

TRADE PRACTICES ACT 1974

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

BY

JANOME AUSTRALIA PTY LTD ACN 000 738 483

AND

MR TOSHIYA TAKAYASU

PERSONS GIVING UNDERTAKING

1. The Undertakings provided at paragraph 19 below are given by Mr Toshiya Takayasu, Managing Director of Janome Australia Pty Ltd ACN 000 738 483 (**Janome**) of 1-15 Mills Street, Cheltenham, Victoria to the Australian Competition and Consumer Commission (**ACCC**) under section 87B of the *Trade Practices Act 1974 (TPA)*.
2. The Undertakings provided at paragraph 20 below are given by Janome to the ACCC under section 87B of the TPA.

CONDUCT

3. Janome supplies Janome branded sewing machines, quilting machines, overlockers and associated products in Australia.
4. Between February and April 2008, Janome sought to implement a Minimum Advertised Price (**MAP**) Policy across its reseller network.
5. The MAP Policy was devised by Janome's Managing Director, Mr Toshiya Takayasu.
6. The MAP Policy provided that resellers should not advertise products supplied by Janome at a price lower than the MAP published by Janome from time to time.
7. The MAP Policy provided, among other things, that:
 - (a) it would come into effect on 1 April 2008;
 - (b) it applied to all forms of advertising except in-store displays, in-store banners, in-store price markings, quotes and contracts; and
 - (c) in the event of a violation of the MAP Policy, Janome may revoke the authorisation of a retailer to sell Janome products.
8. The MAP Policy was distributed by Janome to its Australian resellers other than Victorian resellers.
9. By letter dated 5 May 2008, the ACCC wrote to Janome, raising concerns that the MAP Policy appeared to breach section 48 of the TPA.

10. Section 48 of the TPA provides that a corporation or other person shall not engage in the practice of resale price maintenance.
11. On 12 May 2008 in a letter to resellers who had been forwarded the MAP Policy, Mr Toshiya Takayasu advised that the MAP Policy was suspended with immediate effect and resellers were free to advertise Janome products at whatever price they wished and in any media.
12. By letter dated 23 May 2008, Janome's solicitors informed the ACCC of the Janome suspension of the MAP Policy on 12 May 2009.

ADMISSIONS

13. Janome admits that, by engaging in the conduct described in paragraphs 4 to 8 above, it contravened section 48 of the TPA.
14. Mr Takayasu admits that, by implementing the MAP Policy, he was involved in Janome's contravention of section 48 of the TPA.
15. In response to the ACCC's concerns, and in order to resolve this matter, Janome and Mr Takayasu have offered the Undertakings below under section 87B of the TPA to the ACCC.

16. COMMENCEMENT OF UNDERTAKINGS

17. The Undertakings given at paragraph 19 below come into effect when:
 - a. the Undertaking is executed by Mr Takayasu; and
 - b. the ACCC accepts the Undertaking so executed.
18. The Undertakings given at paragraph 20 below come into effect when:
 - a. the Undertaking is executed by Janome; and
 - b. the ACCC accepts the Undertaking so executed.

UNDERTAKINGS

Mr Takayasu

19. Mr Takayasu hereby undertakes to the ACCC, for the purposes of section 87B of the TPA, that he :
 - a) will not make any statement to any reseller inducing, or attempting to induce that person not to advertise for sale, or not to sell, a product supplied by Janome at a price lower than a price specified by Janome; and
 - (b) will not instruct, authorise, or assist Janome employees or agents to make any statement to any reseller inducing, or attempting to induce, that person

not to advertise for sale, or not to sell, a product supplied by Janome at a price lower than a price specified by Janome.

