

TRADE PRACTICES ACT 1974
UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B

BY

JB Hi-Fi Group Pty Ltd
(ACN 093 114 286)

PERSONS GIVING THE UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by JB Hi-Fi Group Pty Ltd (ACN 093 114 286) (**JB Hi-Fi**) of 14 Spink Street, Brighton in the State of Victoria pursuant to section 87B of the *Trade Practices Act 1974 (TPA)*.

BACKGROUND

2. JB Hi-Fi is incorporated under the *Corporations Act 2001 (Cth)* and is registered in New South Wales.
3. JB Hi-Fi is a retailer that supplies a wide range of products, including televisions, computers, laptops, iPods, MP3 players, mobile phones, home theatre products, music, movies, games, game consoles, DVD recorders, car sound, in-car entertainment, digital cameras, printers and accessories.
4. There are 93 JB Hi-Fi stores throughout Australia. In Kotara NSW, there are two JB Hi-Fi stores: one at Kotara Westfield and another at Kotara Homeworks.
3. In June 2007, JB Hi-Fi entered the mobile consumer electronic and telecommunications market and, since that date has supplied mobile phones and accessories in all its stores around Australia. The ranges of mobile phone brands sold and promoted by JB Hi-Fi include: Apple, Blackberry, HTC, Imate, Palm, Samsung, Nokia, Motorola, LG, Sony Ericsson and Telstra.
4. On or about 28 June 2008, a customer purchased what was represented to her as being a new Nokia mobile phone for \$80 from the Kotara Westfield store. When she returned home to operate the new mobile phone, she found names and video clips on the mobile phone which indicated that it was not new. Subsequently, the customer returned the mobile phone to the Kotara Westfield store and had it replaced with a second mobile phone that was also represented to her as being new.
5. The customer found that the second mobile phone also contained contact details of a list of persons which indicated again that it was not a new mobile phone. The customer called one of the contact persons listed on the mobile phone and was

informed by that person that they were the previous owner of the phone which was returned to the Kotara Westfield store 6 months previously as a faulty product.

6. The customer then returned the second mobile phone to the Kotara Westfield store and was provided with a refund. The customer subsequently complained to the ACCC about this conduct (the **complainant**).
7. On 22 August 2008, the ACCC sent a letter to JB Hi-Fi outlining its concerns that, by engaging in the conduct referred to above, JB Hi-Fi may have engaged in false, misleading and deceptive conduct in contravention of sections 52 and 53(b) of the TPA. The ACCC also noted that JB Hi-Fi had given section 87B Undertakings to the ACCC on two previous occasions, the first in December 2006 and the second in February 2008.
8. On 10 September 2008, JB Hi-Fi responded to the ACCC's letter. JB Hi-Fi stated it had investigated the matter and determined that the two incidents referred to above occurred as a result of a procedural error by staff at the Kotara Westfield store. Specifically, staff had failed to return the faulty mobile phones immediately to the supplier and instead remixed the faulty phones with new stock. JB Hi-Fi claimed that the two incidents were isolated.
9. JB Hi-Fi further stated they already have policies in place at all its stores which staff are expected to follow to deal with returned mobile phones that are faulty. Pursuant to these policies, it is mandatory for the selling store to replace the mobile phone with a new product and return the faulty product immediately to the relevant supplier for a credit.
10. During the period from 1 January 2008 to 28 August 2008, the Kotara Westfield store received 39 mobile phone units which were returned as faulty.
11. The ACCC acknowledges that JB Hi-Fi has co-operated in resolving this matter and has taken a number of steps to address the ACCC's concerns, including:
 - (a) Providing to the complainant a gift voucher to the value of \$50;
 - (b) Recommunicating to staff of the Kotara Westfield store the mandatory policies for dealing with returned mobile phones; and
 - (c) Highlighting these incidents as part of its ongoing trade practices compliance training across all stores.
12. To address the concerns of the ACCC, JB Hi-Fi has offered to give this Undertaking to the ACCC and the ACCC has agreed to accept the Undertaking under section 87B of the TPA.

COMMENCEMENT

13. This Undertaking comes into effect when:
 - (a) The Undertaking is executed by JB Hi-Fi; and
 - (b) The ACCC accepts the Undertaking so executed.
14. Upon the commencement of this Undertaking, JB Hi-Fi undertakes to assume the obligations set out in paragraphs 15 to 18 below.

UNDERTAKINGS

Cease and refrain from making false, misleading or deceptive representations

15. JB Hi Fi undertakes that it will, for a period of 3 years from the date of this Undertaking coming into effect, whether by itself, its directors, servants or agents or otherwise howsoever, in trade or commerce, in connection with the supply or possible supply of mobile phones or in connection with the promotion by any means of the supply or use of mobile phones, immediately cease and thereafter refrain from making any representation that the mobile phones it supplies are new when this is not the case.

Corrective Notices

16. JB Hi-Fi further undertakes that it will, at its own expense:
 - (a) within 21 days of the date of this Undertaking coming into effect, publish or cause to be published for 8 consecutive weeks, a corrective notice in the form and terms of **Annexure A** to this Undertaking, subject only to such variations as may be agreed to by the ACCC in writing, to be displayed in a prominent position at the Kotara Westfield store; and
 - (b) within 21 days of the date of this Undertaking coming into effect, cause to be published for 8 consecutive weeks in the *Newcastle Post* newspaper, a corrective notice in the form and terms of **Annexure A** to this Undertaking, subject only to such variations as may be agreed to by the ACCC in writing.
17. JB Hi-Fi further undertakes that it will provide the ACCC with written evidence of the consumer notices it has caused to be published pursuant to paragraphs 16(a) and 16(b) above, by providing to the ACCC a copy of each of the consumer notices which have been published at the Kotara Westfield store and in the *Newcastle Post* newspaper.

