

TRADE PRACTICES ACT 1974 (Cth)

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

GIVEN BY

AUSTRALIA POST

of 321 Exhibition Street, Melbourne, Victoria

1. Background

- 1.1 In January, February and March 1998 Australia Post's NSW Administration, as part of a promotion to encourage the payment of bills over the counter at Post Offices, distributed a leaflet in the form of an entry form for a competition ("the Leaflet") known as the "Pay Two Bills Promotion". A copy of the Leaflet is annexed and marked "A".
- 1.2 The Australian Competition and Consumer Commission ("the Commission") has raised concerns about certain conditions contained in the Leaflet and the manner of its presentation which it considers has confused and misled persons who received the Leaflet.

2. The Pay Two Bills Promotion

- 2.1 The Leaflet promoting the Pay Two Bills Promotion was distributed to consumers by mail as an insert in accounts of third parties, being accounts that were payable at Australia Post, and through Post Offices to Australia Post customers in New South Wales and the ACT. 2.8 million Leaflets were available for insertion with accounts and 1.2 million Leaflets were distributed to corporate and licensed outlets used by customers. Advertising of the competition was also done by radio commercials, and by posters at corporate and licensed outlets.

2.2 In the Leaflet in large print appear the words:

“Pay Two Bills to Win the Thrill”

In smaller print:

“Pay Two Bills at Australia Post and you could win a Hyundai Coupe FX.

OR one of six prizes of \$500.00 to be won!”

This is followed by a box in yet smaller print:

“How to enter:

1. To be in the running to win a Hyundai Coupe FX pay any two bills that you can pay over the counter at an Australia Post Shop or Post Office.
2. Ensure this entry is date stamped by Australia Post when you pay each bill.
3. Complete this entry and post. (Entries close 30/3/98)”

In even smaller print at the bottom of the Leaflet (“the fine print conditions”) and printed in white on a red background, a further qualification to the statements referred to above is made. It includes:

“Prizes can only be awarded to those participants who have paid two bills of which at least one bill is from the following participating principals - (Citi Bank, AAPT Telecommunications, Sydney Water, One Tel, GIO Australia or Optus Communications). One \$500 prize will be given to the first entry drawn for each of these Companies. This prize will be credited to each winners account by each of the participating Companies whose bill has been paid at an Australia Post outlet.”

2.3 The Commission considers that the Leaflet is misleading or likely to mislead consumers, and further contains a misleading representation as to existence of a condition in that:

- (a) the fine print conditions significantly modify the representations made prominently in other parts of the Leaflet;
- (b) the fine print conditions are in a very small print and printed in a manner and in a colour combination that makes them very difficult to read;
- (c) there is no indication, whether by asterisks or otherwise, that draws the reader's attention to the fact that the fine print conditions substantially modify the prominent representations of the Leaflet;
- (d) the Leaflet was distributed, inter alia, by insertion with accounts from various suppliers who were not participating principals as defined in the fine print conditions and payment of whose accounts at Australia Post would not entitle the payer to be eligible for any of the \$500 prizes.

2.4 As a consequence of the matters in 2.3 the Commission considers, and Australia Post accepts, that consumers may have been confused by the Leaflet and were likely to be misled by it in a number of respects including:

- (a) whether all entrants were eligible to win the car (in accordance with the main representation) or only those who paid a bill from a participating principal (in accordance with the fine print conditions);
- (b) whether entrants were eligible for six cash prizes of \$500 (in accordance with the main representation) or only credits of \$500 from participating principals (in accordance with the fine print conditions);
- (c) whether all entrants were eligible for the six \$500 prizes (in accordance with the main representation) or were only eligible if they paid a bill from a participating principal, and even then only eligible for one \$500 prize from that participating principal, (in accordance with the fine print conditions).

2.5 The Commission considers, and Australia Post accepts, that as a consequence of the matters stated above, Australia Post has inadvertently contravened section 52 of the Trade Practices Act.

- 2.6 The Commission accepts that the contravention was inadvertent and acknowledges the full and prompt co-operation of Australia Post in addressing these matters.
- 2.7 Australia Post has an extensive compliance program which was implemented during 1995 in consultation with the Commission. This program, whilst generally effective, failed to prevent the Leaflet from being produced and distributed or to prevent continued distribution after Australia Post became aware of the problems with the Leaflet. Australia Post is currently reviewing its compliance program to ensure compliance with Standard AS3806-1998.
- 2.8 Australia Post has since 1975 maintained an independent Audit Group. The Audit Group is independent of management in Australia Post. The Audit Group reports directly to the Managing Director and the Board Audit Committee which is a sub-committee of the Full Board. Reports prepared by the Audit Group are utilised by the Auditor-General who is Australia Post's external auditor.
- 2.9 The National Compliance Officer and the State Compliance Officers have trade practices compliance expertise.