Janome

20. Janome hereby undertakes to the ACCC, for the purposes of section 87B of the TPA, that it:

- a. will not, whether by itself, its directors, its employees, agents or otherwise, make any statement to any reseller inducing, or attempting to induce, that person not to advertise for sale, or not to sell, a product supplied by Janome at a price lower than a price specified by Janome;
- b. 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 Janome's business, being a program designed to minimise Janome's risk of future breaches of Pt IV of the TPA, with particular attention to section 48 of the TPA.
- c. will maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years from the date the Undertaking is accepted by the ACCC;
- d. will provide, at its own expense, a copy of any documents requested by the ACCC in accordance with "**Annexure A**";
- e. will send a notice in the form of "**Annexure B**" to all of its Australian resellers, informing them of the conduct in which it has engaged and the consequent breach of the TPA;
- f. will publish on its website, www.janome.com.au, a notice in the form of "**Annexure C**" for a period of three months beginning not later than thirty days after the Undertaking is accepted by the ACCC. The Notice will:-
 - (i) be a size that is at least 40% of the screen size,
 - (ii) be viewable immediately on screen after the web page is accessed, and
 - (iii) not require a further selection of hyperlinks or scrolling on the screen to be seen.
- g. will cause a notice in the form of "**Annexure C**" to be published once in each of *Australian Stitches* and *Embroidery and Cross Stitch* magazines within six months of the Undertaking being accepted by the ACCC and will use its best endeavours to ensure that the notice:-
 - (i) is of a size no less than one full page of each magazine;
 - (ii) has a heading in capital letters of a text size not less than 26 point Times New Roman; and
 - (iii) is in text of a size not less than 12 point Times New Roman font; and
- h. will provide to the ACCC copies of the *Australian Stitches* and *Embroidery and Cross Stitch* magazines in which the notice referred to in subparagraph (g) above appears within 30 days of publication of the notice.

Acknowledgements

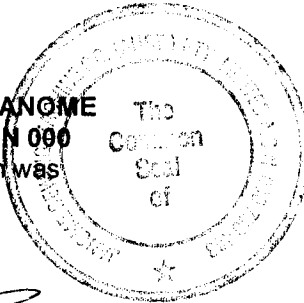
- 21. Mr Takayasu and Janome acknowledge that the ACCC will make this Undertaking available for public inspection.
- 22. Mr Takayasu and Janome further acknowledge that the ACCC will from time to time publicly refer to this undertaking.
- 23. Mr Takayasu and Janome further acknowledge that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- 24. Janome further acknowledges that a summary of the ACCC Compliance Program Review reports referred to in Annexure A of the Undertaking may be held with this Undertaking on the public register.

EXECUTED by TOSHIYA TAKAYASU



Signature of Toshiya Takayasu

THE COMMON SEAL of JANOME AUSTRALIA PTY LTD ACN 090 738 483, the fixing of which was witnessed by:



Signature of director



Signature of director/secretary

Toshiya Takayasu
Name

Toshiya Takayasu
Name

DATED this 11th day of May 2009.

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



~~Graeme Julian Camust~~
~~Chairman~~

PETER RICHARD KELL
ACTING CHAIRMAN

DATED this 11th day of ~~May~~ June 2009.

TRADE PRACTICES COMPLIANCE PROGRAM

Janome Australia Pty Ltd ACN 000 738 483 (**Janome**) will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within one month of the date the Undertaking is accepted by the Australian Competition and Consumer Commission (**ACCC**), Janome will appoint a Director or a Senior Manager with suitable qualifications or experience in corporate compliance as **Compliance Officer** with responsibility for ensuring the Compliance Program is effectively designed, implemented and maintained.
2. Within two months of the date the Undertaking is accepted by the ACCC, Janome shall appoint a qualified, internal or external, compliance professional with expertise in trade practices issues (**the Compliance Advisor**). Janome shall instruct the Compliance Adviser to conduct a Trade Practices Act 1974 (**TPA**) risk assessment (**Risk Assessment**) in accordance with 2.1 – 2.4 below:
 - 2.1. identify the areas where Janome is at risk of breaching Pt IV of the TPA, in particular section 48.
 - 2.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Janome should they occur;
 - 2.3. identify where there may be gaps in Janome's existing procedures for managing these risks; and
 - 2.4. provide recommendations for action having regard to the risk assessment.

Compliance Policy

3. Janome will, within two months of the date the Undertaking is accepted by the ACCC, issue a policy statement outlining Janome's commitment to trade practices compliance (**the Compliance Policy**). Janome will ensure that the Compliance Policy:
 - 3.1. is written in plain language;
 - 3.2. contains a statement of commitment to compliance with the TPA;
 - 3.3. contains a strategic outline of how commitment to trade practices compliance will be realised within Janome;
 - 3.4. contains a requirement for all staff to report any compliance related issues and trade practices compliance concerns to the Compliance Officer;

3.5. contains a guarantee that whistleblowers will not be prosecuted or disadvantaged in any way and that their reports will be kept confidential and secure; and

3.6. contains a clear statement that Janome will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the TPA and will not indemnify them.

