

## TRADE PRACTICES ACT 1974

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

BY

**MYER PTY LTD**  
**ACN 004 143 239**

#### PERSONS GIVING THIS UNDERTAKING

1. These undertakings are given by Myer Pty Ltd ACN 004 143 239 (**Myer**) of Level 7, 275-295 Lonsdale Street, Victoria to the Australian Competition and Consumer Commission (**ACCC**) under section 87B of the *Trade Practices Act 1974 (TPA)*.

#### BACKGROUND

2. Myer is incorporated under the Corporations Act 2001 and registered in Victoria.
3. Myer is a national retailer of consumer goods including the Bloc and Stone ranges of sunglasses manufactured and imported into Australia by Inline UK Pty Ltd (**Inline**).
4. Sunglasses supplied in Australia must comply with performance and labelling requirements specified in the mandatory consumer product safety standard based on Australia New Zealand Standard AS/NZS 1067:2003 *Sunglasses and fashion spectacles (the Sunglasses Standard)*.
5. Section 65C of the TPA prohibits a company from supplying consumer goods that do not comply with mandatory product safety standards.
6. Section 52 of the TPA prohibits a company from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive.
7. Section 53 of the TPA prohibits a company from making specific types of false or misleading representations in connexion with the supply of goods or services or in connexion with the promotion of the supply or use of goods or services.
8. Section 55 of the TPA prohibits a person from engaging in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

9. In May 2007, staff of the ACCC visited the Myer store in Bourke Street Mall, Melbourne in Victoria and concluded that a rack of Bloc and a rack of Stone branded sunglasses did not comply with the labelling requirements of the Sunglasses Standard as the affixed labels did not contain the correct description of each lens category. These sunglasses were labelled as complying with the Sunglasses Standard.
10. Myer subsequently advised the ACCC that the Stone and Bloc sunglasses ranges were immediately removed from sale at Myer stores nationally after the ACCC raised its concerns with Myer. Myer recommenced selling the sunglasses after they were relabelled by Myer's supplier, Inline.
11. Prior to Myer removing the Bloc and Stone sunglasses from sale, in May 2007 staff of the ACCC purchased a pair of sunglasses with the style number and name X200 Square (**Square**) and a pair of sunglasses with the style number and name X255 Mumma (**Mumma**), both of which are part of the Bloc range of sunglasses supplied by Myer.
12. Staff of the ACCC commissioned the Optics and Radiometry Laboratory (**ORLAB**) at the University of New South Wales to test the 2 pairs of Bloc Mumma and Square sunglasses that were purchased at Myer for compliance with the Sunglasses Standard. ORLAB's test reports on both pairs of sunglasses concluded that the sunglasses do not meet the performance or labelling requirements of the Sunglasses Standard. While the ORLAB test reports concluded that the Mumma and Square sunglasses tested do not comply with the Sunglasses Standard, the labelling on these sunglasses has a representation of compliance with the Sunglasses Standard.
13. In July 2007, the ACCC informed Myer that the pairs of Square and Mumma sunglasses tested by ORLAB did not comply with the Sunglasses Standard and that, by supplying these sunglasses and the incorrectly labelled Bloc and Stone ranges of sunglasses, Myer may have contravened sections 52, 53(a), 53(c), 55 and 65C(1) of the TPA. Myer took immediate corrective action by withdrawing the products from retail sale nationally and conducting a voluntary national recall of the Square and Mumma sunglasses.
14. Subsequently, Inline commissioned further tests by Qualspec on pairs of Square and Mumma sunglasses. These tests indicated that some of the pairs of sunglasses passed the prescribed performance requirements of the Sunglasses Standard while other pairs failed.
15. As a result of discussions between the ACCC and Myer and so as to resolve the matters in issue and avoid the need for litigation, the ACCC offered Myer the opportunity to give this Undertaking under s87B of the TPA. Myer accepted that offer.

## COMMENCEMENT OF UNDERTAKINGS

16. This undertaking comes into effect when:
  - a. The Undertaking is executed by Myer; and
  - b. The ACCC accepts the Undertaking so executed.

## UNDERTAKINGS

17. Myer undertakes to the ACCC for the purposes of section 87B of the TPA that it will for a period of 3 years from the date this Undertaking comes into effect, ensure that goods supplied by Myer that are subject to a prescribed safety and/or information standard under the TPA comply with the relevant standard.
18. Myer further undertakes to the ACCC for the purposes of section 87B of the TPA that it will:
  - a. maintain and further develop a Trade Practices Compliance Program in accordance with the requirements set out in “**Annexure A**” for the employees or other persons involved in Myer’s business, being a program designed to minimise its risk of future breaches of sections 52, 53, 55, 65C of the TPA in relation to mandatory product safety and information standards (**the Relevant Sections**) and to ensure their awareness of the responsibilities and obligations in relation to the requirements of the Relevant Sections of the TPA, within 3 months of the date of this Undertaking coming into effect; and
  - b. maintain and continue to develop 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 requested by the ACCC in accordance with Annexure A.

