

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION
MINUTE**

OFFICE: Perth
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DATE: 14 September 2009

TO: Brian Cassidy

CC: Sam Di Scerni, Carrie Sutcliffe

FROM: Fiona Johns

SUBJECT: **The Australian Bush Hat Co. Pty Ltd - Section 87B Undertaking**

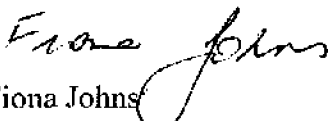
Please find attached a section 87B Undertaking for the consideration of the Chairman.

The Undertaking has been offered by The Australian Bush Hat Co. Pty Ltd (ABHC) in settlement of a matter involving country of origin claims and alleged contraventions of sections 52 and 53(eb) of the *Trade Practices Act 1974*.

On 10 September 2009 the Enforcement Committee considered this matter and accepted ABHC's offer to resolve the matter by way of a section 87B Undertaking in the terms attached. The Undertaking includes a current (and unaltered) level 1 compliance program from the Compliance Monitoring Unit.

Full details of the matter are set out in the Undertaking.

If you require any further information please do not hesitate to contact me on (08) 9325 0606.


Fiona Johns
Senior Investigation Officer

TRADE PRACTICES ACT 1974

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

BY

THE AUSTRALIAN BUSH HAT CO PTY LTD

(A.C.N. 114 871 797)

PERSON GIVING THIS UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission (**Commission**) by The Australian Bush Hat Co Pty Ltd (ACN 114 871 797) (**ABHC**) of 6 Tallangatta Place, BOUVARD, 6211 in the state of Western Australia, under section 87B of the *Trade Practices Act 1974* (**TPA**).

BACKGROUND

2. ABHC is a company incorporated in Western Australia (**WA**) and is involved in the supply of a range of leather Australian bush styled hats to retailers throughout WA.
 3. Premium Selection and Statesman models of hats (**Hats**) supplied by ABHC are cut, shaped and sewn into unfinished hats by suppliers in India.
 4. ABHC imports those unfinished Hats into Australia where:
 - 4.1. synthetic wire is measured, cut and sewn around the rim;
 - 4.2. a decorative band is glued to each hat;
 - 4.3. a chin cord and toggle is attached to each hat;
 - 4.4. a swing tag is affixed to each hat; and
 - 4.5. a label is glued to the inside of the crown of each hat.
 5. Between 2006 and June 2009, ABHC supplied the Hats in Australia with swing tags, labels or logos which included the following words and images:
 - 5.1. Premium Selection model:
 - 5.1.1. "MANUFACTURED IN AUSTRALIA FROM QUALITY IMPORTED AND LOCAL PRODUCTS";
 - 5.1.2. "MANUFACTURED IN AUSTRALIA FROM QUALITY IMPORTED AND LOCAL COMPONENTS";
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- 5.1.3. "THE AUSTRALIAN BUSH HAT CO." on a logo depicting the image of an Australian bush hat above an image of a map of Australia; and
 - 5.1.4. a logo depicting Australia, and an image of an Emu wearing an Australian bush hat accompanied by the words "Always on Top Down Under".
 - 5.2. The Statesman model:
 - 5.2.1. "MANUFACTURED IN AUSTRALIA FROM QUALITY IMPORTED AND LOCAL PRODUCTS;
 - 5.2.2. "MANUFACTURED IN AUSTRALIA FROM QUALITY IMPORTED AND LOCAL COMPONENTS"; and
 - 5.2.3. "THE AUSTRALIAN BUSH HAT CO." on a logo depicting the image of an Australian bush hat above an image of a map of Australia.
 6. ABHC accepts that by engaging in the conduct described in paragraph 5 it represented that the Hats were manufactured in Australia when, in fact, they were not.
 7. ABHC accepts that by engaging in the conduct described above it contravened the following sections of the TPA:
 - 7.1. section 52, which prohibits misleading or deceptive conduct or conduct that is likely to mislead or deceive; and
 - 7.2. section 53(eb), which prohibits the making of false or misleading representations concerning the place of origin of goods.
 8. Section 65AB of the TPA provides a general test for country of origin representations that, if met, affords a defence to section 52 and 53(eb) conduct arising from such representations. The test has two components that must be met to qualify for the general country of origin defence:
 - 8.1. the goods must have been substantially transformed in the country claimed to be the origin; and
 - 8.2. 50 per cent or more of the costs of production must have been carried out in that country.
 9. Section 65AE provides a definition of "substantially transformed" which refers to a fundamental change in form, appearance or nature.
 10. The Commission considers, and ABHC agrees, that the work undertaken in Australia by ABHC does not substantially transform the imported Hats in form, appearance or nature. ABHC accepts, therefore, that the Hats do not meet the general country of origin test set out in section 65AB of the TPA.
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COMMENCEMENT OF UNDERTAKINGS

11. The undertaking comes into effect when:
 - (i) the undertaking is executed by ABHC; and
 - (ii) the Commission accepts the undertaking so executed.

