

TRADE PRACTICES ACT 1974

Undertaking to the Australian Competition and Consumer Commission given for
the purposes of section 87B

by

Bevilles Pty Ltd

ACN 005 064 308

Glossary

'Advertisement' means a catalogue, brochure, display, price ticket or on-line publication published or disseminated in any locality in Australia.

'Bevilles' means Bevilles Pty Ltd ACN 005 064 308.

'Catalogue Period' means the period when each Bevilles' catalogue remained current.

'Current Price Offer' means a representation of the price at which an item of jewellery is currently offered for supply to consumers.

'Higher Price' means a published price, whether the price is struck out, accompanied by the word 'Was' or otherwise identified as a price at which an item is not currently being offered for sale, which is higher in value to an adjacent Current Offer Price.

'Introductory Offer Items' has the meaning attributed in paragraph 4.

Background

- (1) Bevilles is a company incorporated in Australia which carries on a business of retailing jewellery from approximately 24 stores located in Victoria, New South Wales and South Australia and via an internet order service. Bevilles regularly produces catalogues promoting its jewellery.
- (2) From September 2005 to June 2006 Bevilles published and disseminated a number of catalogues each of which advertised certain jewellery products at prices that applied to sales during the catalogue period. Such catalogues included those entitled:
 - (a) "Up to 50% Off Gold Sale" - (catalogue period from 19 September to 23 October 2005);
 - (b) "Christmas Sale" - (catalogue period from 16 November 2005 to 22 January 2006);
 - (c) "Gifts Under Sale" - (catalogue period from 5 December 2005 to 22 January 2006);
 - (d) "Mother's Day Gift Voucher Sale" - (catalogue period from 17 April to 11 June 2006).

Approximately 1.2 million copies of each of these catalogues were distributed in Victoria, New South Wales and South Australia and were also available during the relevant catalogue periods on Bevilles' website.

- (3) Some of the jewellery items depicted and described in the catalogues listed in paragraph 2(a) to (d) were advertised with two prices, a high price struck through with a diagonal line above a more prominent lower price.
- (4) A number of the jewellery items so advertised also had a small asterisk following the struck through high price, which in some cases was substantially obscured by the diagonal line through the price. In some cases the word "NEW" appeared adjacent to this pricing information. At the base of some pages of the relevant catalogue in fine print was the statement "* introductory offer ends..." (**Introductory Offer Items**).

- (5) The Australian Competition and Consumer Commission (ACCC) considers that both the asterisk in the price display and the position and size of the statement “* introductory offer ends ...” were so lacking in prominence that consumers reading the catalogues would not be alerted to the introductory nature of the Introductory Offer Items.
- (6) The ACCC is concerned that Bevilles, in advertising jewellery items, including Introductory Offer Items, with a struck through high price above a more prominent lower price in these catalogues represented that:
- (a) the struck through high price was the price at which Bevilles usually sold such items of jewellery immediately preceding publication of the catalogue, when this was not the case; and
 - (b) the difference between the struck through high price and the lower price was the amount a consumer would save if she or he purchased such items of jewellery for the lower price during the catalogue period compared with what consumers paid to purchase each such item immediately preceding publication of the catalogue, when such was not the case;

as the Introductory Offer Items had not previously been sold at the advertised struck through high prices, and the prices consumers usually paid for some other such items in the 8 weeks immediately preceding publication of the catalogue were less than the advertised struck through high prices.

- (7) The ACCC considers that by making the representations particularised at paragraph 6 Bevilles has in trade or commerce:
- (a) engaged in conduct that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 52 of the *Trade Practices Act 1974* (Cth) (TPA); and
 - (b) made a false or misleading representation with respect to the price of goods, in contravention of section 53(e) of the TPA.
- (8) Bevilles acknowledges that the conduct particularised at paragraph 6 may have been misleading in contravention of the TPA.
- (9) On 7 April 2007, Bevilles at its own expense caused to be published a corrective notice in the form of **Attachment A** in A4 format and caused this notice to be distributed to residential letterboxes in each of the regions in which the “Mother’s Day Gift Voucher Sale” catalogue was distributed, using the same system or systems to manage that delivery as were used to manage the delivery of the “Mother’s Day Gift Voucher Sale” catalogue.

