

D99/11287



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MULTI LINK INTERNATIONAL

F R E E H I L L
H O L L I N G D A L E
& P A G E

BARRISTERS & SOLICITORS
101 COLLINS STREET
MELBOURNE - 3000
AUSTRALIA

THIS DEED is made the *16th* day of *MARCH* 1993 between BRYAN PHILIP HEDGES (trading as "MULTI-LINK INTERNATIONAL") of 65 Ligar Street, Stawell, in the State of Victoria ("MLI") of the first part and the TRADE PRACTICES COMMISSION of Benjamin Offices, Chan Street, Belconnen in the Australian Capital Territory ("the TPC") of the other part.

WHEREAS:

- A. The TPC, having conducted an investigation, has formed the view that MLI has through publications and other representations in the States of South Australia, Victoria, New South Wales, and other places, engaged in the promotion of a trading scheme whereby a payment is to be made by a participant in the scheme to MLI (or to the benefit of another person who participates in the scheme) and the inducement for making such payment is the holding out of the prospect of receiving payments from other persons subsequently introduced to the scheme. The TPC contends that the scheme in question was a breach of one or more of the provisions of Section 61 of the Trade Practices Act 1974 (the "Act"), being a scheme which trades in subscriptions. To alleviate the TPC's concerns MLI has agreed to revise the method by which MLI carries on his business.
- B. MLI has advised the TPC that the conduct ceased when MLI was informed of the TPC's concerns. The TPC acknowledges that MLI has co-operated with the Commission, notified all participants of the cessation of trading, commenced refunding subscriptions, and obtained legal advice with respect to MLI's obligations under the Act.
- C. Having regard to MLI's response and subsequent actions, the TPC will not institute proceedings alleging contravention of any of the provisions of Sections 53 and 61 of the Act, provided that MLI undertakes those actions set out below:
- (1) To offer to refund to participants in the scheme all or in certain instances part of the amount of subscription paid by each individual (if any), the amount of such compensation being set out in Schedule A attached hereto.

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- (2) To cease publication of all material containing representations which may lead to a breach of any of the provisions of Section 61 by MLI.
- (3) To provide to the TPC a letter from MLI's solicitors confirming that MLI has received detailed legal advice with respect to MLI's obligations under the Act and in particular with respect to Section 61 of the Act.
- (4) To forward to all participants in the Scheme a newsletter in the form attached as Schedule B with the object of imparting a sufficient understanding of Section 61 of the Act to all participants in the scheme so as to enable them to recognise and avoid potential contraventions of Section 61 of the Act before they occur, together with a letter in the form attached as Schedule C with incidental changes thereto as the circumstances require.

D. The TPC and MLI believe this settlement to provide the best opportunity to have worthwhile deterrent or educative effect and to secure long term compliance with the Act and certain compensation for participants.

THIS DEED WITNESSES:

1. The TPC agrees not to institute proceedings against MLI alleging contravention of any of the provisions of Sections 53 or 61 of the Act in respect of or relating to MLI's promotion until 30 June 1992 of a trading scheme in South Australia, Victoria, New South Wales and other places.
2. MLI agrees that:
 - (i) MLI will offer to refund to each of the persons identified as participants in the said scheme during the designated promotion period shown at Clause 1 above (the names and addresses of whom are detailed in Schedule A hereto) that refund amount recorded in the said Schedule A being an amount calculated on the basis of the offer of a refund of the amount of \$150.00 less the monetary value of any benefits received by the participant by virtue of participation in the said scheme;
 - (ii) in satisfaction of the terms of Clause 2(i) above, MLI will

