



Trade Practices Act 1974

Undertaking to the AUSTRALIAN COMPETITION AND CONSUMER COMMISSION given for the Purposes of s.87B

BY

HARRIS SCARFE AUSTRALIA PTY LTD
ACN 095 018 803

Background

1. Harris Scarfe Australia Pty Ltd (ACN 095 018 803) ('Harris Scarfe') is incorporated under the Corporations Law and registered in South Australia.
2. Harris Scarfe is an Australian company which operates 21 retail department stores throughout South Australia, Victoria and Tasmania.
3. Harris Scarfe conducts regular sales promotions associated with special prices on various goods offered for sale at its retail department stores.
4. In the course of conducting such promotions over a 6 month period at the end of 2003, Harris Scarfe made representations in catalogues in relation to pricing. The representations were:
 - (a) as to a claimed saving, expressed as "*save \$X*"; and
 - (b) as to a higher price to which nominated items would revert after the particular sales promotion, expressed as "*after the sale \$X*".
5. Printed editions of the catalogues were circulated to the public by means of in-store distribution, direct mail, and letter box drop. Electronic editions of the catalogues were circulated to the public by means of direct e-mail and through the company's website. As a result of consumer complaints the ACCC undertook an investigation into the Harris Scarfe catalogue pricing.
6. Harris Scarfe submitted that in the case of the "*save \$X*" representations it did not actually retail all of the advertised items prior to the sale, or all of the advertised items in any significant quantities. It submitted that in those cases the alleged savings were not based upon actual sales records but were based upon a formula which was not disclosed to consumers. This formula is described by Harris Scarfe as *cost + gst + % mark-up typical of that item = price at which consumers could normally expect to pay*. The ACCC considers such representations in these circumstances to be misleading in breach of section 52 and 53(e) the Trade Practices Act, 1974 ('the Act').

7. Harris Scarfe submitted that in the case of the “*after the sale \$X*” representations not all of the items were in fact sold at the claimed “after the sale \$X” price after the sales promotion, or were not sold in any significant quantities, either because the price did not rise or because there was little or no stock of those items. The ACCC considers such representations in these circumstances to be misleading in breach of the section 52 and 53(e) of the Act.
8. Examples of the items which were promoted are listed at Attachment A:

Undertaking

9. The ACCC raised its concerns with the company. Harris Scarfe admits that the representations in the promotional advertising may have misled consumers, in breach of sections 52 and 53(e) of the Act.
10. Harris Scarfe has agreed to enter into an undertaking with the ACCC to cease making these representations and take steps to ensure consumers are not misled in future by its promotional advertising.
11. Harris Scarfe gives the following undertaking to the ACCC for the purposes of Section 87B of the *Trade Practices Act 1974*.
12. This undertaking comes into effect when:
 - (a) the undertaking is executed by Harris Scarfe, and;
 - (b) the ACCC accepts the undertaking so executed.

Cease and refrain from further false and misleading representations

13. Harris Scarfe agrees to cease making representations which claim or infer that a product has been or will be offered for sale by Harris Scarfe at a higher price where this is not the case.
14. Harris Scarfe agrees to cease making representations which claims that the price of a product will rise after a sales promotion where the price of the product is not likely to rise, or is not likely be stocked at all.

Publish corrective advertising

15. The ACCC believes Harris Scarfe should place corrective advertising aimed at reaching as many consumers as possible who may have been affected by the conduct.
16. Within 30 days of these undertakings coming into effect, Harris Scarfe will place a copy of the consumer notice set out in Attachment B of these undertakings in each of the following newspapers:
 - The Advertiser (South Australia)
 - The Shepparton News, Shepparton Adviser, Geelong Advertiser, Kyabram Free Post, The Herald Sun (Victoria)
 - The Hobart Mercury, Launceston Examiner, Burnie Advocate (Tasmania)
17. The consumer notice will be of a size no less than 12cm x 3 columns (10cm) and will appear in the first 5 pages of the general news section of each of the above newspapers.
18. Within 30 days of these undertakings coming into effect, Harris Scarfe will place a copy of the consumer notice set out in Attachment B of these undertakings on the Harris Scarfe website and maintain it there for a period of three months. The notice shall appear in an automatically generated active pop-up window or message box and either the notice, or a direct and obvious link, shall appear immediately to consumers on access to the home page of the website.

