

TRADE PRACTICES ACT 1974

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

BY

**PARIS MIKI AUSTRALIA PTY LIMITED
ACN 003 409 783**

PERSONS GIVING THIS UNDERTAKING

1. These undertakings are given by Paris Miki Australia Pty Limited ACN 003 409 783 (**Paris Miki**) of Artarmon Court, Suite 1A, Level 1, 43-45 Herbert Street, Artarmon, New South Wales to the Australian Competition and Consumer Commission (**ACCC**) under section 87B of the *Trade Practices Act 1974* (Cth) (**TPA**).

BACKGROUND

2. Paris Miki is incorporated under the *Corporations Act 2001* (Cth) and registered in New South Wales.
3. Paris Miki is a national retailer of optical appliances including spectacle frames, lenses and non-prescription sunglasses.
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 AZ/NSZ 1067:2003 *Sunglasses and fashion spectacles* (the **Sunglasses Standard**).
5. Section 65C of the TPA prohibits a corporation from supplying consumer goods that do not comply with mandatory product safety standards.

CONDUCT

6. In November 2007, staff of the ACCC visited Paris Miki stores in Northland Shopping Centre and Melbourne Central Shopping Centre in Melbourne, Victoria, and observed the following:
 - (a) none of the sunglasses on display in the Northland store had any labelling other than a price tag;
 - (b) non of the "Ray Ban" brand sunglasses in the Melbourne Central store had any labelling apart from a price tag; and
 - (c) the labelling on the "Vellotti" brand sunglasses in the Melbourne Central store provided a lens category number but failed to provide the other information required by the Sunglass Standard.

(The sunglasses described above will be collectively referred to as **the Paris Miki Sunglasses**).

The Sunglass Standard requires sunglasses and fashion spectacles to be labelled with the following information:

- (d) the manufacturer or supplier's identification;
- (e) the applicable lens category number and the corresponding description as prescribed by the Sunglass Standard, namely:

For category 0 lenses:	Lens category 0. Fashion Spectacles – not sunglasses. Very low sunglare reduction. Some UV protection.
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For category 1 lenses:	Lens category 1. Fashion Spectacles – not sunglasses. Limited sunglare reduction. Some UV protection.
For category 2 lenses:	Lens category 2. Sunglasses. Medium sunglare reduction. Good UV protection.
For category 3 lenses:	Lens category 3. Sunglasses. High sunglare reduction. Good UV protection.
For category 4 lenses:	Lens category 4. Sunglasses – special purpose. Very high sunglare reduction. Good UV protection.

- (f) in the case of sunglasses fitted with category 1 lenses, the following additional marking:

NOT SUITABLE FOR DRIVING AT NIGHT

- (g) in the case of sunglasses fitted with category 4 lenses, the following additional marking:

MUST NOT BE USED WHEN DRIVING

and the following symbol at least 5mm high"



7. By letter dated 3 December 2007, the ACCC raised its concerns with Paris Miki noting specifically that all sunglasses in the Northland store and the Ray Ban sunglasses in the Melbourne Central store failed to include any of the information required by the Sunglass Standard, and the Vellotti sunglasses in the Melbourne Central store only included the lens category number.
8. By letter dated 6 December 2007, Paris Miki advised the ACCC that:
- (a) upon receiving the ACCC's letter, all sunglass stock without compliant labelling was removed from display;
 - (b) the failure with regard to labelling was due to:
 - (i) an error in supply by the merchandising department;
 - (ii) a failure to verify that the tags remained on the stock at store level; and
 - (iii) the manager of the Northland store taking it upon herself to remove all the labels. She has since been instructed not to do so;
 - (c) Paris Miki does not have a trade practices compliance program but will immediately undertake to create one.
9. The ACCC was concerned the Paris Miki Sunglasses supplied by Paris Miki may have contravened section 65C of the TPA by not complying with the labelling requirements of the Sunglass Standard.
10. Paris Miki admits it engaged in the conduct described in paragraphs 6 and 7 above.
11. Paris Miki acknowledges it may have contravened section 65C of the TPA by engaging in the conduct described in paragraphs 6 and 7 above.
12. In response to the ACCC's concerns regarding the conduct described above, Paris Miki has offered this Undertaking under section 87B of the TPA to the ACCC.