## ACKNOWLEDGEMENTS

19. Myer acknowledges that the ACCC will make this Undertaking available for public inspection.
20. Myer acknowledges that the ACCC will issue a media release in relation to this Undertaking and may from time to time publicly refer to the undertaking.
21. Myer acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

22. Myer acknowledges that a summary of the Commission Compliance Program Review reports referred to in Annexure A of the Undertaking may be held with this Undertaking on the Public Register.

IN WITNESS of this undertaking and its agreement, Myer Pty Ltd (ACN 004 143 239), executes this agreement by authority of the Board of Directors in the presence of:

  
.....  
Director

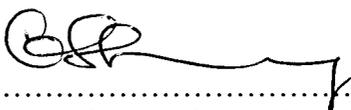
  
.....  
Director

WCRWAYIA  
.....  
Name (printed)

B-BROOKES  
.....  
Name (printed)

DATED this 19 day of DECEMBER, 2007

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

  
.....  
Chairperson (Graeme Samuel)

DATED this 20<sup>th</sup> day of December, 2007

## “Annexure A”

### TRADE PRACTICES COMPLIANCE PROGRAM

Myer will maintain and further develop a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

#### Appointments

1. For the purposes of this Undertaking coming into effect Myer will continue to have or, if the position falls vacant, will recruit a Director or a Senior Manager with suitable qualifications or experience in corporate compliance as **Compliance Officer** with responsibility for ensuring the Compliance Program is effectively designed, implemented and maintained.
2. Within 3 months of the date of this Undertaking coming into effect Myer shall appoint a qualified, internal or external, compliance professional with expertise in trade practices issues (**the Compliance Advisor**). Myer shall instruct the Compliance Adviser to conduct a Trade Practices Act risk assessment (**Risk Assessment**) in accordance with 2.1 – 2.4 below:
  - 2.1. identify the areas where Myer is at risk of breaching the relevant sections of the TPA;
  - 2.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Myer should they occur;
  - 2.3. identify where there may be gaps in Myer’s existing procedures for managing these risks; and
  - 2.4. provide recommendations for action having regard to the assessment.

#### Compliance Policy

3. Myer will, within 3 months of the Undertaking coming into effect, issue a policy statement further confirming Myer’s commitment to trade practices compliance (**the Compliance Policy**). Myer will ensure that the Compliance Policy:
  - 3.1. is written in plain language;
  - 3.2. contains a statement of commitment to compliance with the TPA;
  - 3.3. contains a strategic outline of how commitment to trade practices compliance will be realised within Myer;
  - 3.4. a requirement for all staff to report any compliance related issues and trade practices compliance concerns to the Compliance Officer;

- 3.5. a guarantee that whistleblowers will not be prosecuted or disadvantaged in any way and that their reports will be kept confidential and secure; and
- 3.6. a clear statement that Myer 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 Escalation Procedure**

4. Myer will ensure that the Compliance Program maintains and further develops a trade practices complaints escalation procedure. Myer shall use its best endeavours to ensure this procedure is consistent with Australian Standard 4269, though tailored to Myer's circumstances. Myer will take reasonable steps to ensure that staff and customers are made aware of Myer's complaints escalation procedure.
5. Myer will ensure that the Compliance Program includes whistleblower protection mechanisms to protect those coming forward with trade practices complaints. Myer shall use its best endeavours to ensure that these mechanisms are consistent with Australian Standard 8004, though tailored to Myer's circumstances.

### **Reports to Board/Senior Management**

6. Myer will ensure that the Compliance Officer reports to the Board and/or senior management meetings at least once every 2 months on the continuing effectiveness of the Compliance Program.

### **Training**

7. Myer will ensure that the Compliance Program provides for regular (at least once a year) and practical trade practices training in the Relevant Sections of the TPA for the Compliance Officer, and for all executive directors, officers, staff employed in the Quality Assurance team, product buying personnel and store managers and any other employee whose duties could result in them being concerned with conduct that may contravene the Relevant Sections of the TPA. Myer must ensure that the training is conducted by either a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
8. Myer will ensure that the Compliance Program provides practical trade practices training at least once every two years for all Head Office and Store staff employed by Myer and not identified in paragraph 7 above. Myer must ensure that the training is conducted by either a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
9. Myer will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new directors, officers and employees.

