

TRADE PRACTICES ACT 1974

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

BY

PMP HOME MEDIA PTY LIMITED trading as PMP DISTRIBUTION
ABN 25 051 757 718

PARTY GIVING THIS UNDERTAKING

1. This undertaking is given by PMP Home Media Pty Limited ABN 25 051 757 718 trading as PMP Distribution (**PMPD**) of Level 15, 67 Albert Avenue, Chatswood, New South Wales to the Australian Competition and Consumer Commission (**ACCC**) under section 87B of the *Trade Practices Act 1974* (Cth) (**TPA**).

BACKGROUND

2. PMPD is a wholly owned subsidiary of PMP Limited, an Australian publicly listed company. Its head office is at Chatswood, NSW.
3. PMPD has offices in Melbourne, Sydney, Brisbane, Adelaide and Perth.
4. PMPD distributes advertising material, other publications and product samples to Australian households around the country, through a network of distributors and deliverers, known as 'walkers' who deliver materials by hand to home letterboxes. The use of walkers to make hand deliveries has historically meant there were uncertainties in the recording and reporting of deliveries to customers.
5. To reduce uncertainties and improve the quality of delivery reporting to customers, PMPD introduced technology based on Global Positioning Systems (**GPS**) and, in late 2008, also introduced an on-line portal for major customers.
6. Following the introduction of new processes and technology in the PMPD business, a small group of larger customers have been provided with post-delivery performance reports (**PDRs**). These were provided in various formats.
7. A review in late 2008 indicated that information set out in some PDRs provided to some PMPD customers was inaccurate, including through the reallocation of delivery territories shown as "vacant" to show those territories as "unknown", "early", "late", or "delivered" on one or more of the days for delivery of those materials. The result of these reallocations was to report that materials had been delivered when those deliveries had not taken place.
8. Upon discovering this conduct, PMPD ceased publishing PDR material, advised affected customers, initiated the development of accurate reporting procedures and voluntarily contacted the ACCC and is seeking to resolve the matter by a s 87B undertaking. PMPD has since implemented a revised and accurate PDR format and made it available to some customers.
9. PMPD is in the process of resolving these issues with the individual customers whose reports may have been affected by the conduct. PMPD is using its best endeavours to resolve these issues as soon as possible. PMPD warrants that it has contacted all affected customers of which it is aware and will contact any other affected parties that it subsequently becomes aware of.
10. The ACCC is concerned that the conduct described above is likely to have contravened the TPA. To address all of the ACCC's concerns, PMPD has offered, and the ACCC has accepted, this Undertaking under section 87B of the TPA.

COMMENCEMENT OF UNDERTAKINGS

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

UNDERTAKINGS

12. PMPD undertakes to the ACCC, pursuant to section 87B of the TPA, that:
- (a) PMPD will put in place business procedures and processes to ensure that where PDRs are provided to its customers, those reports accurately reflect the information available to PMPD from its distributor and deliverer contractors at the time of the report;
 - (b) 7 days from the date of this Undertaking, PMPD will provide to the ACCC an independent auditor's report that the obligation in paragraph 12(a) above has been complied with by PMPD;
 - (c) PMPD will, within three months of the date of this Undertaking coming into effect, establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in "Annexure A" for the employees of the PMPD's distribution business in Australia, being a program designed to minimise PMPD's risk of future contraventions of Parts V and Part VC 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;
 - (d) PMPD will maintain and continue to implement the Trade Practices Compliance Program introduced pursuant to clause 12(c) for a period of three years from the date of this Undertaking coming into effect; and
 - (e) PMPD 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

13. PMPD acknowledges that the ACCC may make this Undertaking available for public inspection.
14. PMPD acknowledges that the ACCC may issue a media release in relation to this Undertaking and may from time to time publicly refer to the Undertaking.
15. PMPD 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, PMP Home Media Pty Limited ABN 25 051 757 718, executes this agreement by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001* (Cth).

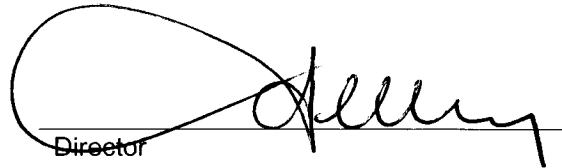


Director / Secretary

Alistair Clarkson

Name (printed)

DATED this 21 day of May



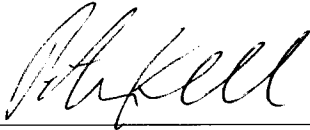
Director

RICHARD IVAN ALLELY

Name (printed)

2009.

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



~~Graeme Julian Samuel~~ PETER RICHARD KELL
Chairman ACTING CHAIRMAN

DATED this 17th day of JUNE 2009.

