

TRADE PRACTICES ACT 1974

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

By

JORDAN TATUM ENTERPRISES PTY LTD**AND****NATHAN BURGESS HUNT:****BACKGROUND**

- 1 Jordan Tatum Enterprises Pty Ltd ("**JTE**") is the proprietor of the Burdekin Hotel, Ayr.
- 2 Nathan Burgess Hunt ("**Mr Hunt**") is the sole director and shareholder of Jordan Tatum Enterprises Pty Ltd and the manager of the Burdekin Hotel.
- 3 In or about July 2006 JTE, by Mr Hunt, attempted to make or arrive at an arrangement or understanding in relation to the price of over-the-bar alcoholic beverages with one or more other hoteliers in Ayr, in the State of Queensland, being competitors or potential competitors for the supply of alcoholic beverages.
- 4 Following an investigation, the Australian Competition and Consumer Commission ("**ACCC**") reached the view that JTE may have attempted to contravene the *Trade Practices Act 1974* ("**the Act**"), and that Mr Hunt may have attempted to induce the other hoteliers to contravene the Act, in that the conduct engaged in by Mr Hunt:
 - 4.1 Was engaged in with the intention of inducing the making of the arrangement or the arriving at of the understanding between JTE and the other hoteliers; and
 - 4.2 Constituted an attempt to make an arrangement or arrive at an understanding, or an attempt to induce the other hoteliers to make an arrangement or arrive at an understanding, between competitors that would have the effect or purpose (including the substantial purpose), or likely effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of the price for, or a discount, allowance, rebate or credit in relation to, over-the-bar alcoholic beverages supplied or to be supplied, in contravention of Section 45 of the Act.
- 5 In September 2006 the ACCC brought to Mr Hunt's attention its concerns about his conduct, particularly given the provisions of Section 45A of the Act.
- 6 The ACCC and Mr Hunt subsequently met on several occasions to discuss the ACCC's view.
- 7 On 23 January 2007, Mr Hunt gave evidence to the ACCC pursuant to a Section 155 Notice.
- 8 Mr Hunt admits that his conduct may have constituted an attempted contravention of the Act. However, he states he was unaware that his conduct may have so contravened the Act prior to receiving notification from the ACCC, and it is noted that no arrangement or understanding was ever put into effect.

COMMENCEMENT

- 9 This undertaking comes into effect when:
- (i) The undertaking is executed by JTE and Mr Hunt; and
 - (ii) The ACCC accepts the Undertaking so executed.
- 10 Upon the commencement of this Undertaking JTE and Mr Hunt undertake to assume the obligations set out below.

UNDERTAKINGS

- 11 JTE and Mr Hunt hereby undertake for the purposes of Section 87B of the Act:
- (i) That JTE and Mr Hunt will not engage in any activity constituting price fixing or attempting to price fix contrary to Section 45 of the Act;
 - (ii) That Mr Hunt will undertake trade practices compliance training at least once a year for the next 3 years. In this respect it is noted that in May 2007 Mr Hunt completed and passed an online training course in relation to Restrictive Trade Practices Compliance, and accordingly this paragraph of this undertaking will take effect one year from the date of acceptance of this undertaking by the ACCC.
 - (iii) That Mr Hunt will use his best endeavours to have published, at his own cost, within 6 months of acceptance of this undertaking by the ACCC, in an Australian hotel industry newsletter, an article concerning price fixing, written either by the ACCC or by his solicitors with input from the ACCC; and
 - (iv) That Mr Hunt will take all necessary steps to ensure that JTE, or any other corporation controlled by him, will prepare and maintain a trade practices compliance program (in accordance with the requirements of paragraph 12 below) in relation to the management of any business which it is currently operating or which it acquires within the next 3 years, such program to be implemented within three months of the date on which JTE and Mr Hunt are notified that the ACCC has accepted these undertakings, or within 3 months of the date of the acquisition by JTE, or a company controlled by Mr Hunt, of any new business, whichever is the later.

Compliance Program Requirements

- 12 The Trade Practices Compliance Program to be prepared in accordance with the undertaking given in paragraph 11(iv) above will:
- A. Identify risk areas for trade practices breaches and develop systems to eliminate or minimise these risks;
 - B. State that the company will take action internally against those responsible for breaches and will not indemnify them; and
 - C. Provide practical and verifiable training for all relevant staff and management so that breaches and potential breaches may be prevented or otherwise detected, referred and acted upon.

In particular Compliance Program will address the following steps:

12.1 Commitment

- 12.1.1 Implement adequate procedures to check for trade practices compliance.
- 12.1.2 Ensure, so far as practicable, that compliance procedures are understood by staff and other relevant third parties e.g. agents, distributors and advertising representatives.

12.2 Policies and Procedures

- 12.2.1 Produce a written policy of commitment to compliance and articulate how this will be carried out;
- 12.2.2 Set in place procedures so that the policy is well understood throughout the business;
- 12.2.3 Ensure procedures are laid down to assess compliance against predetermined objectives and assessment criteria.

