

TRADE PRACTICES ACT 1974

UNDERTAKING GIVEN TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION FOR THE PURPOSES OF SECTION 87B

BY

JB HI-FI GROUP PTY LTD (ACN 093 114 286)

PERSON GIVING UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by JB Hi-Fi Group Pty Ltd (ACN 093 114 286) (**JB Hi-Fi**) of 14 Spink Street, Brighton in the State of Victoria pursuant to Section 87B of the Trade Practices Act 1974 (**TPA**).

BACKGROUND

2. JB Hi-Fi is a retailer of home entertainment products, including audio visual equipment, photographic equipment, computers and computer peripherals, music compact discs and DVDs (including music DVDs, motion pictures and documentaries) (**home entertainment products**).
3. JB Hi-Fi operates through over 70 company-owned retail stores, located in all States and Territories of Australia (except Tasmania) and it employs in excess of 700 sales staff.
4. JB Hi-Fi advertises the home entertainment products in various media including catalogues that are distributed nationally. Between 28 February 2006 and 10 March 2006 JB Hi-Fi distributed a catalogue entitled "Cheapest TV Prices!" (**Catalogue**). In the Catalogue 45 home entertainment products were advertised at a discount that was represented as saving a nominated sum of money off each home entertainment product's recommended retail price (**RRP**). Those 45 products included Televisions, DVD/VCR Combos, DVD Recorders, Receivers, Home Theatre Systems, Speakers and Video Cameras (**Advertised Products**).
5. The ACCC was concerned the Catalogue may have misled or deceived consumers into believing that JB Hi-Fi or its competitors operating within the same geographical markets as its stores, had within a reasonable period of time prior to the distribution of the Catalogue sold in reasonable quantities the Advertised Products at the RRP when this may not in fact have been the case. If so, such conduct may have breached sections 52 and 53(a) and (e) of the TPA.
6. The TPA prohibits a corporation, in trade or commerce, from:
 - 6.1 engaging in conduct that is misleading or deceptive or is likely to mislead or deceive (section 52);
 - 6.2 in connexion with the promotion by any means of the supply of goods:
 - 6.2.1 falsely representing the goods are of a particular value or have had a particular history (section 53(a)); and
 - 6.2.2 making a false or misleading representation with respect to the price of goods (section 53(e)).

7. The ACCC was particularly concerned by the inclusion of Soniq brand televisions (**Soniq Products**) in the Advertised Products for the reason the Soniq Products are manufactured exclusively for JB Hi-Fi and therefore are not available for purchase through any retailer other than JB Hi-Fi. The Soniq Products advertised in the Catalogue included a 127cm High Definition Plasma Television advertised for sale at \$2998.00 with a represented saving of \$3,000.00 off the RRP. This RRP was derived from a Samsung television with features said by JB Hi-Fi to be comparable to those of the Soniq television.
8. Whilst acknowledging the ACCC's concerns JB Hi-Fi has advised it relied on RRP information from the manufacturers and its general knowledge of the market in making the representations about the savings customers would receive on the Advertised Products. In addition (other than in relation to the Soniq Products) JB Hi-Fi believed most if not all of the Advertised Products had been sold by at least some of its major competitors in each State and Territory at the RRP. JB Hi-Fi has discontinued use of advertising that references any saving based on RRP for the products it sells.
9. Despite the explanation provided by JB Hi-Fi the ACCC remained concerned that JB Hi-Fi may have breached Sections 52 and 53(a) and 53(e) of the TPA in relation to the Advertised Products.
10. On a without admissions basis JB Hi-Fi has offered to give this Undertaking to the ACCC pursuant to Section 87B of the TPA and the ACCC has agreed to accept this Undertaking in order to resolve its concerns in respect of the Advertised Products.

COMMENCEMENT

11. This Undertaking comes into effect on the date being the later of the following:
 - 11.1 the date on which JB Hi-Fi executes the Undertaking; and
 - 11.2 the date on which the ACCC accepts the Undertaking, which acceptance is evidenced by the execution of the Undertaking.

