

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

BY



CARPET ONE AUSTRALASIA LIMITED

BACKGROUND

1. Carpet One Australasia Limited (ACN. 068 532 794) ("Carpet One Australasia") is a company incorporated in the State of Queensland.
2. Carpet One Australasia acts as a co-operative buying vehicle for its members who comprise of retail store owners who retail carpet and other floor coverings under the business name of *Carpet One*.
3. Carpet One Australasia acquires carpet and other floor coverings which it in turn sells to its members.
4. Carpet One Australasia's members, as well as purchasing carpet and other floor coverings from Carpet One Australasia, also purchase these products directly from carpet importers and manufacturers. Carpet One Australasia negotiates with manufacturers and importers terms for the purchase by its members of products directly from them.
5. Carpet One Australasia provides a recommended retail price to its members for products purchased by them from Carpet One Australasia and from carpet manufacturers and importers.
6. Carpet One Australasia also produces promotional material for its members as part of national marketing campaigns.
7. In April 2000, June 2000 and October 2000 Carpet One Australasia produced three separate catalogues which advertised carpet and other floor coverings for sale at *Carpet One* stores ("the catalogues"). 1.3 million copies of each catalogue was distributed by Carpet One Australasia to its members who then organised to have the catalogues letter box dropped or included in newspapers.
8. Each product advertised in the first two catalogues had next to it a price per square metre which was represented as a *Recommended Retail Price* and another price per square metre which was represented as a *Now* price. In the third catalogue, each product advertised therein had next to it a price per square metre which was represented as a *Retail Price* and another price per square metre which was represented as a *Right Price*. The April 2000 catalogue also included the representations *20-40% OFF* and *15-30% OFF*.

9. The represented *Recommended Retail Price* or *Retail Price* in relation to each product advertised in the catalogues was the recommended retail price provided by Carpet One Australasia to its members in respect of that product and did not reflect the price at which the product had previously been offered for sale by most *Carpet One* stores. The price at which most *Carpet One* stores had previously offered for sale each product advertised in the catalogues was less than the represented *Recommended Retail Price* or *Retail Price*.
10. The April 2000 and October 2000 catalogues also included the representation *12 months interest free* on their front covers. The small print qualifier on the back pages of these catalogues stated *Interest free is for a period of twelve months from the completion of installation and is on selected items only*.
11. The Commission is of the view that Carpet One Australasia was knowingly concerned in a contravention of sections 52, 53(a) and 53(e) of the *Trade Practices Act 1974* ("the Act") by producing catalogues which:
- (a) referred to particular prices as a *Recommended Retail Price* when such prices were not the retail prices recommended by the manufacturers or importers of the respective products to which those prices applied;
 - (b) stated *20-40% OFF* and *15-30% OFF* and/or used the term *Recommended Retail Price* or *Retail Price* next to certain prices listed in the catalogues when such prices were not the prices at which the products which they applied to were previously offered for sale by most *Carpet One* stores; and
 - (c) misrepresented that a 12 months interest free offer applied to all products promoted therein.

UNDERTAKINGS

12. Carpet One Australasia hereby undertakes for the purposes of section 87B of the Act:
- (a) that any form of advertising which it produces will not refer to a price in connection with a product as a *Recommended Retail Price* without sufficient qualification when that price is not the price recommended by the manufacturer or importer of that product;
 - (b) that any form of advertising which it produces will not compare the price at which a product is being offered for sale with another price which is referred to as a *Recommended Retail Price* or a *Retail Price* when the later price is not the price at which the product is commonly offered for sale in the marketplace;