12.3 Management Responsibility

- 12.3.1 Detail the processes involved in establishing, implementing and maintaining the compliance program and the roles and responsibilities of management, staff and other stakeholders.
- 12.3.2 Ensure that line managers (if any) are responsible for compliance in their immediate area.

12.4 Resources and Authority

- 12.4.1 Ensure that the person responsible for compliance systems (if not Mr Hunt) has:
 - Authority, recognition and support within the business;
 - Access to all levels in the business to ensure compliance; and
 - Overall responsibility for design, integrity and updating of the program.
- 12.4.2 Ensure that staff have access to the necessary materials including compliance manuals and training, and (if appropriate given the business procedures) databases.
- 12.4.3 Ensure as far as practicable that any external compliance service providers have the resources and expertise to carry out the required tasks.

12.5 Operating Procedures for Compliance

12.5.1 Integrate compliance considerations into:

- Computer systems
- Forms
- Contracts
- Administrative procedures
- Financial evaluations
- Management performance evaluations (line and senior)

12.6 Training

12.6.1 Develop and execute a practical and easily understood compliance training system throughout the business. Training will be:

- Integrated into induction courses
- Reviewed every twelve (12) months
- Participatory
- Verifiable by third parties
- Framed to reflect areas of risk

12.7 Record Keeping

12.7.1 Keep an accurate record of compliance failures and of the rectification of such failures.

12.8 Employee Compliance

12.8.1 Develop a disciplinary policy for breaches of the Act by employees and ensure that the policy is disseminated within the business.

12.8.2 Ensure that compliance is integrated into performance reviews for employees.

12.9 Identification and Rectification

12.9.1 Develop a system to identify and classify compliance failure so that systemic and recurring problems are rectified.

12.10 Reporting

12.10.1 Ensure that compliance problems are rapidly reported to Mr Hunt or the Compliance Manager (if any).

Review of the trade practices compliance program

- 13 While he continues to conduct or control a business, Mr Hunt shall take all necessary steps to ensure that JTE, or any other company that he controls, causes, at its own expense, an independent audit of the compliance program to be conducted annually for a period of three (3) years. The audit shall be carried out by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law, who is independent of Mr Hunt. Such a professional will qualify as independent on the basis that he or she:
- 13.1 Is not a present or past staff member or director of JTE, or any business or company conducted or controlled by Mr Hunt;
 - 13.2 Has not acted and does not act for Mr Hunt, JTE, or any business or company conducted or controlled by Mr Hunt;
 - 13.3 Is not retained by Mr Hunt, JTE, or any business or company conducted or controlled by Mr Hunt in any other capacity;
 - 13.4 Has not provided and does not provide consultancy or other services for Mr Hunt, JTE, or any business or company conducted or controlled by Mr Hunt; and
 - 13.5 Has no substantial shareholding or other interest in JTE or any business or company conducted by Mr Hunt.

The auditor shall review and report on:

- A. the implementation of the compliance program and the achievement of its objectives over the preceding twelve months;
 - B. any recommended changes to the compliance program that may be necessary to ensure achievement of its objectives.
- 14 The date for the completion of the first such audit, and the provision of the auditor's report to the ACCC shall be one year and one month of this undertaking coming into effect. Subsequently, audit reports shall be prepared and presented by or in the same month in each following year, with the last report due three years and one month from this undertaking coming into effect.
- 15 Mr Hunt shall take all necessary steps to ensure that JTE, or any other corporation controlled by him, implements promptly and with due diligence any recommendations made in the audit report or required by the ACCC that are reasonably necessary to ensure that JTE, or any other corporation controlled by him, maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.
- 16 If requested by the ACCC, Mr Hunt shall take all necessary steps to ensure that JTE, or any other corporation controlled by him, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
- 17 In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Mr Hunt shall take all necessary steps to ensure that JTE, or any other corporation controlled by him, at its own expense and if requested by the ACCC, cause and interim or additional audit to be conducted and cause the resulting auditor's report to be provided to the ACCC.

ACKNOWLEDGMENTS

- 18 JTE and Mr Hunt acknowledge that the ACCC will make this undertaking available for public inspection.
- 19 JTE and Mr Hunt further acknowledge that the ACCC will from time to time publicly refer to this undertaking.
- 20 JTE and Mr Hunt further acknowledge that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by

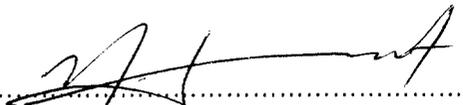
JORDAN TATUM ENTERPRISES PTY LTD

Pursuant to section 127(1) of the Corporations Act 2001

Secretary/Director  Director

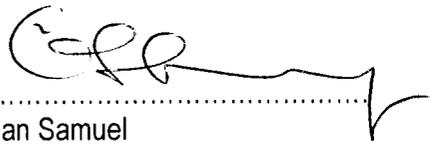
Print Name: NATHAN HUNT

This 19th day of July 2007


.....
NATHAN BURGESS HUNT

This 19th day of July 2007

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


.....
Graeme Julian Samuel
Chairman

This 1st day of August 2007