UNDERTAKING


12. ABHC hereby undertakes for the purposes of section 87B of the TPA, that it:
 - 12.1. will not, for a period of 3 years from the date the Undertaking is accepted by the Commission, in trade or commerce represent that its hats are made in Australia unless it has first established, by conducting all necessary enquiries and calculations, that the goods meet the test for country of origin claims set out in section 65AB of the TPA, namely that:
 - (i) the products have been substantially transformed in Australia, as defined by section 65AE of the TPA; and
 - (ii) 50 per cent or more of the costs of manufacturing the goods is attributable to manufacturing processes that occurred in Australia.
 - 12.2. will, within 14 days of the Undertaking being accepted by the Commission:
 - 12.2.1. cause a corrective advertisement in the form set out in *Annexure A* of this Undertaking to be published in a weekend edition of the West Australian newspaper. ABHC will use its best endeavours to ensure that such an advertisement is:
 - (i) placed in the first 10 pages of each newspaper;
 - (ii) of a size not less than 15cm by 12cm (or equivalent area);
 - (iii) with a font not less than 9 points; and
 - (iv) with a heading not less than 2 points larger than the remaining text.
 - 12.2.2. write to retailers to whom it supplied the Hats asking them to return to ABHC Hats falling within paragraph 5.
 - 12.3. will, at its expense,
 - 12.3.1. establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in *Annexure B*, being a program designed to minimise ABHC's risk of future breaches of sections 52 and 53(eb) of the TPA;

- 12.3.2. 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 Commission; and
- 12.3.3. provide a copy of any documents requested by the Commission in accordance with *Annexure B*.

ACKNOWLEDGEMENTS

13. ABHC acknowledges that the Commission will make this Undertaking available for public inspection.
14. ABHC acknowledges that the Commission will from time to time, publish and publicly refer to this Undertaking.
15. ABHC acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

EXECUTED by **The Australian Bush Hat Co Pty Ltd (ACN 114 871 797)** by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*:



Signature (Director and Secretary)

PATRICK HEALY
Print name

This day of 8/09/ 2009

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



Graeme Julian Samuel

Chairperson

Australian Competition and Consumer Commission

This day of September 2009

Annexure A

Public Notice

The Australian Bush Hat Co Pty Ltd

[ABHC logo]

The Australian Competition and Consumer Commission (ACCC) has accepted court enforceable undertakings from The Australian Bush Hat Co Pty Ltd (ABHC) in relation to Manufactured in Australia claims made about two models of its hats.

Premium Selection and Statesman models of hats supplied by ABHC were cut, shaped and sewn into unfinished hats by suppliers in India. ABHC imported the products into Australia and added brimlock, a decorative band, chin cord and toggle. Labels and swing tags containing the following words and images were attached to the hats:

“MANUFACTURED IN AUSTRALIA FROM QUALITY IMPORTED AND LOCAL PRODUCTS”;

“MANUFACTURED IN AUSTRALIA FROM QUALITY IMPORTED AND LOCAL COMPONENTS”;

“THE AUSTRALIAN BUSH HAT CO.” on a logo depicting the image of an Australian bush hat above an image of a map of Australia; and

A logo depicting Australia, and an image of an Emu wearing an Australian bush hat accompanied by the words “Always on Top Down Under”.

ABHC accepts that the Manufactured in Australia claims made about the hats were false and misleading in contravention of the Trade Practices Act 1974 (TPA).

The TPA allows goods which are not wholly manufactured in Australia, to be represented as being of Australian origin if they have been substantially transformed in Australia, and at least 50% of the costs of manufacturing the goods have been incurred in Australia. This was not the case in this matter.

The Premium Selection and Statesman hats were sold in souvenir stalls and other outlets in Western Australia between and 2006 and 2009.

ABHC will refund the retail price of the hats to consumers who show they were misled by ABHC's claims. Consumers should direct any enquiries in this regard to ABHC at:

The Australian Bush Hat Co.
6 Tallangatta Place
BOUVARD WA 6211

Phone: 08 9581 8867
0404 448 323



Australian
Competition &
Consumer
Commission

This notice has been published at ABHC's expense

Annexure B

TRADE PRACTICES COMPLIANCE PROGRAM

The Australian Bush Hat Co Pty Ltd (**ABHC**) will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements.

1. Training

- 1.1. Within 2 months of the Undertaking being accepted by the Australian Competition and Consumer Commission (**ACCC**), and thereafter at least once a year for the period of the Compliance Program, a Director and Business Development Manager will attend practical trade practices training focusing on sections 52 and 53(eb) of the Trade Practices Act 1974.
- 1.2. ABHC 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. ABHC 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.

2. Complaints handling

- 2.1. ABHC will, within two months of the Undertaking being accepted by the ACCC:
 - 2.1.1. develop procedures for recording, storing and responding to trade practices complaints; and
 - 2.1.2. provide the ACCC with an outline of the complaint handling system developed.

3. Provision of documents or information to the ACCC

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