

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

BY

**HAGEMEYER BRANDS AUSTRALIA PTY LIMITED ACN 001 375 686
trading as HAGEMEYER APPLIANCES**

PERSON GIVING UNDERTAKING

1. This undertaking (the "**Undertaking**") is given to the Australian Competition and Consumer Commission (the "**Commission**") by Hagemeyer Brands Australia Pty Limited (ACN 001 375 686) (trading as Hagemeyer Appliances) of 104 Vanessa Street, Kingsgrove, New South Wales ("**Hagemeyer**") pursuant to section 87B of the *Trade Practices Act 1974* (the "**TPA**").

BACKGROUND

2. Hagemeyer carries on business in Australia as, among other things, an importer and distributor of electrical products including air conditioning units. Hagemeyer is the only accredited distributor of Dimplex air conditioning products in Australia. Hagemeyer's distribution of Dimplex air conditioning products is conducted wholly within Hagemeyer's Major Electrical Appliances business unit which trades under the brands Dimplex, Blanco and De Dietrich ("**MEA**").
3. Between approximately September 2005 and June 2006, Hagemeyer, in trade or commerce and in connection with the promotion and sale of particular Dimplex air conditioners (the "**Products**"), represented that the hydrofluorocarbon refrigerant R407C gas used in the Products was environmentally friendly when this was not the case (the "**Representation**").
4. Hagemeyer made the Representations in promoting the Products in the following media:
 - (a) the "*Come Home to Cool*" brochure distributed between September and December 2005 (the "**Brochure**");
 - (b) on its website located at URL: <http://www.hlbcorporate.com.au> and the Dimplex website located at URL: <http://www.dimplex.australia.com.au> (the "**Websites**") between September 2005 and 2 June 2006;

- (c) in an article that appeared in the September 2005 edition of the "*Appliance Retailer*" trade magazine.
5. The Commission is concerned that by making the Representation, Hagemeyer may have:
- (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of section 52 of the TPA; and
- (b) represented that the products have performance characteristics they do not have, in contravention of section 53(c) of the TPA.
6. The Commission is concerned that the Representations may be misleading as the refrigerant R407C is not environmentally friendly and will contribute to global warming if released into the atmosphere.
7. Hagemeyer has removed the Representation from the Websites and ceased distribution of the Brochure.
8. In response to the Commission's concerns, Hagemeyer has offered to give the Undertaking in the terms set out in this document to the Commission pursuant to section 87B of the TPA. The Commission has agreed to accept the Undertakings under section 87B of the TPA.

COMMENCEMENT OF UNDERTAKINGS

9. These Undertakings come into effect when:
- (a) the Undertaking is executed by Hagemeyer; and
- (b) the Commission accepts the Undertaking so executed.

UNDERTAKINGS

Cease and refrain from making the Misleading Representation

10. Hagemeyer undertakes that it will, for a period of 5 years from the date of this Undertaking coming into effect, whether by itself, its directors, servants or agents or otherwise howsoever, in trade or commerce, in connection with the supply or possible supply or in connection with the promotion by any means of the supply or use of air conditioning units containing R407C gas, refrain from representing that R407C gas or the Products that use R407C gas are environmentally friendly.

Corrective Notices

11. Hagemeyer undertakes that it will, at its own expense within 30 days of the date of this Undertaking coming into effect:
- (a) write and use its best endeavours to cause to be sent to all persons, to whom it supplied a copy or copies of the Brochure, a corrective letter in the form and terms of "**Annexure A**";
 - (b) use its best endeavours to cause to be published in the next available edition of the "*Appliance Retailer*" trade magazine a corrective notice in the form and terms of "**Annexure B**";
 - (c) cause to be published on the Websites a notice, in the form and terms of "**Annexure C**", which notice will be:
 - (i) accessible through a prominent one-click link entitled "*Trade Practices Act: Corrective Notice*";
 - (ii) in text which is in a type not less than 10 font size print; and
 - (iii) maintained on the Website for a period of not less than 60 continuous days.


Trade Practices Compliance Program

12. Hagemeyer undertakes that it will:
- (a) establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in "**Annexure D**") for the employees or other persons involved in Hagemeyer's business, being a program designed to minimise Hagemeyer's risk of future breaches of sections 52, 53 and 55 of the TPA and to ensure its awareness of the responsibilities and obligations in relation to the requirements of sections 52, 53 and 55 of the TPA within 6 months of the date of this Undertaking coming into effect;
 - (b) 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
 - (c) provide, at its own expense, a copy of any documents required by the Commission in accordance with **Annexure D**.