Commencement

- (10) This undertaking comes into effect when:
- (a) the undertaking is executed by Bevilles; and
 - (b) the ACCC accepts the Undertaking so executed
- (11) Upon the commencement of this Undertaking, Bevilles undertakes to assume the obligations set out in paragraph 12.

Undertakings

- (12) Bevilles makes the following undertakings for the purposes of section 87B of the TPA:

- (a) that it will not, and will ensure that its subsidiaries will not, for a period of 3 years from the date of this Undertaking coming into effect, in trade or commerce make in any Advertisement in conjunction with a Current Price Offer, which is not to extend for a period longer than eight weeks from the day of first publication of the Advertisement, a representation as to a Higher Price unless:
- (i) where Bevilles has sold the item of jewellery in the period of eight weeks ending on the day of first publication of the advertisement, the Higher Price is no greater than the price at which Bevilles most frequently supplied that item of jewellery in that period (excluding sales at prices set by reference to the status of the purchaser as a staff member or supplier to Bevilles); or
 - (ii) where Bevilles has not sold the item of jewellery in the period of eight weeks ending on the day of first publication of the advertisement, the item of jewellery was offered at the Higher Price for a period of no less than eight weeks immediately prior to the first publication of the advertisement in each store now making the Current Price Offer.
- (b) that it will at its own expense within 42 days of the date of this Undertaking coming into effect cause to be published:
- (i) at all points of sale, a corrective notice in the form of **Attachment A** of a size no less than A3 format, such notice to remain in place for 28 days; and
 - (ii) a corrective notice in the form of **Attachment A** of a size no less than A4 format and cause this notice to be as a pdf document linked directly to the front page of www.bevilles.com.au via a link no smaller than 10cm wide by 3cm high titled 'Corrective Notice', such notice to remain in place for 28 days.
- (c) that it will establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in **Attachment B**, for the employees or other persons involved in Bevilles business, being a program designed to minimise Bevilles risk of future breaches of Part V of the TPA and particularly sections 52 & 53(e) and to ensure its awareness of the responsibilities and obligations in relation to the requirements of Part V and particularly sections 52 & 53(e) within 3 months of the date of this Undertaking coming into effect;
- (d) that it will 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
- (e) that it will provide, at its own expense, a copy of any documents required by the ACCC in accordance with **Attachment B**.

Acknowledgments

- (13) Bevilles acknowledges that the ACCC will make this undertaking available for public inspection.
- (14) Bevilles further acknowledges that the ACCC will from time to time publicly refer to this undertaking.
- (15) Bevilles 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) Bevilles further acknowledges that a summary of the ACCC Compliance Program Review reports referred to in **Attachment B** of the Undertaking may be held with this undertaking on the public register of section 87B undertakings maintained by the ACCC.

Signed by authorised representatives of Bevilles

OR

Executed by Bevilles Pty Ltd ACN 005 064 308 pursuant to section 127(1) of the Corporations Act 2001:

OR

The Common Seal of Bevilles Pty Ltd ACN 005 064 308 was hereunto affixed in the presence of:

.....

Secretary/Director

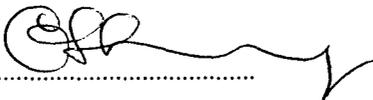


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Director

This 5 day of June 2007

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



.....
Graeme Julian Samuel

Chairman

This 12th day of June 2007

CORRECTIVE ADVERTISEMENT

A correction from Bevilles

Advertised savings on jewellery likely to mislead

In the period from September 2005 to June 2006, Bevilles distributed a number of catalogues which advertised savings on various jewellery items through statements like:

50% Off
~~\$399.95~~
\$199.95

The Australian Competition and Consumer Commission (ACCC) investigated the claimed savings on a number of these jewellery items, including some promoted in Bevilles' Christmas 2005 and Mother's Day 2006 catalogues. The ACCC considers that in light of the sales history of some items the advertised savings were overstated and were therefore likely to be misleading in breach of the *Trade Practices Act 1974*.

