

# TRADE PRACTICES ACT 1974

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

By

**IMAGE BLINDS PTY LTD ACN 009 990 621**

## Persons giving this Undertaking

1. This undertaking is given to the Australian Competition and Consumer Commission ("**ACCC**") by Image Blinds Pty Ltd ACN 009 990 621 ("**Image Blinds**") of 97 Delta Street, Geebung in the State of Queensland pursuant to section 87B of the *Trade Practices Act 1974* ("**the Act**").

## Background

2. Image Blinds carries on the business of selling blinds and awnings throughout South-East Queensland.
3. Image Blinds has one retail showroom at 97 Delta Street, Geebung in Brisbane ("**the Showroom**").
4. With the exception of two of its products, Image Blinds' products are all made to measure and accordingly, most sales are effected by sales representatives employed by Image Blinds at its customers' premises after measurements are taken, and quotes are prepared onsite for the supply and installation of blinds and/or awnings.
5. Section 52 of the Act prohibits conduct that is misleading or deceptive or that is likely to mislead or deceive.
6. Section 53(e) of the Act states that a corporation must not, in trade or commerce, in connection with the supply or possible supply of goods or services, make a false or misleading representation with respect to the price of goods or services.

## The Conduct

7. In the period from about November 2007 to March 2009, Image Blinds conducted an Advertising Campaign ("**the Advertising Campaign**") in *The Sunday Mail* newspaper in which it continuously offered various products for sale at discounts of "30% off".
  8. In the period from about July 2008 to March 2009, Image Blinds altered the Advertising Campaign in *The Sunday Mail* newspaper to continuously offer a blanket discount of "30% off" all of its products.
  9. During the Advertising Campaign Image Blinds often published multiple advertisements in *The Sunday Mail* each month. While Image Blinds regularly changed the name of the sale (for example from 'Christmas Sale' to 'Summer Sale' to 'Winter Sale') throughout the Advertising Campaign, the purported discount remained the same and did not represent any special savings.
  10. Image Blinds admits that:
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- 10.1 the savings represented in the Advertising Campaign were determined by reference to Image Blinds' own internal recommended retail prices, rather than the prices at which the products were generally sold, and that Image Blinds generally sold its products for less than its own internal recommended retail prices; and that
  - 10.2 the "30% off" representations made during the Advertising Campaign did not accurately reflect actual savings available on the advertised products.
11. Accordingly, Image Blinds accepts that by engaging in the conduct set out above it breached sections 52 and 53(e) of the Act.

### **Resolution**

12. Upon being made aware of the ACCC's concerns, Image Blinds has:
- 12.1 terminated the Advertising Campaign, thereby ceasing the conduct of concern to the ACCC; and
  - 12.2 offered this undertaking to the ACCC pursuant to section 87B of the Act.

### **Commencement**

13. This undertaking comes into effect when:
- 13.1 it is executed by Image Blinds; and
  - 13.2 the undertaking, so executed, is accepted by the ACCC.
- ("the Commencement of this Undertaking")**.
14. Upon the Commencement of this Undertaking, Image Blinds undertakes to assume the obligations set out in paragraphs 15 to 20 below.

### **Undertakings**

15. Image Blinds hereby undertakes for the purposes of section 87B of the Act that, for a period of three (3) years from the Commencement of this Undertaking that:
- 15.1 Image Blinds, whether by itself or by the conduct of its directors, servants, agents or employees, will not in trade or commerce:
    - (a) offer any goods or services for sale using comparative price representations, including in the "% off" format, if the goods or services have not previously been offered for sale at the higher price for a reasonable period and in reasonable quantities immediately prior to the commencement of the sale; or
    - (b) use false, misleading or deceptive representations with respect to the price of goods or services in its advertising or other forms of promotion.

