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## **TRADE PRACTICES ACT 1974**

### **UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B**

**BY**

**BUSINESS PAGES PTY LTD**

**(ACN 108 891 961)**

#### **PERSON GIVING THE UNDERTAKING**

This undertaking is given to the Australian Competition and Consumer Commission ("the ACCC") by Business Pages Pty Ltd ACN 108 891 961 of Level 24 500 Collins Street Melbourne in the State of Victoria 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. Business Pages Pty Ltd is a company incorporated in the State of Victoria and operates an online internet business directory.
2. In late October 2004 the ACCC began receiving complaints regarding an "Application for Registration" form being sent out by Business Pages Pty Ltd to businesses around Australia inviting them to place an order for registration in an online business directory. Concerns were expressed that the cost of a "standard listing" for the directory was not sufficiently drawn to the attention of a person reading the form. A copy of the form is attached.
3. The form set out four types of listing available for a business to select. These options included:
  - . standard listing;
  - . accentuated listing;
  - . accentuated listing with company logo; and
  - . additional link to the business' internet home page.
4. While the cost of the accentuated and additional listings was stated clearly next to each of those listings (ie \$149, \$199 and \$49 respectively), no charge was given next to the standard listing.

5. The price of the standard listing (ie \$1449) was stated on the form, however it appeared on the seventh line of a ten line block of text located toward the foot of the page which provided amongst other things that:  
*“...By signing and returning this application to us you confirm... that you agree to be bound by the Terms and Conditions overleaf for an initial subscription period of two years at an annual subscription fee of 1449 Australian Dollars for the standard listing...”*
6. In addition, it is only in the Terms and Conditions set out on the reverse of the form that any indication is provided that a business will be liable for further annual subscription fees after the initial two year period unless the business cancels the subscription three months before the expiration of the current subscription.
7. Following receipt of the complaints and consideration of the content and layout of the Application for Registration form the ACCC reached the view that by its use of the form Business Pages Pty Ltd had contravened the following sections of the Act:
  - . Section 52 which prohibits a corporation from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive;
  - . Section 53(e) which prohibits a corporation from making a false or misleading representation with respect to the price of goods or services; and
  - . Section 53C which prohibits a corporation from making a representation as to part of the price of a good or service unless it also specifies the cash price for the goods or service.
8. The ACCC was concerned that the layout of the form may have misled or deceived, or was likely to mislead or deceive, persons reading the form as to the actual cost of the standard listing. The ACCC was particularly concerned that persons reading the form may have concluded, or were likely to conclude, that the standard listing is a free service. The standard listing is not a free service. The full cost of the standard listing is \$2898.00 plus GST being \$1449.00 per year for an initial minimum contract period of two years plus GST.

#### **COMMENCEMENT OF UNDERTAKING**

9. This undertaking comes into effect when:
  - a. The Undertaking is executed by Business Pages Pty Ltd; and
  - b. The ACCC accepts the Undertaking so executed.

#### **UNDERTAKINGS**

10. Business Pages Pty Ltd and its director jointly and severally undertake to the ACCC for the purposes of section 87B of the Act that they will:

- a. not in future use the form attached to this undertaking, or a similarly laid out form which fails to disclose prominently, and in close proximity to the service being offered, the full cost of that service to obtain customers for any on line directory services they offer;
- b. ensure in future that any solicitations about the provision of any such on line directory services disclose both prominently and in close proximity to the services being offered the full cost of that service;
- c. within 14 days of signing this undertaking send to any business which has returned a signed Application for Registration form a letter detailing the concerns of the ACCC that businesses who signed the form may have been misled as to the cost of the standard listing service and advising that businesses who wish to receive the service will be required to make a positive election in writing to do so (Annexure A);
- d. refund or return any monies the company has received from any business which has:
  - (i) returned a signed application for registration form;
  - (ii) made any payment in respect of that application;
  - (iii) notified Business Pages that it does not wish to continue with the service; or
  - (iv) not notified Business pages within thirty (30) days of receipt of the letter referred to in paragraph (c) on the form attached to Annexure A of this undertaking of its affirmation to take up a standard listing in the Business Pages online directory.
- e. be jointly and severally liable for any shortfall in monies to be refunded to businesses under the terms of paragraph (d) above;
- f. provide to the ACCC within 90 days of the date of this undertaking a Statutory Declaration detailing:
  - (i) the names and addresses of all businesses which provided to Business Pages a signed Registration of Application form for a listing on its online directory;
  - (ii) the names and addresses of all businesses which paid any monies to Business Pages as payment for a listing on its online directory together with the details of the amounts paid;
  - (iii) the names and addresses of all businesses to which Business Pages sent the letter set out at Annexure A;
  - (iv) whether or not a response was received from each business to which the letter was sent;
  - (v) the nature of responses received from each business; and
  - (vii) details of any refunds provided by Business Pages to any businesses; and
- g. within 3 months of the acceptance of this undertaking implement a Trade Practices Compliance Program in accordance with the elements set out in Annexure B.

## **ACKNOWLEDGEMENTS**

11. Business Pages Pty Ltd and its director acknowledge that the ACCC will make the undertaking available for public inspection.

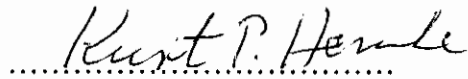
12. Business Pages Pty Ltd and its director further acknowledge that the ACCC will from time to time publish and publicly refer to this undertaking at its discretion.

