

## TRADE PRACTICES ACT 1974

Undertaking to the Australian Competition and Consumer Commission given for  
the purposes of section 87B

by

Skins Compression Garments Pty Ltd

ACN. 110 666 923

### Person Giving this Undertaking

1. This undertaking is given to the Australian Competition and Consumer Commission ("ACCC") by Skins Compression Garments Pty Ltd (ACN 110 666 923) ("Skins"), Unit B, 102 Bonds Road, Riverwood, in the State of New South Wales, under section 87B of the Trade Practices Act 1974 ("the Act").

### Background

2. Skins carries on business as:
  - 2.1. the supplier of compression sports performance garments ("Skins products") to a distributor and retailers across Australia; and
  - 2.2. a retailer of Skins products to the general public in Australia by telephone and internet sales..
3. The ACCC instituted proceedings in the Federal Court at Adelaide on 28 August 2007 against Skins and Jaimie Royston Fuller ("Fuller"), the sole director of Skins at all material times, and Christopher Thomas Warhurst ("Warhurst"), a representative of Skins' agent in South Australia, ("the proceedings"), alleging that, inter alia:
  - 3.1. Skins engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 52 of the Act by making certain representations in advertising Skins products in 2005, 2006 and 2007;
  - 3.2. Skins, by reason of the conduct of its agent Warhurst, engaged in the practice of resale price maintenance in contravention of section 48 of the Act in its dealings with The Sports Locker Pty Ltd, a retailer of sporting goods from premises located at Prospect in South Australia ("Sports Locker");
  - 3.3. Warhurst was directly or indirectly knowingly concerned in, or party to, the conduct by Skins in contravention of section 48 of the Act.
4. By virtue of the operation of section 84(2)(a) of the Act, the conduct of its agent Warhurst is deemed to be conduct engaged in by Skins.
5. The proceedings have been finalised with the consent of the parties by the making of orders by the Court and the giving of undertakings as follows:
  - 5.1. Declarations to the effect that Skins engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 52 of the Act by representing, in television, radio and print advertising and on websites that:
    - 5.1.1. Skins does not pay money for sports stars to wear Skins products;
    - 5.1.2. Skins does not pay money for sports stars to endorse Skins products;
    - 5.1.3. sports stars always pay money for Skins products,in circumstances in which those representations were false by reason of agreements Skins entered into with sports stars or their representatives, clubs, teams or governing bodies pursuant to which Skins:
    - 5.1.4. paid money for sports stars to wear Skins products;
    - 5.1.5. paid money for sports stars to endorse Skins products;
    - 5.1.6. provided Skins products for sports stars to wear without them being paid for with money.

- 5.2. A declaration to the effect that by reason of the operation of section 84(2)(a) of the Act, Skins engaged in the practice of resale price maintenance in contravention of section 48 of the Act in its dealings with Sports Locker by reason of Christopher Thomas Warhurst, a representative of Skins' agent in South Australia, inducing Sports Locker not to advertise Skins products at prices less than prices specified by Skins in July 2005, and attempting to induce Sports Locker not to advertise Skins products at prices less than prices specified by Skins in September 2005 and May 2006.
- 5.3. A declaration to the effect that Warhurst was directly or indirectly knowingly concerned in, or party to, the conduct by Skins in contravention of section 48 of the Act.
- 5.4. An order that Skins pay a pecuniary penalty in respect of its resale price maintenance conduct referred to in subparagraph 5.2.
- 5.5. An order that Warhurst pay a pecuniary penalty in respect of his involvement in Skins' resale price maintenance conduct referred to in subparagraph 5.2.
- 5.6. An order that Skins advise its current retailers, agents and/or distributors of its resale price maintenance conduct by letter;
- 5.7. Orders that Skins:
  - 5.7.1. publish a corrective notice on its website;
  - 5.7.2. cause a corrective advertisement to be published in B & T weekly; and
  - 5.7.3. cause a corrective advertisement to be broadcast on the SBS national television network, in respect of its misleading and deceptive conduct.
- 5.8. An order that Skins pay the ACCC's costs of the proceedings.
- 5.9. Skins undertaking to the Court that it will not make the representations referred to in subparagraphs 5.1.1 to 5.1.6 when marketing, selling or promoting Skins products for a period of three years, or representations to similar effect, unless they are true.
- 5.10. Fuller giving an undertaking to the ACCC for the purposes of section 87B of the Act.
- 5.11. Warhurst giving an undertaking to the ACCC for the purposes of section 87B of the Act.
- 5.12. Skins giving this undertaking to the ACCC for the purposes of section 87B of the Act.

## **Commencement**

6. This undertaking comes into effect when:
  - 6.1. the undertaking is executed by Skins; and
  - 6.2. the ACCC accepts the undertaking so executed.
7. Upon the commencement of this undertaking, Skins undertakes to assume the obligations set out in paragraph 8.

## **Undertaking**

8. Skins hereby undertakes for the purposes of section 87B of the Act that it will design and implement a Trade Practices Compliance Program covering section 52 and Part IV of the Act which is designed to ensure an awareness of the responsibilities and obligations contained in section 52 and part IV 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 this Undertaking coming into effect.
  - 8.1. **Training**
    - 8.1.1. Within 3 months of this Undertaking coming into effect, and thereafter at least once a year for the period of the undertaking, employees, agents or other persons involved in Skins business will attend practical trade practices training focusing on section 52 and Part IV of the Act. These persons will include, at least:
      - 8.1.1.1. the General Manager;

8.1.1.2. the Financial Controller;

8.1.1.3. the Sales Manager;

8.1.1.4. the Marketing Manager.

8.1.2. Skins will ensure that the training referred to in paragraph 8.1.1 above is administered by a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law.

8.1.3. Skins will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 8.1.1 above to the Commission within 14 days of completion of the training verifying that such training has occurred.

## 8.2. Complaints handling

8.2.1. Skins will:

8.2.1.1. develop procedures for recording, storing and responding to trade practices complaints within two months of this Undertaking coming into effect; and

8.2.1.2. provide the Commission with an outline of the complaint handling system developed within two month of the Undertaking coming into effect.

9. If requested by the Commission, Skins 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.

## Acknowledgements

10. Skins acknowledges that the ACCC will make this undertaking available for public inspection.

11. Skins further acknowledges that the ACCC will from time to time publicly refer to this undertaking.

12. Skins further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

13. Skins further acknowledges that a summary of the compliance program reports referred to in paragraph 8 of this undertaking may be held with this undertaking on the public register.

Executed by Skins Compression Garments Pty Ltd (ACN 110 666 923) pursuant to section 127(1) of the Corporations Act 2001:

.....  
Director

.....  
Director

This 13 day of May 2009

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

.....  
Graeme Julian Samuel

Chairperson

This 25 day of May 2009