Complaints Handling System

4. Janome will ensure that the Compliance Program includes a trade practices complaints handling system. Janome shall use its best endeavours to ensure this system is consistent with Australian Standard 4269, though tailored to Janome's circumstances. Janome will ensure that staff and customers are made aware of the complaints handling system.

5. Janome will ensure that the Compliance Program includes whistleblower protection mechanisms to protect those coming forward with trade practices complaints. Janome shall use its best endeavours to ensure that these mechanisms are consistent with Australian Standard 8004, though tailored to Janome's circumstances.

Reports to Board/Senior Management

6. Janome will ensure that the Compliance Officer reports to the Board and/or senior management meetings every 6 months on the continuing effectiveness of the Compliance Program.

Training

7. Janome will ensure that the Compliance Program provides for regular (at least once a year) and practical trade practices training for all directors, officers, employees, representatives and agents of Janome, whose duties could result in them being concerned with conduct that may contravene Pt IV of the TPA, in particular section 48. Janome must ensure that the training is conducted by either a suitably qualified compliance professional or legal practitioner with expertise in trade practices law. The first practical trade practices training will take place within 3 months of the date the Undertaking is accepted by the ACCC.

8. Janome will, at its expense, provide a written statement or certificate from the suitably qualified compliance professional or legal practitioner who conducts the training referred to in paragraph 7 above to the ACCC within 14 days of completion of the training verifying that such training has occurred and providing details of what the training covered.

9. Janome will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new directors, officers, employees, representatives and agents, whose

duties could result in them being concerned with conduct that may contravene Pt IV of the TPA, in particular section 48 of the TPA.

Supply of Compliance Program Documents to the ACCC

10. Janome shall, at its own expense, within 6 months of the date the Undertaking is accepted by the ACCC, cause to be produced and provided to the ACCC copies of each of the documents constituting the Compliance Program and implement promptly and with due diligence any recommendations that the ACCC may make that are reasonably necessary to ensure that Janome maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

Review

11. Janome 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:
 - 11.1. **Scope of the Reviews** – the Reviews will be broad and rigorous enough to provide Janome and the ACCC with a supportable verification that Janome has in place a program that complies with each of the requirements detailed in paragraphs 1 to 11 of this Annexure and to provide the Review reports and opinions detailed at paragraph 12 below;
 - 11.2. **Independence of Reviewer** – Janome 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:
 - 11.2.1. did not design or implement the Compliance Program;
 - 11.2.2. is not a present or past staff member or director of Janome;
 - 11.2.3. has not acted and does not act for Janome in any trade practices related matters;
 - 11.2.4. has not and does not act for or consult to Janome or provide other services on trade practices related matters other than Compliance Program reviewing; and
 - 11.2.5. has no significant shareholding or other interests in Janome;
 - 11.3. **Evidence** – Janome 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 Janome's possession or control, including without limitation:
 - 11.3.1. enquiries of any officers, employees, representatives, agents and stakeholders of Janome;

- 11.3.2. Janome's records, including Janome's complaints register/reports and any documents relevant to Janome's training or induction program; and
- 11.3.3. documents created by Janome's consultants and legal practitioners for use in Janome's Compliance Program.
- 11.4. Janome 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

- 12. Janome shall use its best endeavours to ensure the Reviewer sets out the findings of the Review in two separate reports as set out below:

Company Compliance Program Review Report (to be provided to Janome)

- 12.1. Janome's Company Compliance Program Review Report will provide particular and specific information regarding the performance of the Trade Practices Compliance Program to Janome including:
 - 12.1.1. if, and to what extent, the Compliance Program of Janome includes all the elements detailed in paragraphs 1 to 11 above;
 - 12.1.2. if, and to what extent, the Trade Practices Compliance Program adequately covers the parties and areas identified in the initial Risk Assessment;
 - 12.1.3. if, and to what extent, the trade practices training is effective;
 - 12.1.4. if, and to what extent, Janome's complaints handling system is effective;
 - 12.1.5. if, and to what extent, Janome is able to provide confidentiality and security to whistleblowers, and staff are aware of the whistleblower protection mechanisms; and
 - 12.1.6. recommendations for rectifying deficiencies in 12.1.1-12.1.5 above that the Reviewer thinks are reasonable necessary to ensure that Janome maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