### **In Store Notice**

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16. Image Blinds undertakes for the purposes of section 87B of the Act to, at its own expense:
- 16.1 within fourteen (14) days from the date of Commencement of this Undertaking, ensure that it prominently displays at its customer service desk in the Showroom a corrective notice in the form of **Annexure "A"** to this Undertaking ("**the Corrective Notice**");
  - 16.2 ensure that the Corrective Notice is displayed in accordance with paragraph 16.1 for a period of not less than one (1) month;
  - 16.3 ensure the Corrective Notice has the following specifications:
    - (a) is in every respect the same as the Corrective Notice contained in Annexure "A";
    - (b) it will be of a size no less than A4 and on white paper, with a margin of between 5 – 10mm;
    - (c) has a black banner with a minimum depth of 14mm placed at the top with white text set in uppercase with a minimum 25 point, sans serif typeface and centred;
    - (d) the headline typeface is bold, sans serif, not less than 40 point size, centred, and in lower case;
    - (e) the Image Blinds logo is centred below the headline and not less than 30mm in height;
    - (f) the body copy is left justified, in Times New Roman font not less than 12 point size;
    - (g) the border is 100 per cent black, with a minimum width of 7 points;
    - (h) the ACCC and Commonwealth logos are centred below the body copy and not less than 30mm in height; and
    - (i) the baseline text is not less than 10 point Times New Roman and centred beneath the ACCC and Commonwealth logos; and
  - 16.4 within fourteen (14) days of the placement of the Corrective Notice, provide to the ACCC written confirmation of its compliance with this paragraph.

#### **Information Notice**

17. Image Blinds hereby undertakes for the purposes of section 87B of the Act to, at its own expense:
- 17.1 within ninety (90) days of the Commencement of this Undertaking, cause to be published in the next edition of the Blind Manufacturers Association of Australia News magazine, an Information Notice in the form of **Annexure "B"** to this Undertaking ("**the Information Notice**");
  - 17.2 use its best endeavours to ensure the Information Notice has the following specifications:
    - (a) is in every respect the same as the Information Notice contained in Annexure "B";
    - (b) is of a size not less than half a page;
    - (c) has a black banner with a minimum depth of 8mm placed at the top with white text set in uppercase with a minimum 14 point, sans serif typeface and centred;
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- (d) the headline typeface is bold, sans serif, not less than 34 point size, centred, in lower case;
- (e) the Image Blinds logo is centred below the headline and not less than 20mm in height;
- (f) the body copy is left justified, in Times New Roman font, not less than 10 point size;
- (g) the border is 100 per cent black, with a minimum width of 2 points;
- (h) the ACCC and Commonwealth logos are centred below the body copy and not less than 20mm in height; and
- (i) the baseline text is not less than 8 point Times New Roman and centred beneath the ACCC and Commonwealth logos; and

17.3 within fourteen (14) days of the publication of the Information Notice, provide to the ACCC written evidence of its compliance with this paragraph by providing a copy of the published Information Notice.

### **Newspaper Advertisement**

18. Image Blinds hereby undertakes for the purposes of section 87B of the Act to, at its own expense:

18.1 within fourteen (14) days of the Commencement of this Undertaking, cause to be published in *The Sunday Mail* newspaper, a corrective advertisement in the form of **Annexure "C"** to this Undertaking ("**the Corrective Advertisement**");

18.2 use its best endeavours to ensure the Corrective Advertisement:

- (a) appears in the first thirty (30) pages of *The Sunday Mail* newspaper;
  - (b) is in every respect the same as the Corrective Advertisement contained in Annexure "C";
  - (c) is of a size not less than 12cm high by three (3) newspaper columns wide;
  - (d) has a black banner with a minimum depth of 8mm placed at the top with white text set in uppercase with a minimum 14 point, sans serif typeface and centred;
  - (e) the headline typeface is bold, sans serif, not less than 34 point size, centred, in lower case;
  - (f) the Image Blinds logo is centred below the headline and not less than 20mm in height;
  - (g) the body copy is left justified, in a Times New Roman font, not less than 10 point size;
  - (h) the border is 100 per cent black, with a minimum width of 2 points;
  - (i) the ACCC and Commonwealth logos are centred below the body copy and not less than 20mm in height; and
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- (j) the baseline text is not less than 8 point Times New Roman font and centred beneath the ACCC and Commonwealth logos; and
- 18.3 within fourteen (14) days of the publication of the Corrective Advertisement, provide to the ACCC written evidence of its compliance with this paragraph by providing a copy of the Corrective Advertisement.