Trade Practices Compliance Program

18. JB Hi Fi undertakes that it will extend its existing Trade Practices Compliance Program to cover mobile phones and section 53(b) of the TPA, including extending the 2009 independent review of its existing Trade Practices Compliance Program to cover JB Hi-Fi's policies and procedures for handling the return of mobile phones.

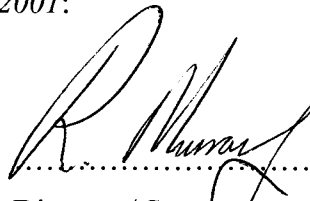
ACKNOWLEDGEMENTS

- 19. JB Hi-Fi acknowledges that the ACCC will make this Undertaking available for public inspection.
- 20. JB Hi-Fi further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
- 21. JB Hi-Fi further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by JB Hi-Fi Group Pty Ltd (ACN 093 114 286) by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*:


.....
Director


Terry Smart
.....
Print Name


.....
Director / ~~Secretary~~

Richard Murray
.....
Print Name

This day of 2009

ACCEPTED by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** pursuant to section 87B of the *Trade Practices Act 1974*


.....
Graeme Julian Samuel
Chairman
Australian Competition and Consumer Commission

This *20th* day of *February* 2009

ANNEXURE A

DETAILS OF CORRECTIVE NOTICES FOR PUBLICATION

1. The notice shall be in the following terms:

CORRECTIVE NOTICE

A CORRECTION FROM JB HI-FI - MOBILE PHONES

The Australian Competition and Consumer Commission (ACCC) has raised concerns with JB Hi-Fi Limited (**JB Hi-Fi**) about the sale of returned mobile phones as new to a customer when they were in fact not new during the period from 1 January to 28 August 2008.

The mobile phone in question was initially returned to the Kotara store by a customer because of technical faults. Due to an operational oversight, the phone was accidentally repackaged and resold as new to the same customer on two different occasions. This was contrary to JB Hi-Fi's internal policies and procedures.

The ACCC considers that by selling the returned phones as new, JB Hi-Fi engaged in false, misleading or deceptive conduct in breach of sections 52 and 53(b) of the *Trade Practices Act 1974* (TPA).

To address its concerns, the ACCC accepted a court enforceable undertaking from JB Hi-Fi. As part of the undertaking, JB Hi-Fi has agreed to refrain from making similar representations in the future concerning the supply of mobile phones as new when this is not the case. JB Hi-Fi has also undertaken to extend its existing trade practices compliance program to cover mobile phones and section 53(b) of the TPA.

If you purchased a mobile phone from us during the period from 1 January 2008 to 28 August 2008 and believe that it was not new at the time of purchase, please let us know so that we may investigate the matter and provide you with either a refund or replacement.

JB Hi-Fi is taking every effort to ensure that this problem does not reoccur and apologises to any customers who were affected.

If you have any queries about this notice or any mobile phone you have purchased from JB Hi-Fi, please call us on 4956 2222.

This corrective notice has been paid for by JB Hi-Fi and placed because of the Undertaking given to the ACCC under section 87B of the Trade Practices Act 1974.

2. The corrective notice when published as a sign in accordance with paragraph 16(a) of the Undertaking shall:
 - (a) be at least 18cm high and 13cm wide;
 - (b) be legible and in black Times New Roman font on a white background and justified left, unless otherwise stated;
 - (c) have a banner at the top with the words “Corrective Notice” appearing in the centre in not less than 14 point San Serif font in white text on a black background;
 - (d) have a prominent headline in the words “A correction from JB Hi-Fi – mobile phones” centred in at least 34 point;
 - (e) display the JB Hi-Fi logo below the headline at least 20mm high;
 - (f) display the body of the text in font of at least 10 point;
 - (g) display the Australian Government and ACCC logos below the main body of the text at least 20mm high; and
 - (h) display at the bottom in font not less than 8 point an acknowledgement from JB Hi-Fi that the corrective notice was published at JB Hi-Fi’s expense as a result of a section 87B undertaking provided to the ACCC.

3. The corrective notice when published in the *Newcastle Post* newspaper in accordance with paragraph 16(b) of the Undertaking shall:
 - (a) be of a size not less than 12cm x 10cm (or equivalent area);
 - (b) be legible and in text which is in a type size not less than 9 point;
 - (c) be published in the first 20 pages of the Early General News section of the newspaper, once per week for a period of 8 consecutive weeks;
 - (d) have a banner at the top with the words “Corrective Notice” appearing in the centre in not less than 12 point San Serif font in white text on a black background;
 - (e) have a prominent headline with the words “A correction from JB Hi-Fi – mobile phones” centred in at least 16 point;
 - (f) display the JB Hi-Fi logo below the headline at least 20mm high;
 - (g) display the Australian Government and ACCC logos below the main body of the text at least 20mm high; and

- (h) display at the bottom in font not less than 8 point an acknowledgement from JB Hi-Fi that the corrective notice was published at JB Hi-Fi's expense as a result of a section 87B undertaking provided to the ACCC.