- (a) within 30 days of the date of this Deed forward to all persons identified in Schedule A hereto a letter written by MLI's solicitors in the terms set out in Schedule B hereto offering to refund to all such persons that amount recorded in the said Schedule A to which each participant is entitled pursuant to Clause 2(i) above, such offer to remain open for acceptance by each ^{AUSTRALIAN RESIDENT} such participant for a period of 30 days ^{AND FOR EACH OVERSEAS RESIDENT PARTICIPANT FOR A PERIOD OF 90 DAYS} from the date of the receipt of the said letter;
- (b) disburse the said refund to each participant who accepts the offer of a refund in accordance with the terms of this Deed;
- (c) accompany the said letter referred to in Clause 2(ii)(a) above with a newsletter as set out at Schedule C hereto with the aim of apprising all participants in the scheme of the provisions of Section 61 of the Trade Practices Act; and
- (d) also post to those participants who were in receipt of a subscription refund prior to the execution of this Deed a newsletter and letter as provided for in Clause 2(ii)(c) above with such incidental alterations as the circumstances require.
3. MLI and the TPC agree that the making of the offers of a refund referred to in Clause 2 above and the disbursement of the said refunds shall be supervised and audited by the legal firm Freehill, Hollingdale & Page at MLI's expense.
4. MLI agrees that MLI shall, within 30 days from the date of this Deed, provide to the TPC a letter from Freehill Hollingdale & Page confirming that MLI has received detailed legal advice with respect to MLI's obligations under the Act and, in particular, with respect to Sections 52, 53 and 61 of the Act.
5. The parties agree that this Deed and its Schedules may be made public and that the TPC may publish and refer to such documents.

- 6. The parties to this agreement further note and affirm that this agreement in no way derogates from the rights or remedies available to any other person arising from the said conduct.
- 7. The parties acknowledge that it is intended that MLI's obligations under this Deed are enforceable in an appropriate Court by action for specific performance.
- 8. In the event that any clause or part of this Deed is deemed to be invalid, unenforceable or both, it is the intention of the parties hereto that the remainder of the Deed is valid and enforceable notwithstanding any such excisions.

EXECUTED by the parties as a deed:

SIGNED SEALED and DELIVERED

by BRYAN PHILIP HEDGES

in the presence of:

..... *Keith Edwards*

Witness

..... *Bryan P. Hedges*

Bryan Philip Hedges

..... *KEITH EDWARDS*

Name (please print)

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SIGNED SEALED and DELIVERED
for the TRADE PRACTICES COMMISSION
by its ^{CHAIRMAN} attorney in the
presence of:

Glen Barnwell
.....
Witness

M. M. F. S.
.....
Attorney
CHAIRMAN

Glen Barnwell
.....
Name (please print)

.....
Name (please print)

SCHEDULE A

The attached list reveals a total of 731 members of Multi-Link International ("MLI"). However, the details of approximately 31 former members of MLI were deleted from MLI's computer records at the very early stages of the Trade Practices Commission investigation as a result of those members having received full refunds of their membership fee.

There are a number of different categories of members contained in the attached list. Whilst all of those categories aren't relevant for the purposes of the offer to refund all or part of the initial \$150.00 membership fee of MLI, the nature of the categories (with a breakdown of refund entitlements of members in each category) are as follows:

1. 450 members (code 92 as per the left hand column of the list) that have received no refund and no benefit as a result of their membership, who therefore are entitled to the offer of a full refund of \$150.00;
2. 37 members (code 93) that have each received a total monetary value of benefits of \$93.54 by virtue of their membership in MLI, who therefore are entitled to the offer of a refund of \$57.46;
3. 26 members (codes 94,95 and 96) that have each received a total monetary value of benefits of in excess of their original \$150.00 membership fee by virtue of their membership in MLI, who therefore are entitled to no refund;
4. 126 members (codes RF and G), of which 95 can be identified, that have received a full refund of \$150.00, who therefore are entitled to no further refund; and

5. 92 members (code R) that paid no membership fee, who therefore are entitled to no refund.

SCHEDULE B

File No

Date

Name and Address
of participant

Dear Sir/Madam

I am writing on behalf of Multi-Link International ("MLI") as records indicate that you were a participant in a trading scheme operated by MLI. The Trade Practices Commission ("TPC") has recently concluded an investigation into MLI's promotion of the scheme.

The TPC's investigation led it to conclude that MLI has, through publications and other representations made during early 1992 in the States of South Australia, Victoria, and other places, engaged in the promotion of a trading scheme whereby payments were made by a participant in the scheme to MLI (or to the benefit of another person participating in the scheme) and the inducement for making such payment was the holding out of the prospect of receiving payments from other persons subsequently introduced to the scheme. The TPC contends that the scheme in question was a breach of Section 61 of the Trade Practices Act, being a scheme which trades in subscriptions (otherwise known as a "pyramid" scheme).