Acknowledgments

- 13. Hagemeyer acknowledges that the Commission will make this undertaking available for public inspection.
- 14. Hagemeyer further acknowledges that the Commission will from time to time publicly refer to this undertaking.
- 15. Hagemeyer further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- 16. Hagemeyer further acknowledges that a summary of the Commission Compliance Program Review reports referred to in **Annexure D** of the Undertaking may be held with this undertaking on the public register.

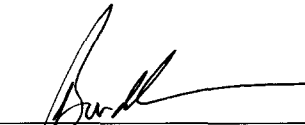
Executed by Hagemeyer Brands Australia Pty Ltd ACN 001 375 686 pursuant to section 127(1) of the Corporations Act 2001 in the presence of:



Signature of Director

MICHAEL P. TOUMA

Name of Director in full

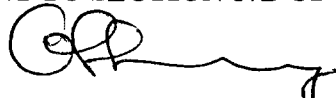


Signature of Secretary/~~other Director~~

CAREY JOHN BOWLER

Name of Secretary/~~other Director~~ in full

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



Graeme Julian Samuel
Chairman

Dated: 30 October 2006

ANNEXURE A

TEXT OF CORRECTIVE LETTER TO PERSONS WHO RECEIVED THE BROCHURE

[Dimplex/Hagemeyer Appliances Letterhead]

Dear *[insert name of addressee]*

Dimplex Air Conditioners- Environmental Claims- Corrective Notice

We recently gave an undertaking to the Australian Competition and Consumer Commission (the "ACCC") in relation to claims made that certain Dimplex air-conditioner products were "environmentally friendly" which may be in breach of the *Trade Practices Act 1974* (the TPA).

In the period from September 2005 to December 2005, we made representations in our "Come Home to Cool" brochure concerning the environmental benefits of certain Dimplex air conditioning units containing the hydrofluorocarbon refrigerant R407C gas (the "**Dimplex air conditioning units**"). The same representations were made between September 2005 and 2 June 2006 on our website located at URL www.hldcorporate.com.au, as well as on the Dimplex website located at URL www.dimplex-australia.com.au.

The ACCC is concerned that Hagemeyer Appliances may have contravened the TPA, and in particular, Hagemeyer may have:

- engaged in misleading or deceptive conduct in breach of section 52 of the TPA; and
- represented that the **Dimplex air conditioning units** have performance characteristics they do not have in breach of section 53(c) of the TPA.

Section 52 of the TPA prohibits a corporation from engaging in misleading or deceptive conduct. Section 53(c) of the TPA prohibits a corporation from falsely representing that a good has a performance characteristic it does not have.

We wish to draw your attention to the fact that the hydrofluorocarbon refrigerant R407C is a greenhouse gas which will contribute to global warming if released into the atmosphere. While R407C gas is less harmful to the environment than certain hydrochlorofluorocarbon refrigerants such as R22 gas, R407C gas is not considered "environmentally friendly".

As part of the ACCC undertaking, we have also agreed to refrain from making similar representations concerning the **Dimplex air conditioning units** in the future and to strengthen our trade practices compliance program.

We request that you destroy all copies of the "Come Home to Cool" brochure that remain in your possession or control or, if you would prefer, return them to us at the address above at our expense.

If you have any queries about this letter or about any Dimplex product you have purchased, please call us on *[contact phone number]*.

We apologise to our customers who may have been misled by these representations.

Yours sincerely

[insert name and position title]

Hagemeyer Appliances

ANNEXURE B

TEXT OF CORRECTIVE NOTICE TO BE PUBLISHED IN THE APPLIANCE RETAILER

Dimplex Air Conditioners- Environmental Claims— Correction

The distributor of Dimplex air-conditioner products in Australia, Hagemeyer Appliances, recently gave an undertaking to the Australian Competition and Consumer Commission (the "ACCC") in relation to claims made that certain Dimplex air-conditioner products were "environmentally friendly" which may be in breach of the *Trade Practices Act 1974* (the TPA).

The September 2005 issue of *Appliance Retailer* contained an article that included statements to the effect that certain Dimplex air-conditioner products were "environmentally friendly". The statements concerned the environmental benefits of certain Dimplex air conditioning units containing the hydrofluorocarbon refrigerant R407C gas.

The ACCC is concerned that Hagemeyer Appliances may have contravened the TPA, in particular, Hagemeyer may have:

- engaged in misleading or deceptive conduct in breach of section 52 of the TPA; and
- represented that the Dimplex air conditioning units have performance characteristics they do not have in breach of section 53(c) of the TPA.

As part of the ACCC undertaking, please note that the hydroflouorocarbon refrigerant R407C is a greenhouse gas which will contribute to global warming if released into the atmosphere. While R407C gas is less harmful to the environment than certain hydrochlorofluorocarbon refrigerants such as R22 gas, R407C gas is not considered "environmentally friendly".

Hagemeyer Appliances apologises to our customers who may have been misled by these representations.