### Website Notice

19. Image Blinds hereby undertakes for the purposes of section 87B of the Act to, at its own expense:
- 19.1 within (fourteen) 14 days of the Commencement of this Undertaking, cause to be published on the Image Blinds website, [www.imageblinds.com.au](http://www.imageblinds.com.au), a website notice in the form of **Annexure "D"** to this Undertaking ("**the Website Notice**");
  - 19.2 ensure that the Website Notice and the link to the Website Notice are displayed in accordance with paragraph 19.1 above for a period of not less than one (1) month; and
  - 19.3 ensure the Website Notice has the following specifications:
    - (a) the Website Notice is accessible through a prominent one-click link displayed in the top third of the home page of the Image Blinds' website entitled 'APOLOGY FOR MISLEADING ADVERTISING' with the following specifications:
      - (i) the words 'APOLOGY FOR MISLEADING ADVERTISING' to be in uppercase not less than 18 point, bold, black, sans serif font on a white background, centred and in a bordered box;
      - (ii) the words 'Click here for further information' to be not less than 14 point, black, sans serif font on a white background, centred below the words 'APOLOGY FOR MISLEADING ADVERTISING' in the same bordered box;
      - (iii) the bordered box is not less than 255 pixels wide by 60 pixels high; and
      - (iv) the bordered box and its contents, including white space, is to operate in the form of a one-click hyper-link to the Website Notice;
    - (b) the Website Notice will be no less than 540 pixels wide by 500 pixels high;
    - (c) the Website Notice will have a black banner with a minimum depth of 40 pixels placed at the top with white text set in uppercase with a minimum 25 point, sans serif typeface and centred;
    - (d) the headline typeface will be bold, black text set in lower case with a minimum 30 point sans serif typeface and centred below the black banner;
    - (e) the Image Blinds logo will be in colour, centred below the headline and be no less than 20mm in height;
    - (f) the Website Notice will have body text of at least 12 point Times New Roman, black font on a white background and left justified;
    - (g) the border will be 100 per cent black and have a minimum width of 3 pixels;

- (h) the ACCC and Commonwealth logos will be in colour, centred below the body copy and be no less than 20mm in height;
- (i) the baseline text will be at least 10 point Times New Roman black font and centred beneath the ACCC and Commonwealth logos;
- (j) the Website Notice will be displayed on a stand-alone webpage which is coded in standard 'HTML' format; and
- (k) the Website Notice will not be displayed as a 'pop-up' or 'pop-under' window.

### **Trade Practices Compliance Program**

20. Image Blinds hereby undertakes for the purposes of section 87B of the Act to, at its own expense:
- 20.1 within three (3) months of the Commencement of this Undertaking, implement a trade practices compliance program ("**the Compliance Program**") in accordance with the requirements set out in **Annexure "E"** for the employees and other persons involved in the Image Blinds business, being a program designed to:
    - (a) minimise Image Blinds' risk of further breaches of Part V, Division 1 of the Act;
    - (b) ensure Image Blinds is aware of its responsibilities and obligations in relation to the requirements of Part V, Division 1 of the Act, in particular sections 52 and 53 of the Act; and
    - (c) ensure all advertising or promotional material is approved by a director or senior manager with trade practices training before release.
  - 20.2 maintain and continue to implement the Compliance Program for a period of three (3) years from the Commencement of this Undertaking; and
  - 20.3 provide a copy of any documents required by the ACCC in accordance with **Annexure "E"**.

### **Acknowledgements**


21. Image Blinds acknowledges that:
- 21.1 the ACCC will make this Undertaking available for public inspection;
  - 21.2 the ACCC may from time to time publicly refer to this Undertaking; and
  - 21.3 this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**EXECUTED BY:**

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**IMAGE BLINDS PTY LTD ACN 009 990 621**

by its authorised officers pursuant to section  
127(1) of the *Corporations Act 2001*:



\_\_\_\_\_  
**Director**

Justin Mason

**PRINT NAME IN FULL**

Dated: 26/8/2009.

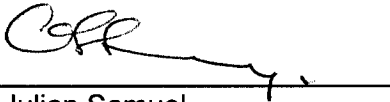
\_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**PRINT NAME IN FULL**

Dated: \_\_\_\_\_

**ACCEPTED BY:**

The Australian Competition and Consumer Commission pursuant to section 87B of the *Trade Practices Act 1974*



\_\_\_\_\_  
Graeme Julian Samuel  
Chairman

Dated: 8/9/09

ANNEXURE "A"

## CORRECTIVE NOTICE

# An apology from Image Blinds Pty Ltd



In the period from at least November 2007 to March 2009 we published various advertisements in *The Sunday Mail* newspaper in which we offered discounts of "30% off" certain products, and sometimes off our entire product range.

