the Commission entered into dialogue over the matter. As at January 1995 Harvey Norman not having remedied to the Commission's satisfaction the alleged misrepresentations, the Commission advised an intention to institute court proceedings against Harvey Norman seeking injunctions. In order to lay the Commission's concerns at rest Harvey Norman gives the following undertakings to the Commission for the purposes of section 87B of the Act:

UNDERTAKINGS

Harvey Norman hereby undertakes, for the purposes of section 87B of the Act, that:

- (1) it will use its best endeavours to ensure that it will not in trade or commerce, advertise or offer for sale or cause to be advertised or offered for sale in any Harvey Norman store any goods or services in relation to which there is any misrepresentation in respect of the price, quality, style, model, accessories, performance characteristics, warranties guarantee or existence of such goods;
- (2) it will take all reasonable steps to ensure the participation of the Proprietors in the Harvey Norman Trade Practices Compliance Programme, Trade Practices education programme, and Complaint Handling System, and to this end shall:
 - (i) immediately amend the standard franchise agreement to ensure that

Proprietors will be required so to participate and that a Proprietor's failure to participate completely and fully in the abovementioned programmes or system will be a default under the agreement, and use the amended document in making any new franchise agreements.

"Harvey Norman will specifically draw the attention of its Proprietors to the significance of a default of this kind and emphasise the serious consequences of Proprietors failing to participate completely and fully in the abovementioned Programme or System."

- (ii) upon the renewal of any franchise agreements, amend the franchise agreements consistently with the amendments required by paragraph (i);
 - (iii) make all reasonable endeavours to obtain the agreement of Proprietors to amend existing franchise agreements to conform to the amendments required by paragraph (i);
- (3) it will use its best endeavours to reduce the incidence of errors in Harvey Norman Advertising;
- (4) it will, where errors are found in Harvey Norman Advertising:
- (a) provide to all Proprietors, selling goods and services advertised in Harvey Norman Advertising, prominent in-store signs designed to alert consumers to the nature and effect of any advertising errors;
 - (b) publicise corrective advertising which so far as is practicable is as prominent as the original Harvey Norman Advertising and directed to the same audience as the original Harvey Norman Advertising; and

- (c) maintain a record of and classify the Harvey Norman Advertising errors which occur to allow for an analysis of those errors and identification and rectification of systemic and recurring problems.
- (5) It will, within 3 months of the signing of this undertaking, develop for consideration by the Commission a Trade Practices Compliance programme with the following characteristics:
- (a) **Aim**

To create a culture of compliance within Harvey Norman and to prevent, so far as is reasonably possible, any contraventions of the Act by its directors, employees or agents.
 - (b) **Policy**

The formal adoption, or reaffirmation, by Harvey Norman, of a policy of strict compliance with the Act within Harvey Norman and the adoption, or reaffirmation, and enforcement of sanctions against its directors, employees or agents who are knowingly or recklessly concerned in a contravention of the Act.
 - (c) **Compliance Infrastructure**

The appointment of an appropriately qualified senior executive as the Compliance Officer with an overall responsibility for Trade Practices compliance.
 - (d) **Coverage**

The compliance programme to cover all its directors, employees or agents whose duties could result in them being concerned in conduct that might breach the Act.

(e) Education

Development and implementation of a Trade Practices education programme calculated to have its directors, employees or agents conversant with the provisions of the Act to a level where:

- (i) its directors, employees or agents can avoid obvious contraventions and can identify more complex potential Trade Practices problems for referral to the appropriate person in the Harvey Norman compliance infrastructure;
 - (ii) persons with responsibilities within the Harvey Norman compliance infrastructure can effectively carry out those responsibilities; and
 - (iii) the Harvey Norman 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 Harvey Norman's legal advisers.
- (6) Harvey Norman will make whatever changes the Commission may reasonably suggest in relation to the Trade Practices Compliance Programme referred to in 5 above.
- (7) The Trade Practices Compliance Programme referred to in 5 above is to be implemented by Harvey Norman within 3 months of approval having been given by the Commission to its form and content, and is thereafter to be maintained in as up to date a form as is practicable to reflect the provisions of the Act appropriate to the operations of Harvey Norman and the Harvey Norman stores.
- (8) As Proprietors become subject to the requirement described in 2 above within their franchise agreement with Harvey Norman to participate in the Harvey Norman Trade Practices Compliance Programme, Trade Practices education programme, and Complaint Handling System, the programmes and system shall be expanded to

accommodate the participation of the Proprietors.

- (9) It will provide a copy of the Trade Practices Compliance and education programmes to all present and future Proprietors for the purposes of assisting such Proprietors to instruct and educate themselves, their directors, employees and agents in their obligations under the Act.
- (10) Harvey Norman will provide to the Commission:-
- (i) the report in writing of a suitably competent solicitor ("the Implementation Report") on the implementation of the Trade Practices Compliance Programme, Trade Practices education programme and Complaints Handling System in accordance with these undertakings;
 - (ii) thereafter at intervals of three months and until fifteen months from the date of these undertakings, a report in writing of steps taken to implement these undertakings.
- (11) Strengthen Harvey Norman's complaint handling system by:
- (i) adopting a complaints handling system that complies with Australian Standard AS4269-1995 (Complaints handling);
 - (ii) maintaining the appointment of a Customer Complaints Manager and supplying his/her name to the Commission within 3 months of the date of signing this undertaking;
 - (iii) taking all reasonable steps to ensure that all present and future Proprietors notify the Customer Complaints Manager of complaints received from consumers regarding products sold or offered for sale through Harvey Norman Advertising;
 - (iv) taking all reasonable steps to ensure that in the first instance, the Proprietor,

and if necessary, in the second instance Harvey Norman, will attempt to resolve such complaints to the satisfaction of consumers as soon as possible;

- (v) taking all reasonable steps to ensure that the Proprietors and Harvey Norman directors, employees or agents notify the Customer Complaints Manager whether or not a complaint has been resolved and if not, why not;
- (vi) maintaining a record of complaints and the outcome of such complaints and classifying and analysing complaints received in order to allow for the identification and rectification of systemic and recurring problems; and
- (vii) causing the Customer Complaints Manager to monitor progress by all present and future Proprietors in resolving complaints notified to Harvey Norman Stores and to procure that all present and future Proprietors will use their best endeavours to ensure the timely and satisfactory resolution of all complaints received.

ACKNOWLEDGMENTS

Harvey Norman 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.

Harvey Norman also notes 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 HARVEY NORMAN HOLDINGS LIMITED was hereunto affixed by authority of the Board of Directors in the presence of:



K. L. Page
.....

Secretary/Director

[Signature]
.....

Director

This *27th* day of *October* 1995.

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

[Signature]
.....
(Professor Allan Fels)
Chairman

This *3* day of *November* 1995.