## **Product Safety**

10. Myer will:

- 10.1. maintain up-to-date copies, in its Quality Assurance team at Head Office, of all prescribed consumer product safety standards and prescribed consumer information standards that relate to products Myer supplies;
- 10.2. ensure that the products supplied that are subject to a prescribed consumer product safety and/or information standard under the TPA, comply with the relevant standard; and
- 10.3. maintain and further develop recall procedures that enable products supplied by Myer that do not comply with prescribed consumer product safety and/or information standards under the TPA to be efficiently and effectively withdrawn from the market and returned to Myer.

## **Supply of Compliance Program Documents to the Commission**

11. Myer shall, at its own expense, within 4 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 and implement promptly and with due diligence any recommendations that the ACCC may make that are reasonably necessary to ensure that Myer maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking, subject to the reasonable practicality of the proposed change tailored to Myer's circumstances.

## **Review**

12. Myer 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:

- 12.1. **Scope of the Reviews** – the Reviews should be broad and rigorous enough to provide Myer and the ACCC with a supportable verification that Myer has in place a program that complies with each of the requirements detailed in paragraphs 1 – 11 above and to provide the Review reports and opinions detailed at point 12 below;
- 12.2. **Independence of Reviewer** – Myer 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:
  - 12.2.1. did not design or implement the Compliance Program;
  - 12.2.2. is not a present or past staff member or director of Myer;

- 12.2.3. has not acted and does not act for Myer in any trade practices related matters;
  - 12.2.4. has not and does not act for or consult to Myer or provide other services on trade practices related matters other than Compliance Program reviewing; and
  - 12.2.5. has no significant shareholding or other interests in Myer.
- 12.3. **Evidence** – Myer shall use its best endeavours to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in Myer’s possession or control, including without limitation:
- 12.3.1. enquiries of any officers, employees, representatives, agents and stakeholders of Myer;
  - 12.3.2. Myer’s records, including Myer’s complaints register/reports and any documents relevant to Myer’s training or induction program; and
  - 12.3.3. documents created by Myer’s consultants and legal practitioners for use in Myer’s Compliance Program.
- 12.4. Myer 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**

13. Myer shall use its best endeavours to ensure the Reviewer sets out the findings of the Review in two separate reports as set out below:

### **Company Compliance Program Review Report (to be provided to Myer)**

- 13.1. Myer’s Company Compliance Program Review Report will provide particular and specific information regarding the performance of the Compliance Program to the corporation including:
- 13.1.1. if, and to what extent, the Compliance Program of Myer includes all the elements detailed in paragraphs 1 – 11 above;
  - 13.1.2. if, and to what extent, the Compliance Program adequately covers the parties and areas identified in the initial Risk Assessment;
  - 13.1.3. if, and to what extent, the trade practices training is effective;

- 13.1.4. if, and to what extent, Myer's complaints handling system is effective;
- 13.1.5. if, and to what extent, Myer is able to provide confidentiality and security to whistleblowers, and staff are aware of the whistleblower protection mechanisms; and
- 13.1.6. recommendations for rectifying deficiencies in 12.1.1-12.1.5 above that the Reviewer thinks are reasonable necessary to ensure that Myer 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)

- 13.2. The Commission Compliance Program Review Report will provide particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:
  - 13.2.1. details of the evidence gathered and examined during the Review;
  - 13.2.2. the name and relevant experience of the person appointed as the company Compliance Officer;
  - 13.2.3. the Reviewer's opinion on whether Myer has in place a Compliance Program that complies with the requirements detailed in paragraph 1-11 above;
  - 13.2.4. actions recommended by the Reviewer to ensure the continuing effectiveness of Myer's Compliance Program;
  - 13.2.5. confirmation that any actual and potential inadequacies in Myer's Compliance Program have been brought to the attention of the Compliance Officer and the Board;
  - 13.2.6. confirmation that the Reviewer has revisited any actual and potential inadequacies in Myer's Compliance Program identified in any previous Company Compliance Program Review Report, and assessed how they have been addressed by Myer;
  - 13.2.7. 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

- 13.2.8. any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.
  - 13.3. Myer will ensure that the Review Reports are completed and provided to Myer within two months of each Review.
  - 13.4. Myer 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.
  - 13.5. Myer acknowledges that a brief statement regarding the Commission Compliance Program Review Report may be included in the ACCC's 87B public register.
14. **Recommendations** – Myer 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 Myer maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking, subject to the reasonable practicality of the proposed change tailored to Myer's circumstances.
15. If requested by the ACCC, Myer shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
16. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Myer shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Commission Review Report to be provided to the ACCC.