Bevilles acknowledges that some of the advertised savings may have been misleading.

In light of the ACCC's concerns Bevilles has reviewed its processes to ensure that its advertising fully complies with the requirements of the *Trade Practices Act 1974*. Bevilles has also provided the ACCC with an enforceable undertaking that its future advertised savings on jewellery items will be fully supported by the sales history of those items.



This corrective advertisement has been paid for by Bevilles as part of its undertaking to the ACCC.

TRADE PRACTICES COMPLIANCE PROGRAM

Bevilles 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 Bevilles 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. Bevilles 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. Bevilles 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 Bevilles is at risk of breaching Part V and particularly sections 52 & 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 Bevilles should they occur;
 - 3.3. identify where there may be gaps in Bevilles' existing procedures for managing these risks; and
 - 3.4. provide recommendations for action having regard to the assessment.

Compliance Policy

4. Bevilles will, issue a policy statement outlining Bevilles' commitment to trade practices compliance (**the Compliance Policy**). Bevilles 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 Bevilles 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. Bevilles 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. Bevilles 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 Bevilles, whose duties could result in them being concerned with conduct that may contravene Part V and particularly sections 52 & 53(e) of the TPA. The training program will be designed to ensure the employees' awareness of the responsibilities and obligations in relation to Part V and particularly sections 52 & 53(e) of the TPA. Bevilles must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.

7. Bevilles 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 Part V and particularly sections 52 & 53(e) of the TPA.

Reports to Senior Management

8. Bevilles will ensure that the Compliance Officer reports to the Board and/or senior management meetings every 3 months on the continuing effectiveness of the Compliance Program.

Supply of Compliance Program Documents to the ACCC

9. Bevilles shall, at its own expense, within 3 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. Bevilles will implement promptly and with due diligence any recommendations the ACCC may make that are reasonably necessary to ensure that Bevilles maintains and continues to implement the Compliance Program in accordance with the Undertaking.

Review

10. Bevilles 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 Bevilles and the ACCC with supportable verification that Bevilles has in place a program that complies with each of the requirements detailed in paragraphs 1-8 above and to provide the Review reports and opinions detailed at paragraph 11 below.

- 10.2. **Independence of Reviewer** – Bevilles 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 Bevilles;

- 10.2.3. has not acted and does not act for Bevilles in any trade practices related matters;

- 10.2.4. has not and does not act for or consult to Bevilles 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 Bevilles.

- 10.3. **Evidence** – Bevilles 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 Bevilles' possession or control, including without limitation:

- 10.3.1. enquiries of any officers, employees, representatives, agents and stakeholders of Bevilles;

- 10.3.2. Bevilles' records, including the company's complaints register/reports and any documents relevant to the Bevilles training or induction program; and

- 10.3.3. documents created by Bevilles' consultants and legal practitioners for use in Bevilles' Compliance Program.

- 10.4. Bevilles 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. Bevilles 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 Bevilles)

- 11.1. Bevilles' 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 of Bevilles includes all the elements detailed in paragraphs 1-8 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, Bevilles' 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 Bevilles maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

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

- 11.2. The ACCC 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 Bevilles has in place an effective Compliance Program that complies with the requirements detailed in paragraph 1-8 above;
 - 11.2.4. actions recommended by the Reviewer to ensure the continuing effectiveness of Bevilles' Compliance Program;
 - 11.2.5. confirmation that any actual and potential inadequacies in Bevilles' Compliance Program have been brought to the attention of the Compliance Officer and the company Board or governing body;
 - 11.2.6. confirmation that the Reviewer has revisited any actual and potential inadequacies in Bevilles' Compliance Program identified in the previous Company Compliance Program Review Report, and assessed how they have been addressed by Bevilles;
 - 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. Bevilles will ensure that the Review Reports are completed and provided to Bevilles within one months of each Review.
- 11.4. Bevilles will retain the Company Compliance Program Review Report and cause the ACCC Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.

12. **Recommendations** - Bevilles 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 Bevilles maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
13. Bevilles 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 effectively, Bevilles 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.