

**TRADE PRACTICES ACT 1974****UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B****BY****GIVIC PTY LTD  
(ACN 107 472 060)****PERSON GIVING THE UNDERTAKING**

This undertaking is given to the Australian Competition and Consumer Commission ('the ACCC') by Givic Pty Ltd ACN 107 472 060, trading as Grab It, c/o Walker Lawrence Watson, 'B' Big Arcade, 40 James Street, Burleigh Heads in the State of Queensland under section 87B of the *Trade Practices Act 1974* ('the Act').

**SCOPE OF THIS UNDERTAKING**

This undertaking incorporates the Background, the Commencement of the Undertaking, the Undertakings and the Acknowledgements.

**BACKGROUND**

1. Givic Pty Ltd is a company incorporated in the State of Queensland. It retails a variety of products including handbags, sunglasses, toiletries and cosmetics throughout two outlets in Victoria.
2. In early October 2004, the ACCC received a complaint alleging that a Grab It outlet was supplying cosmetic products without ingredient labelling contrary to the requirements of the *Trade Practices (Consumer Product Information Standard) (Cosmetics) Regulations 1991* ('the cosmetics standard').
3. Section 5 of the cosmetics standard requires, amongst other things, that cosmetic product ingredients be listed in descending order by volume or mass either:
  - (a) on the container; or
  - (b) if the product is not packed in a container on the product; or
  - (c) if this is not possible because of the size, shape or nature of the product or its container, a list of the product's ingredients must be shown in another way that ensures that a consumer can be informed about the ingredients in the product.
4. Under section 65D of the Act, a corporation is prohibited from supplying goods that do not comply with the requirements of a prescribed consumer product information standard.
5. Investigation of this matter revealed that Grab It outlets in Victoria were supplying goods that did not comply with the cosmetics standard.

6. During the investigation it also became apparent that Grab It was supplying cosmetic products which may have misled consumers as to their place of origin. The products of concern were labelled 'Starry USA' and contained no other information as to their place of origin. Enquiries revealed that these products were made in China. The ACCC was concerned that the labelling may have misled consumers to believe the product was made in the United States. As such, labelling of these products in this manner may have breached sections 52 and 53(eb) of the Act. These sections, respectively, prohibit a corporation from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive and making a false or misleading representation concerning the place of origin of goods.
7. Following its investigation of this matter the ACCC reached the view that Givic Pty Ltd may have contravened:
  - (a) Section 65D of the Act by supplying certain cosmetic products that did not comply with the section 5 of the cosmetics standard; and
  - (b) Sections 52 and 53(eb) of the Act by supplying certain cosmetic products, the labelling of which was misleading as to place of origin.

#### **COMMENCEMENT OF UNDERTAKING**

8. This undertaking comes into effect when:
  - (a) The Undertaking is executed by Givic Pty Ltd; and
  - (b) The ACCC accepts the Undertaking so executed.

#### **UNDERTAKINGS**

9. Givic Pty Ltd undertakes for a period of three (3) years to the ACCC for the purposes of section 87B of the Act that it will:
  - (a) not in trade or commerce sell or offer for sale cosmetic products without their ingredients being listed clearly in descending order by volume or mass on their respective containers or otherwise, in accordance with section 5 of the cosmetics standard;
  - (b) not in trade or commerce sell or offer for sale cosmetic products that have false or misleading place of origin representation and/or any other false or misleading representation contrary to Part V of the Act, and in particular sections 52 and 53 (eb);
  - (c) provide for a period of two (2) months from the execution of the undertaking in store signage at point of sale in all of its outlets which informs consumers that certain cosmetic products previously sold by Grab It outlets did not comply with section 5 of the cosmetic standard by not listing the


ingredients and provide to those consumers who may request it, a list of ingredients for those cosmetic products previously sold that did not comply with the cosmetic standard; and


- (d) within three (3) months of the acceptance of this undertaking implement a Trade Practices Compliance Program in accordance with the elements set out in Annexure A.