ANNEXURE A

TRADE PRACTICES COMPLIANCE PROGRAM

PMP Home Media Pty Limited ABN 25 051 757 718 (**PMPD**) 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 PMPD 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. PMPD shall appoint a qualified, internal or external compliance professional with expertise in trade practices issues (**the Compliance Advisor**) within 1 month of the Undertaking coming into effect, for the purposes set out in paragraph 3.
3. PMPD shall instruct the Compliance Advisor to conduct a Trade Practices Act risk assessment (**the Risk Assessment**) in accordance with 3.1 – 3.4 below:
 - 3.1 identify the areas where PMPD is at risk of breaching the Relevant Sections;
 - 3.2 assess the likelihood of these risks occurring and the consequences of the risks to the business operations of PMPD should they occur;
 - 3.3 identify where there may be gaps in PMPD's existing procedures for managing these risks; and
 - 3.4 provide recommendations for action having regard to the assessment.

Compliance Policy

4. If it has not already done so at the date of giving the Undertaking, PMPD will issue a policy statement outlining PMPD's commitment to trade practices compliance (**the Compliance Policy**). PMPD will ensure the Compliance Policy:
 - 4.1 is written in plain language;
 - 4.2 contains a statement of commitment to compliance with the *Trade Practices Act 1974*;
 - 4.3 contains a requirement for all staff to report any compliance related issues and trade practices compliance concerns to the designated officer (**Compliance Officer**); and
 - 4.4 contains a clear statement that PMPD 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 Handling Procedure

5. PMPD 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.

Training

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

Reports to Senior Management

8. PMPD will ensure that the Compliance Officer reports to Senior Management Team every six (6) months on the continuing effectiveness of the Compliance Program.

Supply of Compliance Program Documents to the Commission

9. PMPD 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 documents constituting the Compliance Program.
10. PMPD will implement promptly and with due diligence any recommendations the Commission may make that are reasonably necessary to ensure that PMPD maintains and continues to implement the Compliance Program in accordance with the Undertaking.

Review

11. PMPD 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 Review** – the Reviews should be broad and rigorous enough to provide PMPD and the Commission with supportable verification that PMPD 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 12 below.
 - 11.2 **Independence of Reviewer** – PMPD 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 PMPD;
 - 11.2.3 has not acted and does not act for PMPD in any trade practices related matters;
 - 11.2.4 has not and does not act for or consult to PMPD 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 PMPD.
 - 11.3 **Evidence** – PMPD shall use its best endeavors to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in PMPD's possession or control, including without limitation:

- 11.3.1 enquiries of any officers, employees, representatives, agents and stakeholders of PMPD;
 - 11.3.2 PMPD's records, including the company's complaints register/reports and any documents relevant to the PMPD training or induction program; and
 - 11.3.3 documents created by the PMPD's consultants and legal practitioners for use in the PMPD's Compliance Program.
- 11.4 PMPD 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. PMPD shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in two separate reports as outlined below:

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

- 12.1 PMPD's Company Compliance Program Review Report will provide particular and specific information regarding the performance of the Trade Practices Compliance Program including:
- 12.1.1 if, and to what extent, the Compliance Program of PMPD includes all the elements detailed in paragraphs 1-10 above;
 - 12.1.2 if, and to what extent, the 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, PMPD's complaints handling system is effective;
 - 12.1.5 recommendations for rectifying deficiencies in 12.1.1 – 12.1.4. that the Reviewer thinks are reasonably necessary to ensure that PMPD maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

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

- 12.2 The Commission Compliance Program Review Report will supply 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 PMPD has in place an effective Compliance Program that complies with the requirements detailed in paragraph 1 – 10 above;
 - 12.2.4 actions recommended by the Reviewer to ensure the continuing effectiveness of PMPD's Compliance Program;
 - 12.2.5 confirmation that any actual and potential inadequacies in PMPD's Compliance Program have been brought to the attention of the Compliance Officer and the governing body;

- 12.2.6 confirmation that the Reviewer has revisited any actual and potential inadequacies in PMPD's Compliance Program identified in the previous Company Compliance Program Review Report, and assessed how they have been addressed by PMPD;
 - 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 PMPD will ensure that the Review Reports are completed and provided to PMPD within two months of each Review.
 - 12.4 PMPD will retain the Company Compliance Program Review Report and cause the Commission Compliance Program Review Report to be provided to the Commission within 14 days of its receipt from the Reviewer.
- 13. **Recommendations** - PMPD 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 PMPD maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
 - 14. If requested by the Commission, PMPD will, at its own expense, promptly provide to the Commission such information and documents as are specified by the Commission relating to the implementation and operation of the Compliance Program. For the purposes of clarity, the information and documents that would be requested under this paragraph would be information and/or documents identifying, constituting, particularising and/or explaining the policies and processes put in place by PMPD pursuant to the Compliance Program and information and/or documents that purport to evidence the giving effect to, or implementation of, the policies and processes pursuant to the Compliance Program. The information and documents that may be the subject of a request under this paragraph **do not** include the content or substance of any complaints or allegations made pursuant to the Compliance Program.
 - 15. In the event the Commission has sufficient reason to suspect that the Compliance Program is not being implemented effectively, PMPD shall, at its own expense and if requested by the Commission, cause an interim or additional Review to be conducted and cause the resulting Review Report to be provided to the Commission.