

TRADE PRACTICES ACT :



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

BY

**EVEREADY AUSTRALIA PTY. LIMITED
A.C.N. 003 539 026**

BACKGROUND

Eveready Australia Pty. Limited ("Eveready"), has offered for sale and sold, in Australia, Eveready brand rechargeable Nickel-Cadmium batteries described on the packaging as "Super High Performance Nickel-Cadmium Batteries" and "Super High Performance Rechargeable Nickel-Cadmium Batteries". There has appeared on the batteries and on the associated packaging a triangular symbol consisting of three arrows above the word "recyclable".

At the time these batteries were offered for sale and sold there were no facilities in Australia available to the public for the recycling of these batteries.

The Trade Practices Commission has alleged that the presence on the batteries and associated packaging of the triangular symbol and the word "recyclable" would lead consumers in Australia to believe that the batteries can, as a matter of practicality, be recycled in the sense that, after their useful life in the hands of the first consumer, they can be processed so that they can be reused in their present form by another consumer or their components can be used in another product cycle. Further that, in the absence of facilities to recycle the batteries in this way, the presence on the batteries and on associated packaging of the triangular symbol and the word "recyclable" is misleading and deceptive in contravention of section 52 of the *Trade Practices Act 1974* ("the Act") and constitutes a representation that they have performance characteristics or benefits they do not have, in contravention of section 53(c) of the Act.

Eveready has acknowledged that its conduct, in offering for sale and selling the batteries in the circumstances described, has resulted in contraventions of the Act and has agreed to give the following undertakings for the purposes of section 87B of the Act.

UNDERTAKINGS

Eveready Australia Pty. Limited ("Eveready") undertakes, for the purposes of section 87B of the *Trade Practices Act* 1974, on behalf of itself and any and all subsidiaries of Eveready Australia Pty. Limited and any and all business entities controlled by Eveready Australia Pty. Limited or its subsidiaries ("the Eveready Group") that:

- (a) from the date of Eveready giving these undertakings, the Eveready Group will not, in trade or commerce, sell or distribute or otherwise make available batteries displaying, on the batteries or on associated packaging, the triangular symbol consisting of three arrows which has appeared on Eveready brand "Super High Performance Nickel-Cadmium Batteries" and "Super High Performance Rechargeable Nickel-Cadmium Batteries" ("the recyclable symbol"), or the word "recyclable", or any other symbol, wording or mark which represents that the batteries are recyclable, unless:
 - (i) at the time of the sale, distribution or making available, Eveready has available to it facilities for the recycling of the batteries and believes, on reasonable grounds, that it will have available to it such facilities at the time when the batteries have reached the end of their useful lives;
 - (ii) each battery, or where the batteries are sealed in packaging, the packaging, bears, in easily legible type, words to the effect:

"When spent, recycle by returning to Eveready or your Eveready retailer"
 - (iii) Eveready has previously obtained, or taken all reasonable steps to obtain, the agreement of any retailer to whom it sells, distributes or otherwise makes available the batteries, that the retailer will return to Eveready, within a reasonable time, any of the batteries returned to the retailer; and
 - (iv) there has appeared in the Australian Newspaper and at least one other major newspaper circulating state-wide in each state, on at least three occasions, an advertisement, in terms approved by the Trade Practices Commission ("Commission"), of not less than half a page in size, stating to the effect that Eveready brand Nicad batteries bearing the "recyclable" symbol, or the word "recyclable", or any other symbol, wording or mark which represents that the batteries are recyclable, on the battery or associated packaging, can be recycled by being returned to Eveready or Eveready retailers;
- (b) from the date of Eveready giving these undertakings, the Eveready Group will not, in trade or commerce, represent in any way that any battery which it sells or distributes or otherwise makes available is recyclable unless that battery can be sold, distributed or made available in accordance with undertaking (a) above; and

- (c) Eveready will, recycle, or cause to be recycled, all batteries which are, or have been, sold by the Eveready Group displaying on the batteries or on associated packaging, the recyclable symbol, or the word "recyclable", or any other symbol, wording or mark which represents that the batteries are recyclable ("Eveready recyclable batteries") which are or have been returned to the Eveready Group and will, within three months of giving these undertakings, seek the return of such batteries to the Eveready Group by:
- (i) taking all reasonable steps to obtain the agreement of all retailers to whom it has sold, distributed or otherwise made available Eveready recyclable batteries, that the retailer will return to Eveready, within a reasonable time, any such batteries returned to the retailer and that the retailer will display, for as long as is reasonably necessary given the life expectancy of the batteries, at all its points of sale for Eveready batteries, prominent signs stating that any Eveready recyclable battery can be recycled by being returned to Eveready or Eveready retailers.
 - (ii) providing to retailers who agree to display them, the signs stating that any Eveready recyclable battery can be recycled by being returned to Eveready or Eveready retailers;
 - (iii) placing in the Australian Newspaper and at least one other major newspaper circulating state-wide in each state, on at least three occasions, an advertisement, in terms approved by the Commission, of not less than half a page in size, stating to the effect that Eveready brand Nicad batteries bearing the "recyclable" symbol, or the word "recyclable", or any other symbol, wording or mark which represents that the batteries are recyclable, on the battery or associated packaging, can be recycled by being returned to Eveready or Eveready retailers.

For the purposes of these undertakings, a battery will be taken to have been recycled if, subsequent to its initial manufacture, it has been processed, other than by being recharged by an end-user, so that it can be reused as a battery or so that its component parts or materials have been recovered with the intention that they will be used in the manufacture of batteries or other products.

In addition to giving these undertakings, Eveready agrees that the Commission may, for the purposes of encouraging compliance with the Act, publicise where, when and to whom it wishes:

- (i) Eveready's acknowledgment that it has contravened the Act; and
- (ii) the contents of these undertakings.

IN WITNESS OF THESE UNDERTAKINGS
AND ITS AGREEMENT THE COMMON SEAL
OF EVEREADY AUSTRALIA PTY. LIMITED
was hereunto affixed by authority of the
Board of Directors previously given in
presence of



R. P. W. L.

Director

U. E. C.

Secretary

This 3rd day of *December* 1993

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

A handwritten signature, likely of Professor Allan Fels, written in ink.

~~(Professor Allan Fels)~~ (John Broome)
~~Chairman~~ Acting Chairman

This 5th day of *January* 199~~7~~⁸ *H*