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

- 12.2. The ACCC Compliance Program Review Report will provide particular and specific information regarding the scope of the Review and the effectiveness of the Trade Practices Compliance Program including:
 - 12.2.1. details of the evidence gathered and examined during the Review;
 - 12.2.2. the name and relevant experience of the person appointed as the company Compliance Officer;
 - 12.2.3. the Reviewer's opinion on whether Janome has in place a Trade Practices Compliance Program that complies with the requirements detailed in paragraph 1-11 above;
 - 12.2.4. actions recommended by the Reviewer to ensure the continuing effectiveness of Janome's Compliance Program;
 - 12.2.5. confirmation that any actual and potential inadequacies in Janome's Compliance Program have been brought to the attention of the Compliance Officer and the Board;
 - 12.2.6. confirmation that the Reviewer has revisited any actual and potential inadequacies in Janome's Compliance Program identified in any previous Company Compliance Program Review Report, and assessed how they have been addressed by Janome;
 - 12.2.7. 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
 - 12.2.8. any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.
- 12.3. Janome will ensure that the Review Reports are completed and provided to Janome within two months of each Review.
- 12.4. Janome will retain the Company Compliance Program Review Report and cause the ACCC Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
- 12.5. Janome acknowledges that a brief statement regarding the ACCC Compliance Program Review Report may be included in the ACCC's section 87B Undertakings public register.

13. **Recommendations** – Janome shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that Janome maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
14. If requested by the ACCC, Janome shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
15. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Janome shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting ACCC Review Report to be provided to the ACCC.

Annexure B

Dear Janome Reseller

Between February and April 2008 Janome Australia Pty Ltd wrote you with respect to the implementation of Janome's Minimum Advertised Price (**MAP**) Policy, and that the purpose of the MAP Policy was to require resellers not to advertise products at a price lower than the MAP published by Janome from time to time.

On 5 May 2008 the Australian Competition and Consumer Commission (**ACCC**) wrote to Janome and raised concerns that in implementing the MAP Policy, Janome may have contravened section 48 of the *Trade Practices Act 1974* (**TPA**) that relate to resale price maintenance.

Janome and I acknowledge that in implementing the MAP Policy we contravened the resale price maintenance provisions of the TPA.

Janome and I have provided court enforceable undertakings to the ACCC, and Janome will be reviewing all its policies and procedures with a view to minimizing the risk of further breaches of the TPA.

Janome and I wish to reiterate that you are entitled to advertise and sell products supplied by Janome at any price you choose.

Janome thanks you for your ongoing support and looks forward to working closely with you in the future.

Should you have any questions with regard to this matter, please contact Ian Commerford, National Manager - Sales or myself.

Yours sincerely

Toshiya Takayasu
Managing Director

Please note that further information about resale price maintenance and the TPA is available from the ACCC Infocentre telephone 1300 302 502 or on its web site at www.accc.gov.au.



Trade Practices Act breach

Last year Janome Australia Pty Ltd attempted to stop discount advertising by its resellers.

Between February and April 2008 Janome sought to implement a Minimum Advertised Price Policy on its resellers which prevented Janome resellers from advertising sewing machines, quilting machines, overlockers, and associated products at a price lower than the price specified by Janome.

The Policy aimed to have uniform prices advertised for Janome products. The Policy was implemented by Mr Toshiya Takayasu, Janome's Managing Director.

On 5 May 2008 the Australian Competition and Consumer Commission wrote to Janome, advising the Policy appeared to breach s 48, the resale price maintenance provisions, of the *Trade Practices Act 1974 (TPA)* which prohibits a company from setting the minimum price at which a reseller can advertise or sell goods it has purchased from the company for resale.

Janome suspended the Minimum Advertised Price Policy on 12 May 2008.

Janome has admitted that in implementing Policy it contravened s48 of the TPA; and Mr Takayasu has admitted that by his role in implementing the Policy he contravened s48 of the TPA.

Janome acknowledges that its resellers are permitted to advertise and sell its products at whatever price they determine.

Janome apologises to its customers for implementing the Minimum Advertised Price Policy.

Any questions regarding the Policy should be directed to Customer Service at Janome Australia Pty Ltd, 1- 15 Mills Street, Cheltenham VIC 3192, Australia, or call at 1-300 Janome or e-mail us at vic@janome.com.au.

Further information about resale price maintenance and the Trade Practices Act is available for the ACCC Info centre telephone 1300302 502 or on its web site at www.accc.gov.au.



Australian
Competition &
Consumer
Commission

This notice is published as part of court enforceable undertakings given to the ACCC by Janome.