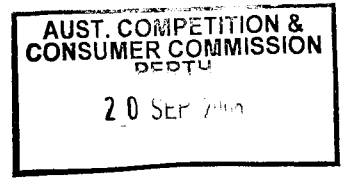


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**TRADE PRACTICES ACT 1974**

**UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION GIVEN FOR THE PURPOSE OF SECTION 87B**

**BY**

**MR EUGENI YURIEVICH TSVETNENKO**

**PERSONS GIVING THIS UNDERTAKING**

1. This Undertaking is given to the Australian Competition & Consumer Commission (ACCC) by Mr Eugeni Yurievich Tsvetnenko of 20 Gateway Boulevard, Canning Vale, in the state of Western Australia, under section 87B of the *Trade Practices Act 1974* (TPA).

**BACKGROUND**

2. On 7 March 2006 Mr Tsvetnenko commenced trading under the business name Mobile Adverts. Mobile Adverts operates an adult entertainment chat service using mobile telephone short messaging services (SMS).
3. On 9 June 2006 Zhenya Enterprises Pty Ltd (ACN 120 137 804) with Mr Tsvetnenko as the sole director commenced trading under the business name Mobile Adverts.
4. During the period 23 March 2006 to 27 April 2006, Mobile Adverts advertised in the "She seeks Him" section of the Quokka classifieds promoting a service called SecureDate (the advertisements). The Quokka classifieds are distributed by hardcopy newspaper in Perth, Western Australia and also published on the internet at [www.quokka.com.au](http://www.quokka.com.au).
5. The Mobile Adverts advertisements made representations including:
  - a) users of the SecureDate service could make contact with the people profiled in the advertisements for possible introduction and dating;
  - b) users of the SecureDate service could list their own profile on SecureDate and to other users; and
  - c) the maximum call cost is \$4.99.
6. Following ACCC enquiries, Mr Tsvetnenko advised that:
  - a) SecureDate is not in fact a dating or personal introduction service;
  - b) customers using the SecureDate service are charged a total of \$5.00 when sending an SMS and receiving a response SMS whilst using the service;
  - c) all profiles listed on SecureDate were for entertainment chat purposes only and users of the service in fact communicated only with Mobile Adverts employed chat operators; and
  - d) the SecureDate service did not have the facility to list the profiles of its users who wished to list their profile.

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7. The ACCC have assessed the representations made in the SecureDate advertisement and the response from Mr Tsvetnenko. The ACCC is concerned that Mobile Adverts' conduct was misleading or deceptive and may contravene sections 52, 53(c) and 53(e) of the TPA. Mr Tsvetnenko has acknowledged the ACCC's concerns that he may have been in contravention of sections 52, 53(c) and 53(e) of the TPA.
  8. In response to the ACCC's concerns Mr Tsvetnenko has offered the ACCC court enforceable undertakings pursuant to section 87B of the TPA in the terms set out below.

### **COMMENCEMENT OF UNDERTAKINGS**

9. This Undertaking comes into effect when the ACCC accepts the Undertaking which has been executed by Mr Tsvetnenko.
10. Upon commencement of this Undertaking, Mr Tsvetnenko undertakes to assume the obligations set out in paragraphs 10 to 14.

### **UNDERTAKINGS**

#### **Advertising and selling practices**

11. Mr Tsvetnenko undertakes not to make representations:
  - a) that Mobile Adverts provide dating or introduction services, when that is not the case;
  - b) that the price of the services advertised by Mobile Adverts is the total price, where there are additional costs or charges that apply; and
  - c) that customer profiles can be listed on dating or introductory services advertised by Mobile Adverts, when there is no facility to list customer profiles;whether by himself his servants or agents or otherwise being directly or indirectly knowingly concerned in such conduct by a corporation.

#### **Trade Practices Compliance program**


12. Within a period of 3 months from the commencement of this Undertaking, Mr Tsvetnenko will establish a Trade Practices Compliance Program (the Compliance Program) in accordance with the requirements set out in **Annexure A**.

### **ACKNOWLEDGEMENTS**

13. Mr Tsvetnenko acknowledges that the ACCC will make this Undertaking available for public inspection.
14. Mr Tsvetnenko further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.

15. Mr Tsvetnenko acknowledges and accepts that these Undertakings in no way derogate from the rights and remedies available to any other person arising from the alleged conduct.

**EXECUTED BY**

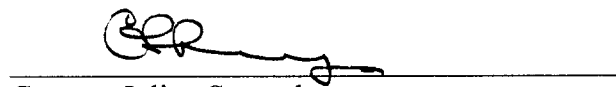


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Signature of Eugeni Yurievich Tsvetnenko

This 19 day of September 2006.

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



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Graeme Julian Samuel  
Chairperson

This 11 day of October 2006.



**ANNEXURE A:**

**COMPLIANCE PROGRAM UNDERTAKINGS AND ORDERS**

**Section 87B Undertaking**

Mr Eugeni Yurievich Tsvetnenko undertakes, to the Australian Competition and Consumer Commission (“**the ACCC**”), for the purposes of section 87B of the *Trade Practices Act 1974* (**the TPA**) that he will design and implement a Trade Practices Compliance Program covering sections 52, 53(c) and 53(e) of the TPA in accordance with the requirements set out below and will maintain and continue to implement the Trade Practices Compliance program for a period of 2 years from the date of the Undertaking coming into effect.

**1. Training**

- 1.1. Within 3 months of this Undertaking coming into effect Mr Tsvetnenko will attend a practical trade practices training session focusing on sections 52 and 53 of the TPA.
- 1.2. Mr Tsvetnenko will ensure that the training referred to in paragraph 1.1 above is administered by a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law.
- 1.3. Mr Tsvetnenko will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 1.1 above to the ACCC within 14 days of completion of the training verifying that such training has occurred.

**2. Complaints handling**

2.1. Mr Tsvetnenko will:

- 2.1.1. develop procedures for recording, storing and responding to trade practices complaints within two months of this Undertaking coming into effect; and
  - 2.1.2. if requested, provide the ACCC with an outline of the complaint handling system developed within two month of the Undertaking coming into effect.
3. If requested by the ACCC, Mr Tsvetnenko will provide, at his own expense, copies of any other documents or information in respect of matters which are the subject of the Compliance Program.