

TRADE PRACTICES ACT 1974

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

BY

TRADING POST AUSTRALIA PTY LTD

(ACN 001 821 156)

and

SENSIS PTY LTD

(ACN 007 423 912)

1 PERSONS GIVING UNDERTAKING

This undertaking is given to the Australian Competition and Consumer Commission (“Commission”) by Trading Post Australia Pty Ltd (“**Trading Post**”) and Sensis Pty Ltd (“**Sensis**”), for the purposes of section 87B of the Trade Practices Act 1974 (“**Act**”).

2 BACKGROUND

The Kloster Ford and Charlestown Toyota Advertisements

- 2.1 Trading Post is a wholly owned subsidiary of Sensis. Trading Post operated the website located at <http://www.tradingpost.com.au> (“Trading Post Website”) on which it publishes online classified advertisements for the sale and provision of a range of goods and services. Since May 2007, Sensis operates the Trading Post Website.
- 2.2 Trading Post purchases certain “keywords” from search engines and when users type in such keywords into a search box as search terms on search engine websites, advertisements referred to on the websites as “sponsored links” are triggered (“**Search Engine Advertisements**”).
- 2.3 As a result of a previous complaint and investigation by the Commission Trading Post issued instructions that names of companies or businesses (“**Competitor Names**”) were not to be reproduced in the title or headline of Search Engine Advertisements.
- 2.4 In or about August 2005, Trading Post’s agent, contrary to Trading Post’s instructions, purchased “Kloster Ford” and “Charlestown Toyota” as keywords to be used in the title or headline of Trading Post’s Search Engine Advertising on the Google search engine. “Kloster Ford” and “Charlestown Toyota” are the registered names of car dealerships located in New South Wales.
- 2.5 The result was that, when “Kloster Ford” or “Charlestown Toyota” was entered into the Google search engine as a search term, the Search Engine Advertisement which was returned and which was located at the top left hand side of the results page (i.e.

immediately before the “organic” search results) reproduced the names “Kloster Ford” and “Charlestown Toyota” in the title or headline. When the user clicked on the title or headline of the Search Engine Advertisement they were taken to the Trading Post Website.

- 2.6 At the time that these Search Engine Advertisements appeared on the Google search engine, Kloster Ford and Charlestown Toyota (“**Car Dealerships**”) did not place advertisements on the Trading Post Website and information relating to the Car Dealerships and goods or services offered by the Car Dealerships could not be found on the Trading Post Website.
- 2.7 On 11 July 2007, the Commission commenced proceedings 1323 of 2007 in the Federal Court against Trading Post alleging breaches of various provisions of Part V of the Act (“**Proceedings**”).

The Commission’s allegations

- 2.8 The Commission alleged amongst other things, that in the circumstances described in paragraphs 2.4 - 2.6 above, Trading Post, by taking out the Search Engine Advertisements, with the names of the Car Dealerships in the title or headline, made the following representations which were misleading and deceptive (and, in relation to (b)-(c) below, falsely represented it had an approval or affiliation it did not have) in breach of the Act:
- (a) by clicking on the result at the top of the left hand side of the results page (i.e. Trading Post’s Search Engine Advertisement) the user would be taken to a website associated with the Car Dealerships;
 - (b) there was an association or affiliation between Trading Post and the Car Dealerships;
 - (c) the Car Dealerships approved of the link between its name and the Trading Post Website;
 - (d) information regarding the Car Dealerships or their cars for sale could be found at the Trading Post Website.

Sensis’ current compliance processes

- 2.9 As a result of the complaints by Kloster Ford and Charlestown Toyota in 2005, and the Commission’s subsequent investigation, Trading Post reviewed its compliance processes for its Search Engine Advertisements and implemented a number of new processes.
- 2.10 In May 2007, the assets and staff of Trading Post were transferred to Sensis. Sensis currently implements the following compliance processes in relation to Trading Post’s Search Engine Advertisements:
- (a) a policy that keyword insertion technology in relation to Competitor Names is not to be used in Trading Post’s Search Engine Advertisements unless approved by Legal Counsel;
 - (b) the training of staff involved in Search Engine Advertising campaigns for Trading Post to explain Sensis’ search engine marketing policy and the risks involved in using keyword insertion technology for keywords that are Competitor Names; and



- (c) the review by Sensis' legal team of keywords which are purchased for use in Search Engine Advertising campaigns to promote Trading Post where Sensis or Trading Post or its employees or agents are responsible for the associated Search Engine Advertisement copy.

(collectively, the "**Compliance Processes**").

Settlement of the proceedings

- 2.11 In order to settle the proceedings, Trading Post has agreed to admit to the allegations in paragraph 2.8 above, and that it contravened sections 52 and 53(d) of the Act. In addition, both Trading Post and Sensis have agreed to offer this undertaking to the Commission.

3 COMMENCEMENT OF THE UNDERTAKING

These undertakings come into effect when:

- (a) the undertakings are executed by Trading Post and Sensis; and
 - (b) the undertakings so executed are accepted by the Commission,
- and endure for 3 years from the date of their effect.