ANNEXURE C

TEXT OF CORRECTIVE NOTICE TO BE PUBLISHED ON THE WEBSITES

Dimplex Air Conditioners- Environmental Claims- Corrective Notice

The distributor of Dimplex air-conditioner products in Australia, Hagemeyer Appliances, recently gave an undertaking to the Australian Competition and Consumer Commission (the "ACCC") in relation to claims made that certain Dimplex air-conditioner products were "environmentally friendly" which may be in breach of the *Trade Practices Act 1974* (the TPA).

The September 2005 issue of *Appliance Retailer* contained an article that included statements to the effect that certain Dimplex air-conditioner products were "environmentally friendly". The statements concerned the environmental benefits of certain Dimplex air conditioning units containing the hydrofluorocarbon refrigerant R407C gas.

The ACCC is concerned that Hagemeyer Appliances may have contravened the TPA, and in particular, Hagemeyer may have:

- engaged in misleading or deceptive conduct in breach of section 52 of the TPA; and
- represented that the Dimplex air conditioning units have performance characteristics they do not have in breach of section 53(c) of the TPA.

As part of the ACCC undertaking, we draw your attention to the fact that the hydrofluorocarbon refrigerant R407C is a greenhouse gas which will contribute to global warming if released into the atmosphere. While R407C gas is less harmful to the environment than certain hydrochlorofluorocarbon refrigerants such as R.22 gas, R407C gas is not considered "environmentally friendly".

Hagemeyer Appliances apologises to our customers who may have been misled by these representations.

ANNEXURE D

TRADE PRACTICES COMPLIANCE PROGRAM

Hagemeyer will establish a Trade Practices Compliance Program (the Compliance Program) that complies with each of the following requirements:

Appointments

1. Within one month of the date of the Undertaking coming into effect Hagemeyer will appoint a Director or a Senior Manager of the business, whose responsibilities are to include the development, implementation and maintenance of the Compliance Program and who reports directly to the company Board or governing body (the "**Compliance Officer**").
2. Hagemeyer shall appoint a qualified, internal or external compliance professional with expertise in trade practices issues (the "**Compliance Advisor**") within 1 month of the Undertaking coming into effect, for the purposes set out in paragraph 3.
3. Hagemeyer shall instruct the Compliance Advisor to conduct a Trade Practices Act risk assessment (the "**Risk Assessment**") in accordance with 3.1-3.4 below:
 - 3.1 identify the areas where Hagemeyer is at risk of breaching sections 52, 53 and 55 of the TPA;
 - 3.2 assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Hagemeyer should they occur;
 - 3.3 identify where there may be gaps in Hagemeyer's existing procedures for managing these risks; and
 - 3.4 provide recommendations for action having regard to the assessment.

Compliance Policy

4. Hagemeyer will issue a policy statement for all its Business Units outlining Hagemeyer's commitment to trade practices compliance (the "**Compliance Policy**"). Hagemeyer will ensure the Compliance Policy:
 - 4.1 is written in plain language;
 - 4.2 contains a statement of commitment to compliance with the TPA;

- 4.3 contains a requirement for all staff to report any compliance related issues and trade practices compliance concerns to the Compliance Officer; and
- 4.4 contains a clear statement that Hagemeyer will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the TPA and will not indemnify them.

Complaints Handling System

- 5. Hagemeyer will ensure that the Compliance Program includes a trade practices complaints handling system. Hagemeyer shall use its best endeavours to ensure this system is consistent with AS/ISO 10002:2006 *Customer satisfaction - Guidelines for complaints handling in organizations*, though tailored to Hagemeyer's circumstances. Hagemeyer will ensure that staff and customers are made aware of the complaints handling system.

Training

- 6. Hagemeyer will ensure that the Compliance Program includes a requirement for regular (at least once a year) and practical trade practices training for all employees of Hagemeyer, whose duties could result in them being concerned with conduct that may contravene sections 52, 53 and 55 of the TPA. The training program will be designed to ensure the employees' awareness of the responsibilities and obligations in relation to Part V of the TPA, and in particular sections 52, 53 and 55 of the TPA. Hagemeyer must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
- 7. Hagemeyer will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new employees whose duties could result in them being concerned with conduct that may contravene sections 52, 53 and 55 of the TPA.

Reports to Senior Management

- 8. Hagemeyer will ensure that the Compliance Officer reports to the Board, General Management Team and/or senior management meetings every 6 months on the continuing effectiveness of the Compliance Program.

Supply of Compliance Program Documents to the Commission

- 9. Hagemeyer shall, at its own expense, within 6 months of the date of this Undertaking coming into effect, cause to be produced and provided to the Commission copies of each of the

documents constituting the Compliance Program. Hagemeyer will implement promptly and with due diligence any recommendations the Commission may make that are reasonably necessary to ensure that Hagemeyer maintains and continues to implement the Compliance Program in accordance with the Undertaking.

