



TRADE PRACTICES ACT 1974
UNDERTAKING TO THE
AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
GIVEN FOR THE PURPOSES OF SECTION 87B

BY

SHELDON PARK PTY LTD (ACN 050 194 477)

PERSON GIVING THE UNDERTAKING

- (1) This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Sheldon Park Pty Ltd, ACN 050 194 477 (**Sheldon Park**) of level 9, 492 St Kilda Road, Melbourne in the State of Victoria, pursuant to section 87B of the *Trade Practices Act (1974)* (**the Act**).

BACKGROUND

Sheldon Park / Sportsmart

- (2) Sheldon Park is incorporated under the Corporations Law and is registered in the State of Victoria.
- (3) Sheldon Park retails sporting goods under the business name Sportsmart through three outlets located in Moorabbin, Northcote and Noble Park in the State of Victoria (**Sportsmart outlets**). All Sportsmart outlets retail sports equipment, clothing and footwear.
- (4) Sheldon Park advertises products available at Sportsmart outlets to potential consumers through quarterly catalogues and in advertisements in the Melbourne edition of the *Trading Post* and the *Herald Sun* (**advertising media**).

Conduct

- (5) Sheldon Park represented by way of two price comparative advertising in advertising media some products available at Sportsmart outlets had previously been sold at the Recommended Retail Price (**RRP**) when in fact the advertised products had never been sold, or had not been sold for a substantial period of time, at the RRP.
- (6) Specifically, the ACCC was concerned:
 - a. two price comparative advertising concerning five lines of treadmills (various brands) spanning a period of up to 4 years (7 June 2001 to 3 February 2005) and
 - b. two price comparative advertising concerning 56 styles of footwear (various brands) which were intermittently advertised, most appearing as

one off advertisements, in the advertising media spanning a period of up to 11 months (April 2004 to March 2005)

amounted to misleading and/or false representations concerning the price of goods in contravention of sections 52 and 53(e) of the Act.

Attached as **Annexure A** to this Undertaking is a sample of the advertisements.

- (7) The ACCC considered the representations may have led some consumers to believe:
 - a. the advertised products had previously been sold at Sportsmart outlets at the RRP for a substantial period of time and/or
 - b. they were obtaining a significant saving having regard to the difference between the advertised price and the RRP.
- (8) Sheldon Park admits it may have breached sections 52 and 53(e) of the Act by representing by way of two price comparative advertising in its advertising media some products available at Sportsmart outlets had previously been sold at the RRP when in fact the advertised products had never been sold, or had not been sold for a substantial period of time, at the RRP.
- (9) Sheldon Park has advised the ACCC it has ceased using two price comparative advertising where it has not previously sold the specified products at the higher advertised price recently and at that price for a reasonable period of time.
- (10) In response to the ACCC's concerns regarding the conduct, Sheldon Park has offered this Undertaking to the ACCC.

COMMENCEMENT OF UNDERTAKING

- (11) This Undertaking comes into effect when:
 - a. the Undertaking is executed by Sheldon Park and
 - b. the ACCC accepts the Undertaking so executed.

UNDERTAKINGS

- (12) Sheldon Park hereby undertakes, for the purposes of section 87B of the Act:

Refrain from conduct

- a. not to use two price comparative advertising referring to a specified RRP where the goods are not available regularly in the marketplace at that RRP and not to use two price comparative advertising using a price other than a specified RRP where it has not previously sold the advertised products at the higher of the two comparative prices recently and for a reasonable period of time.
- b. if referring to an RRP to clearly and prominently identify Sheldon Park does not usually retail the product at the RRP.

Public Disclosure

- c. within 28 days from the date on which this Undertaking comes into effect, to display a public disclosure notice in each of its three Sportsmart outlets in the form prescribed in **Annexure B** for a period of 28 days, which unless otherwise agreed with the ACCC is to be displayed at each register and service counter in all three Sportsmart stores at a minimum A4 size (210 x 297mm).
- d. within 28 days from the date on which this Undertaking comes into effect, to publish public disclosure notices in the Melbourne edition of the *Trading Post* and the *Herald Sun* in the form prescribed in Annexure B, which unless otherwise agreed with the ACCC is to be:
 - i. 140mm high and 75 mm wide in relation to the Notices in the *Herald Sun* and 140mm high and 45mm wide in relation to the Notices in the *Trading Post*
 - ii. published on two separate occasions over a one month period in relation to the Notices in the *Herald Sun* and two separate occasions over a one month period in relation to the Notices in the *Trading Post* and
 - iii. placed on the same day of the week and on the same or similar pages of each respective newspaper's traditional Sportsmart advertisement placement
- e. to make any advertising agency it engages in relation to the promotion or advertisement of Sportsmart products aware of Sheldon Park's obligations under this Undertaking.

Trade Practices Compliance Program

- f. to establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in **Annexure C** for the employees or other persons involved in Sheldon Park's business, being a program designed to minimise Sheldon Park's risk of future breaches of Part V of the Act and to ensure awareness of its responsibilities and obligations in relation to the requirements of Part V of the Act, within 3 months of the date of this Undertaking coming into effect
- g. to maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years from the date of this Undertaking coming into effect and
- h. to provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure C.