UNDERTAKINGS

12. JB Hi-Fi undertakes for the purposes of section 87B of the TPA not to advertise for sale any product at a discount off the RRP unless:
 - 12.1 The product has been advertised for sale and sold at the RRP or equivalent by either JB Hi-Fi or any of its competitors operating within the same geographical markets:
 - 12.1.1 in reasonable quantities;
 - 12.1.2 for a reasonable period of time; and
 - 12.1.3 within a reasonable period of the date of the advertising.
 - 12.2 JB Hi-Fi has maintained records to support advertising claims of the type referred to in paragraph 12.1 of this undertaking.

TRADE PRACTICES COMPLIANCE PROGRAM

13. JB Hi-Fi undertakes to do the following:
 - 13.1 establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in Annexure A, for the employees or other persons involved in JB Hi-Fi's business, being a program designed to minimise JB Hi-Fi's risk of future breaches of sections 52, 53(a) and 53(e) of the TPA and to ensure its awareness of the

responsibilities and obligations in relation to the requirements of sections 52, 53(a) and 53(e) of the TPA by the dates provided for in Annexure A;


- 13.2 maintain and continue to implement the said Trade Practices Compliance Program for a period of 3 years from the date of the Undertaking; and
- 13.3 provide, at its own cost, a copy of any documents required by the ACCC in accordance with Annexure A.

ACKNOWLEDGMENTS

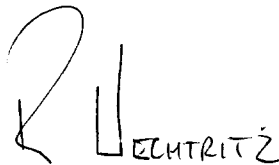
- 14. JB Hi-Fi acknowledges the ACCC's right to make this Undertaking available to the public, including by placing it on a register and publishing it.
- 15. JB Hi-Fi acknowledges that the ACCC may issue a media release about this Undertaking and may, from time to time, publicly refer to the Undertaking.
- 16. JB Hi-Fi acknowledges and accepts that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- 17. JB Hi-Fi further acknowledges that a summary of the Commission Compliance Program Review reports referred to in Annexure A of this Undertaking may be held with this Undertaking on the public register.

IN WITNESS OF THIS UNDERTAKING AND ITS AGREEMENTS

EXECUTED by JB HI-FI GROUP PTY LTD)
(ACN 093 114 286) by its authorised officers pursuant)
to section 127(1) of the Corporations Act 2001.)



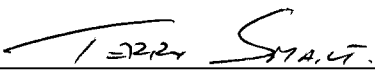
Signature of director



Name of director




Signature of director



Name of director

This 29th day of November 2006

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



Graeme Julian Samuel
Chairman

This 5th day of December 2006

Annexure A

TRADE PRACTICES COMPLIANCE PROGRAM

JB Hi-Fi will establish a Trade Practices Compliance Program that complies with each of the requirements set out in this Annexure A to the Undertaking (**the Compliance Program**).

Appointments

1. Within one month of the date of the Undertaking coming into effect, JB Hi-Fi 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. JB Hi-Fi shall appoint a qualified, internal or external compliance professional with expertise in trade practices issues (**the Compliance Advisor**) within one month of the Undertaking coming into effect, for the purposes set out in paragraph 3.
3. JB Hi-Fi shall instruct the Compliance Advisor to conduct a Trade Practices Act (TPA) risk assessment (**the Risk Assessment**) in accordance with 3.1 – 3.4 below:
 - 3.1. identify the areas where JB Hi-Fi is at risk of breaching sections 52 and 53(a) and 53(e) of the TPA;
 - 3.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of JB Hi-Fi, should they occur;
 - 3.3. identify where there may be gaps in JB Hi-Fi's existing procedures for managing these risks; and
 - 3.4. provide recommendations for action having regard to the assessment.