Review

10. Hagemeyer shall, at its own expense, cause annual reviews of the Compliance Program in respect of MEA (the "**Reviews**") to be carried out in accordance with each of the following requirements:
- 10.1 **Scope of the Review** - the Reviews should be broad and rigorous enough to provide Hagemeyer and the Commission with supportable verification that MEA has in place a program that complies with each of the requirements detailed in paragraphs 1-9 above and to provide the Review reports and opinions detailed at point 11 below.
- 10.2 **Independence of Reviewer** - Hagemeyer shall ensure that the Reviews are 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:
- 10.2.1 did not design or implement the Compliance Program;
- 10.2.2 is not a present or past staff member or director of Hagemeyer;
- 10.2.3 has not acted and does not act for Hagemeyer in any trade practices related matters;
- 10.2.4 has not and does not act for or consult to Hagemeyer or provide other services on trade practices related matters other than Compliance Program reviewing; and
- 10.2.5 has no significant shareholding or other interests in Hagemeyer.
- 10.3 **Evidence** - Hagemeyer shall use its best endeavors to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in Hagemeyer's possession or control, including without limitation:
- 10.3.1 enquiries of any officers, employees, representatives, agents and stakeholders of Hagemeyer;

- 10.3.2 Hagemeyer's records, including the company's complaints register/reports and any documents relevant to the Hagemeyer training or induction program; and
 - 10.3.3 documents created by Hagemeyer's consultants and legal practitioners for use in the Compliance Program in respect of MEA.
- 10.4 Hagemeyer 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.

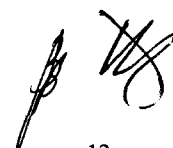
Reporting

11. Hagemeyer shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in two separate reports as outlined below:

Company MEA Compliance Program Review Report (to be provided to Hagemeyer)

- 11.1 Hagemeyer's Company MEA Compliance Program Review Report will provide particular and specific information regarding the performance of the Trade Practices Compliance Program in respect of MEA including:
- 11.1.1 if, and to what extent, the Compliance Program in respect of MEA includes all the elements detailed in paragraphs 1-10 above;
 - 11.1.2 if, and to what extent, the Trade Practices Compliance Program in respect of MEA adequately covers the parties and areas identified in the *initial Risk Assessment in respect of MEA*;
 - 11.1.3 if, and to what extent, MEA's trade practices training is effective;
 - 11.1.4 if, and to what extent, MEA's complaints handling system is effective;
 - 11.1.5 recommendations for rectifying deficiencies in 11.1.1 - 11.1.4 that the Reviewer thinks are reasonably necessary to ensure that MEA maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

Commission MEA Compliance Program Review Report (to be provided to the Commission)



- 11.2 The Commission MEA Compliance Program Review Report will supply particular and specific information regarding the scope of the Review and the effectiveness of the Trade Practices Compliance Program in respect of MEA including:
- 11.2.1 details of the evidence gathered and examined during the Review;
 - 11.2.2 the name and relevant experience of the person appointed as the company Compliance Officer;
 - 11.2.3 the Reviewer's opinion on whether MEA has in place an effective Trade Practices Compliance Program that complies with the requirements detailed in paragraph 1 - 10 above;
 - 11.2.4 actions recommended by the Reviewer to ensure the continuing effectiveness of the Hagemeyer Trade Practices Compliance Program in respect of MEA;
 - 11.2.5 confirmation that any actual and potential inadequacies in Hagemeyer's Compliance Program in respect of MEA have been brought to the attention of the Compliance Officer and the General Management Team;
 - 11.2.6 confirmation that the Reviewer has revisited any actual and potential inadequacies in Hagemeyer's Compliance Program in respect of MEA identified in the previous Company MEA Compliance Program Review Report, and assessed how they have been addressed by Hagemeyer;
 - 11.2.7 any reservations that the Reviewer might have about the reliability and completeness of the information to which the Reviewer had access in the conduct and reporting of the Review; and
 - 11.2.7 any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.
- 11.3 Hagemeyer will ensure that the Review Reports are completed and provided to Hagemeyer within two months of each Review.
- 11.4 Hagemeyer will retain the Company MEA Compliance Program Review Report and cause the Commission MEA Compliance Program Review Report to be provided to the Commission within 14 days of its receipt from the Reviewer.

12. **Recommendations** - Hagemeyer shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the Commission, that are reasonably

necessary to ensure that MEA maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.

13. Hagemeyer shall, at its own expense, if requested by the Commission, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
14. In the event the Commission has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Hagemeyer shall, at its own expense and if requested by the Commission, cause an interim or additional Review to be conducted and cause the resulting Review Report to be provided to the Commission.