

**TRADE PRACTICES ACT 1974**

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

**BY**

**SCOTTY'S PREMIUM PET FOODS FRANCHISING PTY LTD**

**AND**

**SUZANNE SCOTT**

**PERSONS GIVING UNDERTAKING**

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Scotty's Premium Pet Foods Franchising Pty Ltd (Scotty's) of c/ Level 14, 120 Edward Street, Brisbane in the State of Queensland, and Suzanne Scott of c/ Level 14, 120 Edward Street, Brisbane in the State of Queensland, under section 87B of the *Trade Practices Act 1974* ("the Act").

**BACKGROUND**

1. Scotty's is the franchisor of a pet food distribution service. Suzanne Scott is a director and shareholder of Scotty's.
2. On 18 September 2006, the Commission notified Scotty's as to its concerns that Scotty's, in its dealings with franchisees between 2004 and 2006 and in particular in relation to its issuing of notices of breach to each franchisee in September 2006 threatening termination of the franchises within 14 days, may have contravened the Franchising Code of Conduct ("the Code"), in contravention of section 51AD of the Act, and/or engaged in unconscionable conduct in contravention of section 51AC of the Act.
3. In response to the Commission's concerns, Scotty's has withdrawn the notices of breach it issued, and Scotty's and Suzanne Scott have offered this undertaking pursuant to section 87B of the Act.

**COMMENCEMENT OF UNDERTAKING**

4. This undertaking comes into effect when:
  - (a) The undertaking is executed by Scotty's and Suzanne Scott; and
  - (b) The undertaking so executed is accepted by the Commission.

**UNDERTAKINGS**

5. Scotty's undertakes:
  - (a) to withdraw, within 7 days of the date of this undertaking, any current purported notices of breach and termination against any of its franchisees and notify the franchisees of the withdrawal;

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- (b) for a period of 12 months from the date of this undertaking, not to issue any notice pursuant to section 21 of the Code to any Scotty's franchisee unless:
- (i) the notice allows at least 30 days for the franchisee to remedy the breach set out in the notice;
  - (ii) the notice complies with section 21(b) of the Code;
  - (iii) the notice gives sufficient particularity of any breach alleged and any remedial step sought, as to enable compliance by the franchisee;
  - (iv) the notice is sent after a "Solicitor's Certificate" (as defined below) is first obtained by Scotty's; and
  - (v) the notice and Solicitors Certificate are also copied to the Commission for its information.
6. The "Solicitor's Certificate" referred to herein means a certificate from a solicitor currently enrolled in any Australian State or Territory and having a current practising certificate as at the time of giving the certificate in which the solicitor:
- (a) Certifies that the solicitor is currently enrolled in an Australian State or Territory and has a current practising certificate;
  - (b) Certifies that the solicitor has been provided with the proposed breach notice, a copy of which is annexed to the certificate;
  - (c) Certifies that the solicitor considers the proposed breach notice to comply with the Code, that there is a reasonable basis for issuing the proposed breach notice, and that the solicitor considers he or she has been provided with sufficient information by Scotty's to form those assessments.
7. Scotty's further undertakes it will, within 30 days of the date of this undertaking, nominate and notify to its franchisees the name, contact details, and available contact times (being not less than 1 day per week in total) of a contact person, not being Suzanne Scott, who can be contacted by franchisees in relation to any dispute or potential dispute arising in relation to the franchise.
8. Scotty's further undertakes that it will not approach customers of an existing Scotty's franchisee to supply them directly with Scotty's products the subject of Scotty's franchises within the franchise area, unless:
- (a) it first provides the franchisee with 48 hours' notice; or
  - (b) the franchisee has notified Scotty's that it is unable or unwilling to service the customer; or
  - (c) the franchisee has failed to service the customer in accordance with the terms of its franchise agreement with Scotty's.
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