13. Business Pages Pty Ltd and its director further acknowledge that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

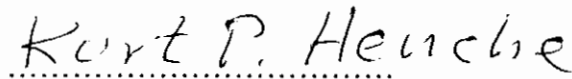
**Executed by**

**BUSINESS PAGES PTY LTD (ACN 108 891 961)**

pursuant to section 127(1) of the Corporations Act 2001



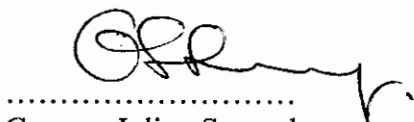
Signature of Sole Director / Company Secretary



Name of Sole Director / Company Secretary

This 27 day of July 2005

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



Graeme Julian Samuel

Chairman

This 27 day of August, 2005

## Annexure A

[Name]  
[Title]  
[Company]  
[Address]

[Date]

Dear Sir/Madam

In approximately November 2004 we sent you an application for registration and subscription to the Business Pages Online Business Directory ("Directory"). We subsequently received from you a signed application requesting you be registered for and subscribe to the Directory. We also wrote to you by letter dated 12 February 2005 confirming you were accepted as a customer of Business Pages and providing you with details as to how to operate your account with us.

Following concerns raised by the Australian Competition and Consumer Commission ("ACCC") that the layout of the application for registration originally sent to you had the potential to mislead or deceive businesses as to the full cost of the standard listing service being offered, Business Pages agreed to write to all businesses who had signed the form and indicated an intention to have a standard listing on the Directory.

The purpose of this letter is to advise you of the full cost of the standard listing offered by Business Pages and to advise you how a business that no longer wishes to be listed on the Directory can have itself removed from the Directory.

The full cost of the standard listing in the Directory is \$1449.00 per year for an initial minimum period of two years plus GST. This means the full cost of the standard listing to your business is \$2898.00 (ie 2 years x \$1449.00) plus GST. The standard listing is not a free service.

In view of the concerns raised by the ACCC, Business Pages has agreed that no business that signed the application form sent out in November last year indicating its intention to have a standard listing will be liable for payment of the standard listing fee of \$2898.00 unless that business reaffirms its request to take up that listing.

If you do not wish to have a standard listing on the Directory at the cost of \$2898.00 for two years you do not need to take any action. Your business will be automatically removed from the Directory thirty days (30) after the receipt of this letter and you will not be required to pay any money to Business Pages.

If you wish to remain on the Directory with a standard listing at a cost of \$2898.00 for two years you will need to advise Business Pages of your affirmation to take up the listing. To that end you will need to sign the attached Notice of Affirmation affirming

your request to take up the standard listing at the cost of \$2898.00 for two years and return it to Business Pages within twenty-one (21) days.

By signing the Notice of Affirmation you also acknowledge that your contract with Business Pages will automatically be renewed for a further twelve months at the end of the existing two year contract unless you advise Business Pages during the final three months of that contract that you do not want to renew the contract.

Yours sincerely

Kurt P Henche  
Director

**Notice of Affirmation**

[Name of Company/Business]

I hereby affirm my contract with Business Pages Pty Ltd for the provision of a standard listing in its online directory at a cost of \$2898.00 for two (2) years plus GST.

I acknowledge that unless I advise Business Pages during the final three months of the two year contract for the standard listing that I do not want to renew the contract, the contract will automatically be renewed for a further one year period at a cost to my business of \$1449.00.

.....

[Signature of an authorised signatory of Company/Business]

Dated the    day of    2005

## **Annexure B**

### **NECESSARY ELEMENTS OF A TRADE PRACTICES COMPLIANCE PROGRAM TO BE IMPLEMENTED BY BUSINESS PAGES PTY LTD**

1. In order to ensure that Business Pages Pty Ltd's future conduct does not contravene section 52, 53(e) and 53C of the *Trade Practices Act 1974* ("the Act"), Business Pages Pty Ltd will design and implement, at its own expense, a compliance program consistent with the Australian Standard for Compliance Programs AS 3806-1998 (hereafter "the compliance program").
2. Business Pages 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 (hereafter "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) is not a present or past staff member or director of Business Pages Pty Ltd;
  - (b) has no substantial shareholding or other interests in Business Pages Pty Ltd.
4. Business Pages 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 Business Pages 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 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, Business Pages Pty Ltd will:
  - (a) appoint a senior manager to oversee trade practices compliance matters;
  - (b) conduct regular trade practices training to its staff;
  - (c) establish a complaint handling system consistent with Australian Standard - Complaints Handling AS4269-1995;



- (d) use its best endeavours to ensure that compliance with the 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, Business Pages 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 Business Pages Pty Ltd and is effective in securing compliance with section 52, 53(e) and 53C of the Act by Business Pages 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) Business Pages 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 Business Pages Pty Ltd;
  - (b) has not acted or does not act for Business Pages Pty Ltd;
  - (c) is not retained by Business Pages Pty Ltd in any other capacity, either currently or in the past;
  - (d) has not and does not provide consultancy or other services for Business Pages Pty Ltd; and
  - (e) has no substantial shareholding or other interests in Business Pages Pty Ltd.
10. Business Pages Pty Ltd will, if requested by the ACCC, provide documents and information in respect of matters which are the subject of the compliance program resulting from this undertaking.