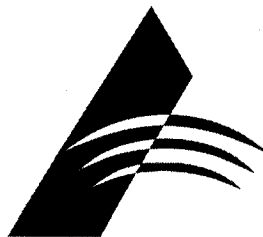
We admit that during this period our advertising did not always accurately represent the actual savings available. Customers were generally not truly saving "30% off" the products advertised because:

- We regularly changed the name of our sale, for example, 'Summer Sale' to 'Winter Sale', but our products were continuously advertised at a 30% discount. This meant that our products were the same price both before and after each advertised 'sale'.
- We determined the advertised 'discount' for each product according to our own internally set recommended retail price, instead of the lower prices at which we normally sold our products.

We have given the Australian Competition and Consumer Commission a court enforceable undertaking (details available at [www.accc.gov.au](http://www.accc.gov.au)). The undertaking requires us to publish this notice and to implement a Trade Practices Compliance Program to ensure that this kind of misleading advertising does not occur again.

We apologise for any inconvenience caused.

If you have any questions about this matter please do not hesitate to contact our General Manager, Justin Mason on (07) 3865 1002.



**Australian  
Competition &  
Consumer  
Commission**

This Corrective Notice has been paid for by Image Blinds Pty Ltd pursuant to an undertaking accepted by the ACCC.



ANNEXURE "B"

INFORMATION NOTICE

# An apology from Image Blinds Pty Ltd



In the period from at least November 2007 to March 2009 we published various advertisements in *The Sunday Mail* newspaper in which we offered discounts of "30% off" certain products, and sometimes off our entire product range.

We admit that during this period our advertising did not always accurately represent the actual savings available. Customers were generally not truly saving "30% off" the products advertised because:

- We regularly changed the name of our sale, for example, 'Summer Sale' to 'Winter Sale', but our products were continuously advertised at a 30% discount. This meant that our products were the same price both before and after each advertised 'sale'.
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ANNEXURE "C"

CORRECTIVE ADVERTISEMENT

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**Australian  
Competition &  
Consumer  
Commission**

This Corrective Notice has been paid for by Image Blinds Pty Ltd pursuant to an undertaking accepted by the ACCC.

Note: this advertisement is to be no smaller than 12cm high by three (3) newspaper columns wide.

ANNEXURE "D"

## CORRECTIVE NOTICE

# An apology from Image Blinds Pty Ltd



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**ANNEXURE "E"**

**IMAGE BLINDS**

**TRADE PRACTICES COMPLIANCE PROGRAM**

Image Blinds Pty Ltd (ACN 009 990 621) ("**Image Blinds**") will establish a Trade Practices Compliance Program ("**the Compliance Program**") for a period of three (3) years from the date of the Undertaking coming into effect that complies with each of the following requirements:

**1. Training**

- 1.1. Within two (2) months of this Undertaking coming into effect, and thereafter at least once a year for the period of the Undertaking, Justin Mason (General Manager) will attend practical trade practices training focusing on sections 52 and 53(e) of the *Trade Practices Act 1974* ("**the Act**").
- 1.2. Image Blinds will ensure that the training referred to in paragraph 1.1 is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
- 1.3. Image Blinds will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 1.1 to the ACCC within fourteen (14) days of completion of the training verifying that such training has occurred.

**2. Approval of advertising**

Image Blinds will implement procedures to ensure that all advertising and promotional material used by Image Blinds is approved by the director or senior manager referred to in paragraph 1.1 prior to its publication, distribution or display to ensure its compliance with Part V, Division 1 of the Act.

**3. Complaints handling**

Image Blinds will:

- 3.1. develop procedures for recording, storing and responding to trade practices complaints within two (2) months of this Undertaking coming into effect; and
- 3.2. provide the Commission with an outline of the complaint handling system developed within two (2) months of the Undertaking coming into effect.

**4. Provision of documents**

If requested by the Commission, Image Blinds 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.

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