Implement a compliance program

19. Harris Scarfe undertakes that it will:
 - (a) Implement a corporate trade practices compliance program, in the manner and form described in Attachment C attached, within 3 months of the date of this Undertaking coming into effect; and
 - (b) Maintain and continue to implement the said program for a period of 3 years from the date of this Undertaking coming into effect.

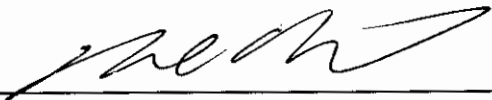
Acknowledgements

20. Harris Scarfe acknowledges that the Commission will make this Undertaking available for public inspection.

21. Harris Scarfe acknowledges that the Commission will refer publicly to this Undertaking from time to time.

22. Harris Scarfe acknowledges that this Undertaking in no way derogates from the rights and remedies available to any person who is not a party to this Undertaking as a result of the conduct set out above.

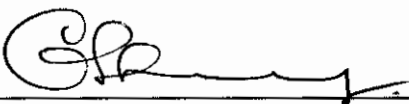
Executed by
~~IN WITNESS of these Undertakings and its agreement the Common Seal of Harris Scarfe Australia Pty Ltd (ACN 095 018 803) was hereunto affixed by authority of its board of Directors in the presence of:~~

Director: _____ 

Director/Secretary: _____ 

Dated the 22 day of October 2004

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974.

Chairman: _____ 

Dated the 30 day of November 2004

ATTACHMENT A

Date of Catalogue	Item	Price Representations
16 July 2003	Blundstone Export Dress Boot	\$59.95 "Save \$70.00" "After the sale \$129.95"
16 July 2003	Fila Large Team Bag Model F11	\$29.95 "Save \$30.00" "After the sale \$59.95"
16 July 2003	FIB Suedette Handbags	\$19.95 "Save \$10.00" "After the sale \$29.95"
16 July 2003	Julius Marlow Antonio Shoes	\$69.95 "Save \$60.00" "After the sale \$129.95"
29 October 2003	York Vulcan 3701 Treadmill	\$1,099 "Save \$700" "After the sale \$1,799"
26 November 2003	Kambrook BBQ Grill KG20	\$39.95 "Save \$30.00" "After the sale \$69.95"
26 November 2003	White Satin, Lace, Panache & Tweed 50ml Perfume Spray	\$19.95 "Save \$23.00" "After the sale \$42.95"
26 November 2003	Remington Microflex Men's Shaver	\$119 "Save \$20.95" "After the sale \$139.95"
26 November 2003	Grosvenor 56 Piece Verona Cutlery	\$99.00 "Save \$100.00" "After the sale \$199.00"
26 November 2003	Towelling Hooded Poncho	\$14.95 "Save \$10.00" "After the sale \$24.95" "40% off"

PUBLIC DISCLOSURE

AN APOLOGY FROM HARRIS SCARFE AUSTRALIA PTY LTD

hs Harris

In December 2003 the Australian Competition and Consumer Commission (ACCC) approached Harris Scarfe Australia Pty Ltd in relation to representations we made in catalogues over the previous six months. We made representations on a number of items in our catalogues such as:

Claimed savings, expressed as "save \$X"; and

Referring to a higher price at which items would be sold after sale,
expressed as "after the sale \$X".

We used a formula to create a price we believed reflected the regular price for that item and used this to establish the alleged savings on that item.

We admit that this may have misled you because you may have thought that the savings were based on what you would have paid for that item *at Harris Scarfe* just before the sale and, for a number of items, that was not the case.

Further, we admit that we may have misled you because often the item did not revert to a higher price as claimed, thereby exaggerating the nature of the savings during the sale period.

Harris Scarfe expresses its sincere apologies to all our customers affected by this conduct. To ensure that this does not happen again, the matter has now been resolved by the ACCC's acceptance of an enforceable undertaking which can be viewed at www.accc.gov.au. We have undertaken to implement a robust compliance program, including extensive training, which will be undertaken by all staff and management.

We have co-operated fully with the ACCC in this matter and we would like to assure you that Harris Scarfe takes its Trade Practices compliance very seriously.