Annexure A

These advertisements are samples only.
Not all products advertised were the subject of the ACCC's concerns.

Trading Post 3/2/05

SPORTSMART
FITNESS

**SAVE HUNDREDS ON
YORK TREADMILLS**

**YORK Pacer
2500 Treadmill**
Not \$699
\$399

York Pacer 2501 Not \$1,299 **\$699**
York Pacer 2502 Not \$1,299 **\$399**

**York 530 Bench
& Barbell
Package**
Not \$299
\$199
(weights not included)

387 High St, Northcote 9482 1833
20 Ian St, Noble Park 9548 5188
85 Cecilmas Rd, Moorabbin 9553 3011

1800 637 881

DISCLAIMER

Please read all copy carefully, check spelling & phone numbers.

Repeat post as soon as possible.

This post is approved Trading Post Group with all our users responsible for incorrect copy or layout.

Please note this is a low resolution post and does not represent an accurate newspaper colour reproduction.

SPORTSMART ALL OUT DOOR BUSTER SALE!

TOP BRAND THINGS ALL \$14.95

Reebok Modulate XTraining (W) **new balance** XTraining (M) **CHDS90**

Not \$110
\$59.95

NEW SEASON SUMMER CAPS \$9.95

adidas **PRIMA** Huffy 40" Board

Any 2 Selected Tees or Shorts 2 For
\$35

Not \$79
\$64.95

KOOKABURRA SWORD ROCKET JR. CRICKET BAT NOW \$25

KENEX Ti Destiny 265 Tennis Wilson Pro Staff Rok Tennis

Not \$159
\$49.95

SAVE MORE THAN 65%

Not \$300
\$99.95

50% OFF 12 PCE BRIDGESTONE GRAPHITE SET NOW \$599

Golf Package: 12 Club Set, Pro Style Bag, & Folding Buggy **MINNIE** Revolution 11 Driver

Not \$499
\$299
Save \$200

Not \$79
\$29.95

Not \$200
\$69
A CRAZY

Limited Stock

HEALTHSTREAM DEFIANT TREADMILL NOW \$799

Pacer 2500 Treadmill **NYKA** Foldable Treadmill Pacer 3501

LESS THAN PRICE!

Not \$399
\$399

Not \$1,599
\$899

3502 motorised Incline \$799

SPORTSMART MOORABBIN
83-85 Cockburn Rd. Ph: 9553 3014
Fax: 9553 4257, 4111 (Goods & Services)

SPORTSMART NORTHCOTE
387 High St. (near Ansonia Rd.) Ph: 9482 1813

SPORTSMART NOBLE PARK 20 The Esplanade
(near Heatherton Rd.) Ph: 9543 5165

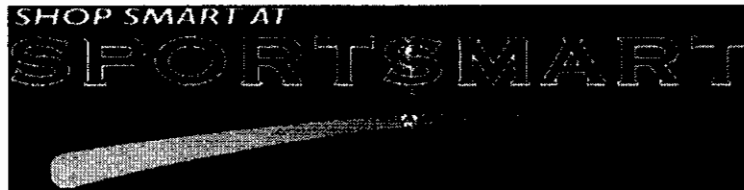
Priority Of Products Available

Herald Sun
7/1/05
(spot colour)

Annexure B

PUBLIC DISCLOSURE

An Apology from Sportsmart



The Australian Competition and Consumer Commission has raised concerns with Sheldon Park Pty Ltd in relation to two price comparative advertising representations we made in our Sportsmart catalogues and selected Sportsmart advertisements we placed in the Melbourne edition of the *Trading Post* and the *Herald Sun*.

We made representations in relation to 5 lines of treadmills (various brands) and 56 styles of footwear (various brands) comparing the recommended retail price (RRP) with our price.

We admit this may have misled you because these items had not previously been sold at Sportsmart outlets at the RRP or had not been sold at Sportsmart outlets at the RRP for a substantial period of time, thereby misrepresenting the nature of the savings for those sale items.

Sheldon Park Pty Ltd expresses its sincere apologies to all our customers affected by this conduct. To ensure this conduct does not happen again, Sheldon Park Pty Ltd offered a court enforceable undertaking which was accepted by the ACCC and can be viewed at www.accc.gov.au. The undertaking requires us to implement a robust compliance program, including Trade Practices training, which will be undertaken by relevant staff and management.



This Public Disclosure has been paid for by Sheldon Park Pty Ltd and circulated at the request of the Australian Competition and Consumer Commission (ACCC).

Annexure C

Annexure C

TRADE PRACTICES COMPLIANCE PROGRAM

1. Appointments

- 1.1. Within one month of the date of the Undertaking coming into effect Sheldon Park Pty Ltd (**Sheldon Park**) will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the compliance program (**the Compliance Officer**).