COMMENCEMENT OF UNDERTAKINGS

13. This undertaking comes into effect when:
- (a) the Undertaking is executed by Paris Miki; and
 - (b) the ACCC accepts the Undertaking so executed.


UNDERTAKINGS

14. Paris Miki hereby undertakes to the ACCC for the purposes of section 87B of the TPA that:
- (a) it will ensure that goods supplied by Paris Miki that are subject to a mandatory safety and/or information standard prescribed under the TPA comply with the relevant standard;
 - (b) it will put in place procedures to ensure that all sunglass stock on display or for sale in its retail stores will be labelled as required by the relevant mandatory safety standard prescribed under the TPA;
 - (c) it will obtain compliance certificates, or otherwise seek assurance, from Paris Miki's suppliers that goods supplied to Paris Miki comply with any applicable mandatory safety and/or information standard prescribed under the TPA;
 - (d) it will 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 Paris Miki's business in Australia, being a program designed to minimise Paris Miki's risk of future breaches of Part V (and Part VC), including sections 65C and 65D of the TPA (**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 three months of the date of this Undertaking coming into effect;
 - (e) it will maintain and continue to implement the Trade Practices Compliance Program for a period of three years from the date of this Undertaking coming into effect; and
 - (f) it will provide, at its own expense, a copy of any documents relevant to the Trade Practices Compliance Program requested by the ACCC in accordance with Annexure A.

ACKNOWLEDGEMENTS

15. Paris Miki acknowledges that the ACCC will make this Undertaking available for public inspection.
16. Paris Miki 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.
17. Paris Miki acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
18. Paris Miki 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, Paris Miki Australia Pty Limited (ACN 003 409 783), executes this agreement by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001* (Cth).



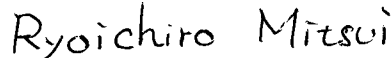
Director / Secretary



Director



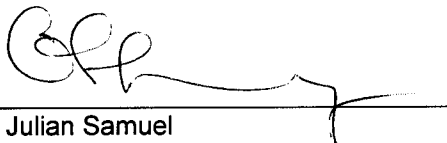
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DATED this 17 day of April 2008.

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



Graeme Julian Samuel
Chairman

DATED this 29 day of April 2008.

ANNEXURE A

TRADE PRACTICES COMPLIANCE PROGRAM

Paris Miki Australia Pty Limited ACN 003 409 783 (**Paris Miki**) will establish and implement 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 Paris Miki 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 Senior Management Team * (**the Compliance Officer**).
2. Paris Miki shall appoint a qualified, internal or external compliance professional with expertise in trade practices issues (**the Compliance Advisor**) within three (3) months of the Undertaking coming into effect, to advise on the design, implementation and maintenance of the Compliance Program.

Compliance Policy

3. Paris Miki will issue a policy statement outlining Paris Miki's commitment to trade practices compliance (**the Compliance Policy**). Paris Miki will ensure the Compliance Policy:
 - 3.1 is written in plain language;
 - 3.2 contains a statement of commitment to compliance with the *Trade Practices Act 1974*;
 - 3.3 contains a requirement for all staff to report any compliance related issues and trade practices compliance concerns to the designated officer (**Compliance Officer**); and
 - 3.4 contains a clear statement that Paris Miki will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the Trade Practices Act and will not indemnify them.

Complaints Escalation Procedure

4. Paris Miki 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. Paris Miki shall use its best endeavours to ensure this procedure is consistent with AS/ISO 10002:2006, though tailored to Paris Miki's circumstances. Paris Miki will take reasonable steps to ensure that staff and customers are made aware of Paris Miki's complaints escalation procedure.

Training

5. Paris Miki will ensure that the Compliance Program includes a requirement for regular (at least once a year) face-to-face or on-line practical trade practices training for all employees of Paris Miki, whose duties could result in them being concerned with conduct that may contravene the Relevant Sections of the TPA. The training program will be designed to ensure the employees' awareness of the responsibilities and obligations in relation to the Relevant Sections of the TPA. Paris Miki must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.