4 UNDERTAKINGS

Trading Post Search Engine Advertisements

- 4.1 Conditional upon the Federal Court of Australia being satisfied in the Proceedings that Trading Post, by taking out the Search Engine Advertisements, in the circumstances described in paragraph 2.8 above contravened sections 52 and 53(d) of the Act, Trading Post consents to the Court making declarations in the terms set out at Schedule 1.
- 4.2 Trading Post and Sensis undertake not to permit its employees or agents to publish, distribute, transmit, display or broadcast, or cause to be published, distributed, transmitted, displayed or broadcasted, Search Engine Advertisements (in relation to which Trading Post or Sensis or its employees or agents are responsible for the associated copy which forms the Search Engine Advertisement) where:
 - (a) the title or headline of that Search Engine Advertisement reproduces the keyword entered by the user and that keyword is a known Competitor Name; and
 - (b) by clicking on the title or headline of that Search Engine Advertisement users are taken to the Trading Post Website,

and in circumstances which represent contrary to the fact that the Trading Post Website will contain information about or advertisements by or goods or services from the company or business with that Competitor Name.

Independent auditor

- 4.3 Sensis undertakes to engage an independent third party with experience in trade practices compliance programs to:

- (a) review Sensis' trade practices compliance processes which relate to the Trading Post Search Engine Advertising campaigns by 30 November 2008 and again by 30 November 2009;
- (b) report to the Commission after each review to confirm that:
- (i) Sensis has in place policies relating to general compliance with its legal and regulatory obligations and more specific policies relating to its search engine marketing campaigns.
 - (ii) Sensis has the Compliance Processes as described in paragraph 2.10 above in place;
 - (iii) staff who work on Trading Post Search Engine Advertising campaigns have completed general trade practices compliance training, with a particular emphasis on Part V of the Trade Practices Act, as part of their induction and every two years;
 - (iv) staff who work on Trading Post Search Engine Advertising campaigns have been trained in relation to Sensis' search engine marketing policy and the risks involved in purchasing Competitor Names as keywords and the use of keyword insertion technology; and
 - (v) Sensis has a compliance officer for the Trading Post business unit.

5 ANCILLARY MATTERS

Trading Post and Sensis acknowledge that the Commission will make these undertakings available for public inspection and that the Commission may, from time to time, publicly refer to these undertakings.



EXECUTED BY

Bruce John Akhurst as authorised)
representative for **TRADING POST**)
AUSTRALIA PTY LTD in the)
presence of:)

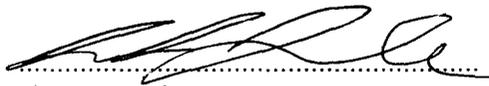

Signature of witness)

Luke Fitzgerald
Name of witness (block letters))



By executing this agreement the)
signatory warrants that the signatory)
is duly authorised to execute this)
agreement on behalf of **TRADING**)
POST AUSTRALIA PTY LTD)

Bruce John Akhurst as authorised)
representative for **SENSIS PTY LTD**)
in the presence of:)


Signature of witness)

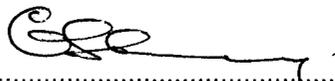
Luke Fitzgerald
Name of witness (block letters))



By executing this agreement the)
signatory warrants that the signatory)
is duly authorised to execute this)
agreement on behalf of **SENSIS PTY**)
LTD)

This 27th day of March 2008

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


Graeme Julian Samuel
Chairperson

This 21st day of April 2008

Schedule 1

Proposed form of Declarations

- 1 A declaration that Trading Post by publishing, or causing to be published, advertisements on or about 28 August 2005 and 30 August 2005, on the results page of the website at www.google.com.au, which appeared in response to user queries for the keywords “Kloster Ford” or “Charlestown Toyota”, where the title of the advertisement contained the keyword entered by the user, in circumstances where a user clicking on the advertisement would be taken to the website at www.tradingpost.com.au, and in circumstances where that website contained no information about or advertisements by or goods or services from the dealerships, has made in trade or commerce each of the following representations:
 - (a) by clicking on the result at the top of the left hand side of the results page the user would be taken to a website associated with the relevant dealership (Kloster Ford or Charlestown Toyota);
 - (b) there was an association or affiliation between Trading Post and the relevant dealership;
 - (c) the relevant dealership approved of the link between its name and the Trading Post Site; and
 - (d) information regarding the relevant dealership or the relevant dealership’s cars for sale could be found at the Trading Post Site.
- 2 A declaration that in the circumstances set out in paragraph 1 above, by making each of the representations set out in paragraph 1 above, Trading Post engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of section 52 of the *Trade Practices Act 1974 (Act)*.
- 3 A declaration that in the circumstances set out in paragraph 1 above, by making representations 1(b), and 1(c) in paragraph 1 above, Trading Post represented that it had an approval or affiliation it did not have in contravention of section 53(d) of the Act.