2. Risk Assessment

- 2.1. Sheldon Park shall within one month: instruct a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law (**a Trade Practices Professional**) to conduct a Trade Practices Act risk assessment (**the Risk Assessment**) in accordance with (a) – (d) below:
 - (a) identify the areas where Sheldon Park is at risk of breaching Part V of the Act
 - (b) assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Sheldon Park should they occur
 - (c) identify where there may be gaps in Sheldon Park's existing procedures for managing these risks
 - (d) provide recommendations for action having regard to the assessment.

3. Compliance Officer Training

- 3.1. Sheldon Park will ensure, within 2 months of the Undertaking coming into effect, the Compliance Officer attends practical trade practices training focusing on Part V of the *Trade Practices Act 1974* (**the Act**).
- 3.2. Sheldon Park shall ensure the training is administered by a Trade Practices Professional.
- 3.3. Sheldon Park, within 14 days of completion of training, will provide the ACCC with a written statement from a Trade Practices Professional confirming the completion of the training conducted in accordance with 3.1 and 3.2 above.

4. Staff Training

- 4.1. Sheldon Park will cause all employees of Sheldon Park whose duties could result in them being concerned with conduct that may contravene Part V of the Act to

receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or a Trade Practices Professional that focuses on Part V of the Act.

5. **Complaints handling**

Sheldon Park will:

- 5.1. develop procedures for recording, storing and responding to trade practice complaints within 2 months of the Undertaking coming into effect and
- 5.2. provide the ACCC with an outline of the complaint handling system within 2 months of the Undertaking coming into effect.

6. **Advertising and Promotional Material**

- 6.1. Sheldon Park will ensure its advertising and promotional material is reviewed by the Compliance Officer to ensure the advertising and promotional material is compliant with Part V of the Act.
- 6.2. Sheldon Park will engage a law firm experienced in the area of Trade Practices law to assist and advise Sheldon Park to ensure the advertising and promotional material is compliant with Part V of the Act, in instances where the Compliance Officer is not confident the advertising and promotional material is compliant with Part V of the Act.
- 6.3. Sheldon Park will not publicly release advertising and promotional material without the approval of the Compliance Officer.

7. **Internal reporting**

- 7.1. Sheldon Park will ensure the Compliance Officer reports to their director(s) or governing body every 6 months on the continuing effectiveness of the Compliance Program.

8. **Review**

- 8.1. Sheldon Park shall, at its own expense, cause an annual audit of the Compliance Program elements (**the Review**) to be carried out in accordance with each of the following requirements:
 - (a) Scope of the Review - Sheldon Park shall ensure the Review is broad and rigorous enough to:
 - i. provide the ACCC with a supportable verification that Sheldon Park has in place a Compliance Program that comply with the

requirements of the Undertaking and is suitable for the size and structure of Sheldon Park and

- ii. provide the Review Report and opinions detailed at point 7 below.
- (b) Independence of Reviewer - Sheldon Park shall ensure the Review is carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
- i. is not a present or past staff member or director of Sheldon Park
 - ii. has not acted or does not act for Sheldon Park in any other capacity other than Compliance Program Reviewer or Advisor
 - iii. is not retained by Sheldon Park in any capacity other than Compliance Program Reviewer or Advisor, either currently or in the past
 - iv. has not and does not act for or consult to Sheldon Park or provide other services on trade practices related matters other than Compliance Program reviewing and
 - v. has no other interests in Sheldon Park.
- (c) Evidence - Sheldon Park shall use its best endeavors to ensure the Review is able to be conducted on the basis that the Reviewer has access to all relevant sources of information in Sheldon Park's possession or control, including without limitation:
- i. enquiries of any employees, representatives, agents and stakeholders of Sheldon Park and
 - ii. documents created by Sheldon Park's consultants, legal practitioners and accountants for use in Sheldon Park's Compliance Program.
- (d) Sheldon Park shall ensure that the first Review is completed within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter.

9. Reporting

- 9.1. Sheldon Park shall use its best endeavours to ensure the Reviewer sets out the findings of the Review in a Trade Practices Compliance Program Review Report, which will provide particular and specific information regarding the scope of the

Review and the effectiveness of the Trade Practices Compliance Program including:

- (a) details of the evidence gathered and examined during the Review
- (b) the name and relevant experience of the person appointed as Sheldon Park Compliance Officer
- (c) the Reviewer's opinion on whether Sheldon Park has in place effective staff training, complaints handling programs that comply with the requirements of the Undertaking
- (d) actions recommended by the Reviewer to ensure the continuing effectiveness of Sheldon Park's Compliance Program.

9.2. Sheldon Park will use its best endeavours to ensure the Trade Practices Compliance Program Review Report is completed and will provide a copy to the ACCC within 14 days of its receipt from the Reviewer.

9.3. Sheldon Park shall implement promptly and with due diligence any recommendations made by the Reviewer and required by the ACCC that are reasonably necessary to ensure that Sheldon Park maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.

10. Requests by ACCC

10.1. If requested by the ACCC Sheldon Park shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.

10.2. In the event the ACCC has sufficient reason to suspect the Compliance Program is not being implemented effectively, Sheldon Park shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Review Report to be provided to the ACCC.