Compliance Policy

4. JB Hi-Fi will issue a policy statement outlining JB Hi-Fi's commitment to trade practices compliance (**the Compliance Policy**). JB Hi-Fi 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 JB Hi-Fi 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. JB Hi-Fi will ensure the Compliance Program includes a complaints handling system capable of identifying, classifying, storing and, where necessary, referring internal and external trade practices complaints.

Training

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

Reports to Senior Management

8. JB Hi-Fi will ensure that the Compliance Officer reports to the Board and/or senior management meetings every six months on the continuing effectiveness of the Compliance Program.

Supply of Compliance Program Documents to the ACCC

9. JB Hi-Fi shall, at its own expense, within four months of the date of this Undertaking coming into effect, cause to be produced and provided to the ACCC copies of each of the documents constituting the Compliance Program. JB Hi-Fi will implement promptly and with due diligence any recommendations the ACCC may make that are reasonably necessary to ensure that JB Hi-Fi maintains and continues to implement the Compliance Program in accordance with the Undertaking.

Review

10. JB Hi-Fi shall, at its own expense, cause annual reviews of the Compliance Program (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 JB Hi-Fi and the ACCC with supportable verification that JB Hi-Fi 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** – JB Hi-Fi 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 JB Hi-Fi;
 - 10.2.3. has not acted and does not act for JB Hi-Fi in any trade practices related matters;
 - 10.2.4. has not and does not act for or consult to JB Hi-Fi 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 JB Hi-Fi.
- 10.3. **Evidence** – JB Hi-Fi 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 JB Hi-Fi's possession or control, including without limitation:
 - 10.3.1. enquiries of any officers, employees, representatives, agents and stakeholders of JB Hi-Fi;
 - 10.3.2. JB Hi-Fi's records, including the company's complaints register/reports and any documents relevant to the JB Hi-Fi training or induction program; and
 - 10.3.3. documents created by JB Hi-Fi's consultants and legal practitioners for use in JB Hi-Fi's Compliance Program.
- 10.4. JB Hi-Fi 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. JB Hi-Fi 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 Compliance Program Review Report (to be provided to JB Hi-Fi)

- 11.1. JB Hi-Fi's Company Compliance Program Review Report will provide particular and specific information regarding the performance of the Compliance Program, including:

- 11.1.1. if, and to what extent, the Compliance Program includes all the elements detailed in paragraphs 1-10 above;
- 11.1.2. if, and to what extent, the Compliance Program adequately covers the parties and areas identified in the initial Risk Assessment;
- 11.1.3. if, and to what extent, the trade practices training is effective;
- 11.1.4. if, and to what extent, JB Hi-Fi's complaints handling system is effective; and
- 11.1.5. recommendations for rectifying deficiencies in 11.1.1 – 11.1.4. that the Reviewer thinks are reasonably necessary to ensure that JB Hi-Fi maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

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

- 11.2. The Commission Compliance Program Review Report will supply particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program, 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 JB Hi-Fi 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 Compliance Program;
 - 11.2.5. confirmation that any actual and potential inadequacies in the Compliance Program have been brought to the attention of the Compliance Officer and the governing body of JB Hi-Fi;
 - 11.2.6. confirmation that the Reviewer has revisited any actual and potential inadequacies in the Compliance Program identified in the previous Company Compliance Program Review Report, and assessed how they have been addressed by JB Hi-Fi;
 - 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

- 11.2.8. any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.
- 11.3. JB Hi-Fi will ensure that the Review Reports are completed and provided to JB Hi-Fi within two months of each Review.
- 11.4. JB Hi-Fi will retain the Company Compliance Program Review Report and cause the Commission Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
12. **Recommendations** - JB Hi-Fi shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC, that are reasonably necessary to ensure that JB Hi-Fi maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
13. JB Hi-Fi shall, at its own expense, if requested by the ACCC, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
14. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented in compliance with this Undertaking, JB Hi-Fi 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.