This public disclosure has been paid for by Harris Scarfe and placed at the request of the Australian Competition and Consumer Commission.

ATTACHMENT C

1. Harris Scarfe shall use its best endeavours to ensure that the corporate trade practices compliance program (“the compliance program”) is designed and implemented so as to comply with each of the following requirements:
 - (a) The compliance program is to cover all officers, employees, representatives and agents of the Harris Scarfe who perform duties in Australia;
 - (b) The compliance program is to inform the officers, employees, representatives and agents of Harris Scarfe who perform duties in Australia of the application of sections 52 and 53(e) (“the relevant provisions of the Act”) of the Trade Practices Act to Harris Scarfe’s business;
 - (c) The compliance program must require the appointment of a senior officer (“the compliance officer”), within 3 months of the date of this Undertaking coming into effect, whose responsibilities are to include the maintenance and continuing implementation of the compliance program and who reports directly to the Board;
 - (d) The compliance program is to provide officers, employees, representatives and agents of Harris Scarfe to confidentially notify the compliance officer of potential breaches of the relevant provisions of the Act and the compliance program by Harris Scarfe;
 - (e) The compliance program is to include an appropriate complaints handling system consistent with Australian Standard AS4269-1995;
 - (f) The compliance program must require the compliance officer to keep and maintain a register of potential breaches and/or complaints related to the relevant provisions of the Act;
 - (g) The compliance program is to ensure that the compliance with the Act is discussed at regular Board and/or senior management meetings;
 - (h) The compliance program is to ensure that compliance with the Act becomes part of normal business practice in the company;
 - (i) The compliance program must require the development of a disciplinary policy or code for those employees and agents who do not comply with the compliance program or the relevant provisions of the Act;
 - (j) The compliance program must require that compliance with the compliance program and the relevant provisions of the Act is a key performance indicator for all employees;

- (k) The compliance program is to provide for the conducting of regular trade practices training (at least once a year) by an internal designated compliance trainer (who has been trained by a solicitor or compliance professional with expertise in trade practices law) and/or a solicitor or compliance professional with expertise in trade practices law for all officers, employees, representatives and agents of Harris Scarfe; and
 - (l) The compliance program is to provide for an induction program on trade practices compliance issues to be undertaken by all new officers, employees, representatives and agents of Harris Scarfe within three months of his or her engagement.
2. Harris Scarfe shall, at its own expense, within 4 months of the date of this Undertaking coming into effect, cause to be produced and provided to the Commission copies of each of the documents constituting the compliance program, together with a letter confirming that the compliance program has been implemented in accordance with the requirements of this Undertaking.
3. Harris Scarfe shall, at its own expense and for the purpose of ensuring that Harris Scarfe maintains and continues to implement the compliance program, cause an audit of the compliance program (“the audit”) to be carried out in accordance with each of the following requirements:
- (a) Harris Scarfe shall ensure that the audit is carried out by an independent compliance professional with expertise in trade practices law (“the auditor”). The auditor will qualify as independent on the basis that he or she:
 - (i) Is not a present or past staff member or director of Harris Scarfe;
 - (ii) Has not acted or does not act for Harris Scarfe;
 - (iii) Is not retained by Harris Scarfe in any other capacity, either currently or in the past;
 - (iv) Has not and does not provide consultancy or other services for Harris Scarfe; and
 - (v) Has no shareholding or other interests in Harris Scarfe.
 - (b) Harris Scarfe shall use its best endeavours to ensure that the auditor:
 - (i) Conducts a critical review as to whether the compliance program has been implemented in compliance with each of the requirements of this Undertaking; and
 - (ii) Makes such recommendations as he/she considers necessary to ensure that the compliance program complies with each of the requirements of this Undertaking.