## ACKNOWLEDGMENTS

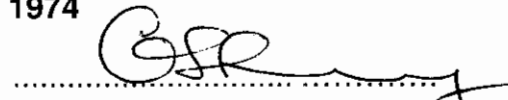
10. Givic Pty Ltd acknowledges that the ACCC will make the undertaking available for public inspection.
11. Givic Pty Ltd further acknowledges that the ACCC will from time to time publish and publicly refer to this undertaking at its discretion.
12. Givic Pty Ltd further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**EXECUTED** this 23<sup>rd</sup> day of MARCH, 2005 for and on behalf of Givic Pty Ltd (ACN 107 472 060) in the presence of:

  
 .....  
 Signature of Witness  
Betty Karagiannis  
 .....  
 Name of Witness (printed)  
Level 20  
31 Market St Sydney  
 .....  
 Address of Witness (printed)

  
 .....  
 Sole Director/Secretary  
GREGORY SCOTT FERGUSON  
 .....  
 Name (printed)

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

  
 .....  
 Graeme Julian Samuel  
 Chairman

This 5<sup>th</sup> day of April 2005

## Annexure 'A'

### NECESSARY ELEMENTS OF A TRADE PRACTICES COMPLIANCE PROGRAM TO BE IMPLEMENTED BY GIVIC PTY LTD

1. In order to ensure that Givic Pty Ltd's future conduct does not contravene section 52, 53(eb), 65D and Part V generally of the *Trade Practices Act 1974* ('the Act'), Givic Pty Ltd will design and implement, at its own expense, a compliance program consistent with the Australian Standard for Compliance Programs AS 3806-1998 ('the compliance program').
2. Givic Pty Ltd undertakes that, within 28 days of the date of execution of this undertaking, it will identify and retain an independent compliance professional with expertise in the Act ('the compliance professional') for the purpose of developing the compliance program.
3. The compliance professional will qualify as independent on the basis that he or she:
  - (a) Was not, at the date of the ACCC complaint of 25 October 2004 which has led to this Undertaking, a present or past staff member or Director of Givic Pty Ltd;
  - (b) has no substantial shareholding or other interests in Givic Pty Ltd.
4. Givic Pty Ltd will forward the compliance program to the ACCC for comment within 60 days of the execution of this Undertaking and implement the compliance program within 30 days of the ACCC's comments on the program.
5. The compliance program is to cover all Directors, employees and agents of Givic Pty Ltd whose duties could result in them being concerned in conduct that might breach the Act.
6. The compliance program will remain in force for a minimum period of three (3) years from the date of its implementation, and during that time both parties may agree to amend it to accord with relevant changes to the Act.
7. As part of the implementation of the compliance program, Givic Pty Ltd will.
  - (a) appoint a senior manager to oversee compliance matters relating to sections 52, 53 and 65D of the Trade Practices Act;
  - (b) conduct regular training to its staff on matters relating to sections 52, 53 and 65D of the Trade Practices Act;
  - (c) establish a complaint handling system consistent with Australian Standard – Complaints Handling AS4269 – 1995;

- (d) use its best endeavours to ensure that compliance with sections 52, 53 and 65D of the Trade Practices Act becomes part of normal business practice in the company.
8. At the end of each 12 month period following the execution of this undertaking, Givic Pty Ltd will cause, at its own expense, an independent auditor who is a compliance professional acceptable to the ACCC (hereinafter 'the compliance auditor'), to review the compliance program and report to the ACCC for approval as follows:
- (a) The compliance auditor will conduct a critical review of both the compliance management system and its effectiveness in securing compliance with the Act;
  - (b) The compliance auditor will make such recommendations as he/she considers necessary to ensure that the compliance program is implemented throughout Givic Pty Ltd and is effective in securing compliance with sections 52 and 53(eb) and 65D of the Act by Givic Pty Ltd;
  - (c) The compliance auditor will provide the ACCC with a copy of the audit report no later than 30 days after the anniversary of the execution of this undertaking; and
  - (d) Givic Pty Ltd will implement promptly and with due diligence any recommendations which the compliance auditor may make and the ACCC approves.
9. The compliance auditor will qualify as independent on the basis that he or she:
- (a) is not a present or past staff member or Director of Givic Pty Ltd;
  - (b) has not acted or does not act for Givic Pty Ltd in his or her capacity as a compliance auditor;
  - (c) is not retained by Givic Pty Ltd in any other compliance capacity, either currently or in the past;
  - (d) has not and does not provide compliance consultancy or other compliance services for Givic Pty Ltd, and
  - (e) has no substantial shareholding or other interests in Givic Pty Ltd.
10. Givic Pty Ltd will, if requested by the ACCC, provide within a reasonable period of time, documents and information in respect of matters which are the subject of the compliance program resulting from this undertaking.

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