- (c) that any form of advertising which it produces that refers to an *interest free offer* that only applies to some items which are promoted in the advertising, will prominently disclose that the *interest free offer* only applies to some of the advertised products;
- (d) that it will publish in the next advertising catalogue that it produces for distribution by its members following the date of acceptance of this undertaking a corrective notice on the second page of the catalogue in the form of Annexure A which will be of a size not less than 10cm wide and 10cm high;
- (e) that it will provide to the Commission a copy of the advertising catalogue which it produces containing the corrective notice referred to in paragraph (13)(d) above within 7 days following production of the catalogue;
- (f) that it will arrange for publication in the next two successive editions of the trade journal "Australian Flooring" following the date of acceptance of this undertaking an article approved by the Commission outlining the background to it providing this undertaking, the details of this undertaking and the ways in which the practice of two-price advertising could breach the Act;
- (g) that it will provide to the Commission each edition of the trade journal "Australian Flooring" in which the article referred to in paragraph (13)(f) above appears within 10 days following the distribution of each such edition;
- (h) that within four months following the date of acceptance of this undertaking it will create and implement a trade practices compliance program with respect to Part V of the Act in accordance with Australian Standard AS 3806-1998 ("the Program");
- (i) that as part of the Program it will:
 - (i) demonstrate commitment to a policy of compliance and embed a culture of compliance throughout the organisation;
 - (ii) analyse and respond to trade practices matters resulting in this undertaking;
 - (iii) identify risk areas for trade practices breaches and develop systems to eliminate or minimise these risks;
 - (iv) state that the company will take action internally against those responsible for breaches and will not indemnify them; and

- (v) provide practical and verifiable training for all relevant staff and management so that breaches and potential breaches may be prevented or otherwise detected, referred and acted upon;
- (vi) conduct trade practices compliance training for its Board members and staff with regard to Part V of the Act that will:
- (1) aim to create a culture of compliance within Carpet One Australasia and to prevent, so far as reasonably possible, any contraventions of Part V of the Act by Carpet One Australasia, its officers, employees or agents; and
 - (2) cover those officers, employees and agents of Carpet One Australasia whose duties could result in their being concerned in conduct that might breach Part V of the Act;
- (j) that it will cause at its own expense an independent audit of the Program to be conducted annually from the date of acceptance of the undertaking for a period of three years. The audit shall be carried out by a suitably qualified compliance professional with expertise in developing and/or reviewing trade practices compliance programs and who is entirely independent of Carpet One Australasia. Such an auditor will qualify as independent on the basis that he or she:
- is not a present or past staff member or director of Carpet One Australasia;
 - has not acted or does not act for Carpet One Australasia;
 - is not retained by Carpet One Australasia in any other capacity;
 - has not and does not provide consultancy or other services to Carpet One Australasia; and
 - has no substantial shareholding or other interest in Carpet One Australasia.

The auditor shall review and report on:

- (i) Carpet One Australasia's adherence to these undertakings over the preceding 12 months;
 - (ii) the implementation of the Program and the achievement of its objectives over the preceding 12 months; and
 - (ii) any recommended changes to the Program that may be necessary to ensure achievement of its objectives;
- (k) that it will cause the independent auditor to complete the review and provide a copy of his or her report to Carpet One Australasia and to

the Commission within 30 days of the end of each 12 month period;
and

- (i) that it will implement as part of the Program all recommendations that are made by the independent auditor.

ACKNOWLEDGMENTS

- 13. Carpet One Australasia acknowledges that the Commission will make this undertaking available for public inspection.
- 14. Carpet One Australasia acknowledges that the Commission will from time to time publicly refer to this undertaking.

IN WITNESS OF THIS UNDERTAKING

The common seal of CARPET ONE AUSTRALASIA LIMITED (ACN 068 532 794) was hereunto affixed by authority of its Board of Directors in the presence of:

Director: [Signature]

Director/Secretary: [Signature]

DATED this 2ND day of October



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

Chairman: [Signature]

DATED this 12 day of October 2001

Annexure A

Following action by the Australian Competition and Consumer Commission, Carpet One Australasia Pty Ltd wishes to apologise to consumers in relation to the misleading representations referred to below which appeared in the May 2000, July 2000 and November 2000 advertising catalogues which it produced.

In these catalogues the advertised price of each product was represented as either a "Right Price" or a "Now" price and was compared with another price which was represented as a "Recommended Retail Price" or a "Retail Price".

The prices in the catalogues which were represented as a "Recommended Retail Price" or a "Retail Price" did not reflect the prices at which the advertised products were commonly offered for sale in the marketplace nor the prices at which most Carpet One stores had previously offered for sale the advertised products. The prices represented as a "Now" price or a "Right Price" were approximately the prices at which most retailers in the marketplace sold the advertised products.