

TRADE PRACTICES ACT 1974

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

BY

KOGAN TECHNOLOGIES PTY LTD

ACN 125 684 184

PERSON GIVING THE UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Kogan Technologies Pty Ltd (ACN 125 684 184) of Level 1, 150 Waverley Road, Malvern East, in the State of Victoria, 3145 under section 87B of the *Trade Practices Act 1974 (the Act)*.

BACKGROUND

2. Kogan Technologies Pty Ltd (**Kogan**) is incorporated under the *Corporations Act 2001* (Cth) and is registered in the State of Victoria.
3. Kogan is both the manufacturer and online retailer of Kogan branded electrical products which Kogan retails through its website at www.kogan.com.au (**the website**). Kogan is owned and operated by its sole director, Mr Ruslan Kogan.
4. Kogan brand electrical products are not sold by any other distributor.

CONDUCT

5. On 25 November 2008, Kogan caused an advertisement to be published in *The Herald Sun* newspaper in Melbourne which contained the following representations:
 - (i) 12" Digital photo frame — 'Now only \$199 (Save over 40%)'
 - (ii) 32" 1080p Full HD LCD TV — 'Now only \$899 (Save 33%)'
 - (iii) 47" 1080p Full HD LCD TV — 'Now only \$1899 (Save over 35%)'
 - (iv) Full HD Digital Video Camera — 'Now only \$399 (Save over 45%)'
 - (v) 4.5" GPS with latest maps — 'Now only \$249 (Save 37%)'
 - (vi) Blu-Ray Player — 'Now only \$349 (Save 30%)'
6. The website also represented to consumers that they could 'save over \$1500' on a Kogan 100Hz 42" LCD TV which was advertised for \$1499.

7. The ACCC wrote to Kogan raising concerns that the pricing representations for its electrical products as referred to in paragraphs (5) and (6) may have amounted to contraventions of sections 52 and 53(e) of the Act, in that the products were never sold by Kogan at the higher prices.
8. Specifically, the ACCC believes that the represented ‘savings’ were not genuine savings as Kogan had not previously advertised or sold the products at the higher non-sale price in reasonable quantities for a reasonable period of time and within a reasonable period of the date of the said advertisements. Accordingly, the LCD TV had only ever been offered for sale by Kogan at \$1499 and never at \$2999 (the latter incorporating the alleged \$1500 saving).
9. Section 52 of the Act prohibits conduct that is misleading or deceptive or that is likely to mislead or deceive. Section 53(e) of the Act states that a corporation shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services make a false and misleading representation with respect to the price of the goods or services.
10. Kogan’s savings were based on an estimated average price that a consumer might pay for a product with the same specifications from another manufacturer and not a saving on the price previously offered by Kogan for those products.
11. The ACCC also considers that these representations were likely to be misleading in that the advertising did not express the basis on which the savings were calculated and, through use of the word “Now”, was likely to generate belief of a price reduction rather than a price comparison.
12. The ACCC also considers that it is potentially misleading to compare the prices of goods based on the estimated price a consumer might pay for a product with the same specifications from another manufacturer. This is particularly the case where the products are not exactly the same, as such comparisons do not take into account other value-adding features.

RESOLUTION OF CONCERNS

13. Kogan acknowledges that the conduct outlined in paragraphs 5 to 6 is likely to have contravened sections 52 and 53 (e) of the Act.
14. In response to the ACCC’s concerns regarding the conduct, Kogan voluntarily
 - (i) removed the representations from the website; and
 - (ii) offered this Undertaking to the ACCC on the terms contained herein.

COMMENCEMENT

15. This undertaking comes into effect when:
 - (i) The undertaking is executed by Kogan; and

- (ii) The ACCC accepts the Undertaking so executed

(the commencement of this undertaking)

- 16. Upon the commencement of this Undertaking, Kogan undertakes to assume the obligations set out in paragraph 17 and 18.

UNDERTAKINGS

- 17. Kogan hereby undertakes for the purposes of section 87B of the Act that:

- (i) it will not, in trade or commerce:

- A. represent that a particular saving is available to purchasers of a Kogan good, where the saving is calculated by reference to the price of a non-Kogan good, without clearly identifying the brand and model of the good with which the price comparison is made;
- B. offer or advertise any goods as being on sale by reference to price comparison, a specified amount, or a specified percentage or figure, unless those goods have been advertised for sale or sold at the higher price in reasonable quantities for a reasonable amount of time within a reasonable period of the date of the advertising.

- (ii) it will ensure that all future advertising and other forms of promotion by Kogan complies with Part V of the Act.

- 18. Kogan further undertakes that it will implement a trade practices compliance program in accordance with **Annexure A**.

ACKNOWLEDGMENTS

- 19. Kogan acknowledges that the ACCC will make this undertaking available for public inspection including by placing it on a register, publishing it and allowing third parties to publish it.
- 20. Kogan further acknowledges that the ACCC may issue a media release about this undertaking and will from time to time publicly refer to this undertaking.
- 21. Kogan further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

IN WITNESS OF THIS UNDERTAKING AND ITS AGREEMENT:

**EXECUTED BY KOGAN TECHNOLOGIES PTY LTD (ACN 125 684 184)
PURSUANT TO SECTION 127(1) OF THE CORPORATIONS ACT 2001**



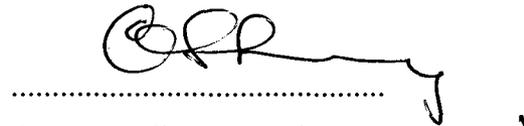
Signature (Director)

Ruslan Kogan

Print Name

This 6th day of April 2009

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



Graeme Julian Samuel

Chairperson

This 20th day of April 2009

ANNEXURE A

TRADE PRACTICES COMPLIANCE PROGRAM

Kogan Technologies Pty Ltd (**Kogan**) undertakes, to the ACCC, for the purposes of section 87B of the *Trade Practices Act 1974* (**the Act**) that Kogan will design and implement a Trade Practices Compliance Program covering Part V of the Act in accordance with the requirements set out below and will maintain and continue to implement the Trade Practices Compliance program for a period of 3 years from the date of the Undertaking coming into effect.

1. Training

- 1.1. Within 3 months of this Undertaking coming into effect, and thereafter at least once a year for the period of the Undertaking, Kogan will cause Mr Ruslan Kogan, Director of Kogan, and any other person occupying that (or the equivalent position) for 3 months or more during the period of 3 years from the date of the Undertaking, to attend practical trade practices training, at Kogan's own expense, focusing on Part V of the Act, including specifically sections 52 and 53 of the Act.
- 1.2. Kogan will ensure that the training referred to in paragraph 1.1 above is administered by a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law.
- 1.3. Kogan will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 1.1 above to the ACCC within 14 days of completion of the training verifying that such training has occurred.
- 1.4. Kogan will cause those employees of Kogan whose duties could result in them being concerned with conduct that may contravene Part V of the Act to receive from the Director of Kogan (at least once a year) briefings concerning Part V of the Act, including specifically briefings concerning sections 52 and 53 of the Act.

2. Complaints handling

- 2.1. Kogan will:
 - 2.1.1. develop procedures for recording, storing and responding to trade practices complaints within two months of this Undertaking coming into effect; and
 - 2.1.2. provide the ACCC with an outline of the complaint handling system developed within two month of the Undertaking coming into effect.

3. If requested by the ACCC, Kogan will provide, at its own expense, copies of any other documents or information in respect of matters which are the subject of the Compliance Program.