

**TRADE PRACTICES ACT 19****UNDERTAKING TO THE TRADE PRACTICES
COMMISSION GIVEN FOR THE PURPOSES OF
SECTION 87B****BY****MAKITA (AUSTRALIA) PTY LTD
A.C.N. 001 117 335****BACKGROUND**

Makita (Australia) Pty Ltd ("Makita"), has offered for sale and sold, in Australia, nickel-cadmium batteries for use in cordless power tools, on which there has appeared a triangular symbol comprising three arrows chasing each other around a stylised version of the mobius loop.

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

The Trade Practices Commission has alleged that the presence on the batteries of the triangular symbol 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 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.

UNDERTAKINGS

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

- (a) from the date of Makita giving these undertakings, the Makita 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 comprising three arrows chasing each other, in a stylised version of the mobius loop, which has appeared on nickel-cadmium batteries used in Makita cordless power tools ("the recyclable symbol"), 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, Makita 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) Makita 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 Makita, within a reasonable time, any of the batteries returned to the retailer by customers; and
 - (iii) Makita 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 prominently display posters which explain to customers that Makita nickel cadmium batteries are recyclable, and can be returned to retailers of Makita cordless power tools, from where they will be taken for recycling; and
 - (iv) Makita has taken all reasonable steps to advise its salespersons throughout Australia of the recycling program referred to at (i) ,(ii) and (iii) above, and has instructed these salespersons to advise customers for Makita cordless tools, about Makita's nickel cadmium battery recycling program, and Makita has, as an ongoing policy, the intention of regularly reminding its salespersons of the need to advise these customers about this recycling program; and
 - (v) Makita has explained its recycling procedures to its customers, as referred to at (i), (ii), (iii) and (iv) above, in an article in *Makita Business Partner News* , and Makita has, as an ongoing policy, the intention of reminding its customers of this program, in further articles

in Makita Business Partner News, no less frequently than four each year;

- (vi) Makita arranges to write, within two months, to all previous purchasers of Makita power tools which were sold with batteries bearing the recyclable symbol, who have returned Makita warranty cards to Makita, explaining Makita's recycling procedures, as referred to at (i), (ii), (iii) and (iv) above.
 - (vii) Makita has, as its current and ongoing practice, the practice of advising consumers, in all Makita Gift Guides and Makita Trade Publications, of the recyclability of nickel cadmium batteries, and that nickel cadmium batteries sold by Makita can be returned to Makita retailers who have agreed to accept batteries for recycling.
- (b) from the date of Makita giving these undertakings, the Makita 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) Makita will, recycle, or cause to be recycled, all batteries which are, or have been, sold by the Makita Group, displaying on the batteries or on associated packaging, the recyclable symbol, or any other symbol, wording or mark which represents that the batteries are recyclable ("Makita recyclable batteries") which are or have been returned to the Makita Group and will, within three months of giving these undertakings, seek the return of such batteries to the Makita Group by:
- (i) taking all reasonable steps to obtain the agreement of all retailers to whom it has sold, distributed or otherwise made available Makita recyclable batteries, that the retailer will return to Makita, 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 Makita batteries, prominent signs stating that any Makita recyclable battery can be recycled by being returned to Makita or Makita retailers; and
 - (ii) providing to retailers who agree to display them, the signs stating that any Makita recyclable battery can be recycled by being returned to Makita or Makita 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.

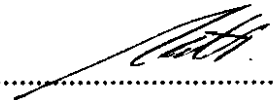
In addition to giving these undertakings, Makita agrees that the Commission may, for the purposes of encouraging compliance with the Act, publicise where, when and to whom it wishes:

- (i) the Commission's opinion that Makita has contravened the Act; and
- (ii) the contents of these undertakings.

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



.....
Director

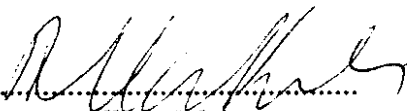


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Secretary



This *THIRD* day of *MAY*. 1994

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 *15th* day of *may* 1994