(c) Harris Scarfe shall ensure that the audit is able to be conducted by the auditor on the basis of any relevant information in Harris Scarfe's possession or control, including without limitation any of the following sources of information:

- (i) Investigations of any officer, employees, representatives and agents of Harris Scarfe to find out how compliance processes are implemented and understood;
- (ii) Enquiries of customers about their experience of Harris Scarfe and its products/services;
- (iii) Harris Scarfe's records, including its complaints register and any documents relevant to its training or induction program; and
- (iv) Documents created by Harris Scarfe's consultants and solicitors for use in Harris Scarfe's compliance program

(d) Harris Scarfe shall use its best endeavours to ensure that the audit is completed after one year and before eighteen months of this Undertaking coming into effect;

(e) Harris Scarfe shall use its best endeavours to ensure that the findings in relation the audit are set out in a written report ("the audit report") and provided to Harris Scarfe within 14 days of the completion of the audit. The audit report is to include a record of any potential contraventions of relevant provisions of the Act and the compliance program that were identified during the audit and the action taken to address the potential contraventions.

4. Harris Scarfe shall implement promptly and with due diligence the recommendations which the auditor may make that are reasonably necessary to ensure that Harris Scarfe maintains and continues to implement the compliance program in accordance with the requirements of this Undertaking.

5. Harris Scarfe shall, at its own expense, cause to be produced and provided to the Commission copies of the audit report within 14 days of Harris Scarfe receiving them.

6. Harris Scarfe shall, at its own expense, if requested by the Commission, provide copies of documents and information in respect of matters which are the subject of the compliance program.

DRAFT MEDIA RELEASE

Harris Scarfe admits sale prices may have misled and issues public apology

Harris Scarfe Australia Pty Ltd, which operates 21 retail department stores throughout South Australia, Victoria, and Tasmania, has admitted to the ACCC that representations in its promotional advertising may have misled consumers. The admission is part of court enforceable undertakings that Harris Scarfe has given to the ACCC.

Over a six month period at the end of 2003, Harris Scarfe made certain representations on a number of items in its catalogues in relation to pricing. The catalogues were distributed to the public in both printed and electronic form by letter box, website, and direct e-mail. The representations were as to a claimed saving, expressed as "**save \$X**" and as to a higher price to which nominated items would revert after the particular sales promotion, expressed as "**after the sale \$X**". The advertised items included boots and shoes, handbags, cutlery, and perfume.

As a result of consumer complaints the ACCC undertook an investigation into Harris Scarfe's catalogue advertising and raised its concerns with the company. It became apparent that in the case of "**save \$X**" the company had used a formula to create a price which it believed reflected the regular price and used this to establish an alleged saving.

Further, in the case of "**after the sale \$X**" certain items did not revert to a higher price as claimed, thereby exaggerating the nature of the savings during the sale period. Not all the items were in fact sold at the claimed after the sale price, or were not sold in any significant quantities, either because the price did not rise or because there was little or no stock of those items.

The ACCC raised its concerns that the representations may have misled consumers in breach of sections 52 and 53(e) of the Trade Practices Act. The company agreed to immediately cease the conduct.

Within the next 30 days the company will be placing public notices in nine newspapers circulating in three States to express its sincere apologies to all consumers affected. Further, to ensure that this does not happen again, Harris Scarfe has undertaken to implement a robust trade practices compliance program, including extensive training, which will be undertaken by all staff and management. Harris Scarfe has agreed that the program will be maintained for a period of three years and will be subject to external audit.

ACCC Chairman, Graeme Samuel, said "Harris Scarfe has co-operated fully with the ACCC in this matter and have thereby saved the public from expensive litigation. Consumers shop around and compare prices", Mr Samuel said. "This makes it all the more important that advertised prices must be honest and accurate. The Courts have made it clear in previous litigation by the ACCC that when a business tells consumers they will receive price savings, those consumers will expect that the price offered is less than the price they would have paid at that same business before the promotion

began. If the claimed saving is not genuine the business runs a serious risk of breaching the Trade Practices Act.”

“To assist retailers in this regard, the ACCC is about to issue a revised guide to safety in price comparison advertising. This will be available free from all ACCC offices and from the ACCC website at www.accc.gov.au”, Mr Samuel said.

Further information
 Graeme Samuel, Chairman,
 Bob Weymouth, Regional Director SA, (08) 8213 3453
 Ms Lin Enright, Director, Public Relations,
 MR xxxxx

27 October 2004

PRISM 18731

Background:

The following are the examples of the items which were promoted:

Date of Catalogue	Item	Price Representations
16 July 2003	Blundstone Export Dress Boot	\$59.95 "Save \$70.00" "After the sale \$129.95"
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