MLI has reached an agreement with the TPC to offer to refund to you (and other members of MLI) the initial subscription sum of \$150.00 less the monetary value of benefits that you have received as a result of your membership of MLI. MLI's records indicate that you have received benefits to the value of [\$] and therefore, you are entitled to a refund of [\$]. If you wish to accept the offer of the refund please fill out the attached form and return it to the address printed on the form. This offer remains open for a period of 30 days ^(30 DAYS IN THE CASE OF PARTICIPANTS RESIDENT OUTSIDE AUSTRALIA) from the date of your receipt of this letter and the acceptance form must be returned by you and received within that period and in any case, by no later than xx December 1992. ^(OR _____ 1993 IN THE CASE OF PARTICIPANTS RESIDENT OUTSIDE AUSTRALIA)

As part of the agreement with the TPC, MLI has ceased publication and withdrawn from circulation all MLI publications containing material which may lead to a breach of Section 61. Should you still have in your possession material related to the MLI business please destroy it immediately. Further, MLI will be forwarding to you a newsletter, outlining the terms of Section 61 of the Trade Practices Act 1974 and explaining its operations with the object of preventing future contraventions of the Act by imparting a sufficient understanding of the Trade Practices Act to all participants to enable them to recognise and avoid potential contraventions before they occur.

MLI fully supports the spirit of the Trade Practices Act and was pleased to co-operate with the TPC in taking steps to limit the impact of the business on its members and to educate members regarding the legality of "pyramid" schemes.

Yours faithfully

MULTI-LINK INTERNATIONAL

Please complete this form and return to Mr Stephen Stern, Freehill,
Hollingdale & Page, GPO Box 128A, Melbourne, Victoria 3001.

Name:

Address:

I.D. Number (if known):

I would like to accept the offer of a refund of my initial subscription for
Multi-Link International less the monetary value of benefits that I
received as a result of my membership of Multi Link International.

.....
(Sign here)

SCHEDULE C
PYRAMID SCHEMES

The Trade Practices Act (1974) prohibits the promotion of, or participation in, a "pyramid selling" scheme. The prohibition is contained in Section 61 of the Trade Practices Act, a copy of which is attached. Section 61 of the Trade Practices Act is a complicated provision and the purpose of this newsletter is to explain, in simple terms, the nature of that prohibition. However, this newsletter is not legal advice and should not be relied upon as such.

In essence, pyramid selling schemes are those where the promoter of the scheme sells to participants not only the right to sell goods or services but also the right to introduce or recruit other people for the scheme. It is a pyramid selling scheme when people are induced to subscribe or participate in the scheme because of the prospect that they will receive payments or other benefits because of the introduction of further participants. The concern of the Trade Practices Commission and other regulatory bodies such as the Fair Trading Offices in each State, is that a point of saturation is reached quite quickly in pyramid selling schemes where later participants have little chance of introducing further participants or of recovering their money.

Pyramid selling schemes are to be contrasted with legitimate direct selling or multi-level sales organisations where the sale of goods or services forms the basis of the business and it is only on the sale of those goods or services that any commissions are paid. Whilst in legitimate direct selling organisations participants are entitled to expand their business organisation by recruiting others to sell the goods or services (and in fact such expansion is one of the methods of increasing a participant's income) it is only on the sale of the goods or services that payment is received and not through the introduction of others.

Accordingly, when considering whether or not to join a direct marketing organisation it is important to assess whether or not the essence of the scheme is the sale of goods or services. If the sale of goods or services is merely ancillary to the scheme and payments are offered or promoted as being offered on the introduction of others, you should make careful enquiries as to the legality of the scheme.

Should you have queries about pyramid selling in general, those queries should be addressed to the Trade Practices Commission or to the appropriate Office of Fair Trading or Consumer Affairs in your state. If you have queries about the operations of a particular business, the first point of call should, of course, be to the business itself and if those queries are not satisfactorily addressed then to the Trade Practices Commission or to the relevant Office of Fair Trading or Consumer Affairs. However, please note that these agencies do not approve or endorse particular schemes.