* Paris Miki's Managing Director, Administration Director, Financial Controller, Operations/Marketing Manager and Merchandise Manager together comprise the Senior Management Team.

6. Paris Miki 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 the Relevant Sections of the TPA.

Reports to Senior Management

7. Paris Miki will ensure that the Compliance Officer reports to Senior Management Team meetings every three (3) months on the continuing effectiveness of the Compliance Program.

Product Safety

8. Paris Miki will:
 - 8.1 maintain up-to-date copies, at its business premises, of all prescribed consumer product safety standards and prescribed consumer information standards that relate to products Paris Miki supplies;
 - 8.2 ensures that the products supplied are subject to a prescribed safety and / or information standard under the TPA, comply with the relevant standard; and
 - 8.3 develop, implement and maintain recall procedures that enable products supplied by Paris Miki that do not comply with prescribed safety and / or information standards under the TPA to be efficiently and effectively withdrawn from the market and returned to Paris Miki.

Supply of Compliance Program Documents to the Commission

9. Paris Miki shall, at its own expense, within four (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 policies and manuals of the Compliance Program. Paris Miki will implement promptly and with due diligence any recommendations the Commission may make that are reasonably necessary to ensure that Paris Miki maintains and continues to implement the Compliance Program in accordance with the Undertaking.

Review

10. Paris Miki 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 Reviews** – the Reviews should be broad and rigorous enough to provide Paris Miki and the Commission with supportable verification that Paris Miki 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** – Paris Miki 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 Paris Miki;
 - 10.2.3 has not acted and does not act for Paris Miki in any trade practices related matters;
 - 10.2.4 has not and does not act for or consult to Paris Miki 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 Paris Miki.

- 10.3 **Evidence** – Paris Miki 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 Paris Miki's possession or control, including without limitation:
- 10.3.1 enquiries of any officers, employees, representatives, agents and stakeholders of Paris Miki;
 - 10.3.2 Paris Miki's records, including Paris Miki's complaints register / reports and any documents relevant to Paris Miki's training or induction program;
 - 10.3.3 documents created by Paris Miki's consultants and legal practitioners for use in Paris Miki's Compliance Program; and
 - 10.3.4 details of any structural changes that occur to the Senior Management Team relevant to the Compliance Program.
- 10.4 Paris Miki 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. Paris Miki shall use its best endeavours to ensure the Reviewer sets out the findings of the Review in a report as set out below:

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

- 11.1 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:
- 11.1.1 details of the documents considered and the persons with whom the Reviewer spoke during the Review;
 - 11.1.2 the name and relevant experience of the person appointed as the Compliance Officer;
 - 11.1.3 the Reviewer's opinion on whether Paris Miki has in place a Compliance Program that complies with the requirements detailed in paragraph 1 - 10 above;
 - 11.1.4 actions recommended by the Reviewer to ensure the continuing effectiveness of Paris Miki's Compliance Program;
 - 11.1.5 confirmation that any actual and potential inadequacies in Paris Miki's Compliance Program have been brought to the attention of the Compliance Officer and, where appropriate, the Senior Management Team;
 - 11.1.6 details of any structural change Paris Miki has made to the Senior Management Team relevant to the Compliance Program;
 - 11.1.7 confirmation that the Reviewer has revisited any actual and potential inadequacies in Paris Miki's Compliance Program identified in any previous Reviews, and assessed how they have been addressed by Paris Miki;
 - 11.1.8 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
 - 11.1.9 any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.

- 11.2 Paris Miki will ensure that the Review Report is completed and provided to Paris Miki within two (2) months of each Review.
 - 11.3 Paris Miki will cause the Commission Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
 - 11.4 Paris Miki acknowledges that a brief statement regarding the Commission Compliance Program Review Report may be included in the ACCC's 87B public register.
12. **Recommendations** – Paris Miki shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the Commission, that are reasonably necessary to ensure that Paris Miki maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
 13. If requested by the ACCC, Paris Miki shall, at its own expense, provide copies of documents and information in respect of matters, as envisaged by paragraph 9 above, 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, Paris Miki 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.