3. Undertakings

3.1 Australia Post undertakes that:

1. All entrants in the competition who have paid any two bills through Australia Post will be eligible to win the Hyundai motor vehicle.
2. All the originally offered prizes of \$500 will be offered in cash, provided that the winner may accept a credit from the participating principal if the winner so elects.
3. It will award six additional cash consolation prizes of \$500 to customers, regardless of which principal bills were paid.

4. It will ensure that at all times it complies with the representations in the advertisement published under clause 3.2.
5. It will not distribute the Leaflet in any manner whatsoever unless the Leaflet is also accompanied by a copy of the advertisement referred to in clause 3.2 approximately 10 cm x 16 cm in size.
6. All persons who seek to have an entry form date stamped by Australia Post when paying a bill shall be given a copy of the advertisement referred to in clause 3.2 approximately 10 cm x 16 cm in size.

3.2 Australia Post has placed an advertisement, in the form of Schedule 1, which has appeared in the following places: in quarter page size in one of the first nine pages (whether tabloid (11 cm x 20 cm) or broadsheet (17.1 cm x 28 cm) in the Early General News section of each of the major Metropolitan Daily Newspapers listed in Schedule 2, on the weekend of 14 and 15 March 1998.

3.3 Australia Post will by 21 March 1998 install a display in identical terms to the advertisements in clause 3.1 at all points of sale in New South Wales and the ACT and will remain in place until after the closing date of the competition.

3.4 Australia Post will send a written apology in a form to be agreed with the Commission to such complainants as the Commission may advise wish to receive an apology, either directly to the complainants or through the Commission, as the Commission may advise.

3.5 In the review of its compliance program, Australia Post will ensure that the following elements are incorporated:

- (a) a process for audit by Australia Post's audit group;
- (b) a reporting system that documents compliance failures;
- (c) a system that responds to complaints, compliance failures and/or audit deficiencies that involves investigating the cause of the complaint, compliance failure and/or audit deficiency with a view to correcting the complaint, compliance failure and/or audit deficiency;

- (d) the introduction of a trade practices clearance of all advertising and promotional material at the following levels:
 - (i) nationally by the Corporate Secretary, the National Compliance Officer and the Group Manager, Corporate Public Affairs or their delegates who are to be no lower than executives at deputy group manager level or its equivalent, and who are to be trained in trade practices compliance;
 - (ii) at the State level by the General Manager (or his/her immediate Executive Reports), the State Compliance Officer and the State Marketing Manager, who are to be trained in trade practices compliance;
- (e) wide distribution of the program within Australia Post.

3.6 Australia Post will submit the revised program to the Commission by 30 June 1998 and will incorporate the changes, if any, that the Commission may reasonably require. The program will be fully implemented by 31 August 1998 or such other time as may be mutually agreed.

3.7 Australia Post will, in all advertisements or promotions for its services (including competitions) that it publishes or causes to be published, if conditions apply:

- (a) state prominently and clearly that conditions apply;
- (b) state prominently and clearly those conditions; and
- (c) ensure that the conditions are not inconsistent with representations made prominently elsewhere in the advertisement or promotion.

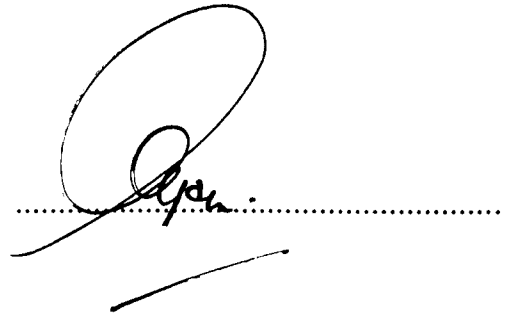
4. Acknowledgments

4.1 Australia Post acknowledges that the Commission may make these undertakings available for public inspection and that the Commission may from time to time publicly refer to these undertakings, including by way of press release.


4.2 Australia Post acknowledges and accepts that this undertaking in no way derogates from the rights and remedies which may be available to any other person arising from the alleged conduct.

Signed on the 6th day of APRIL 1998

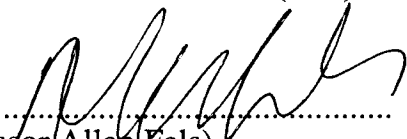
FOR AND ON BEHALF OF THE
AUSTRALIAN POSTAL CORPORATION
BY ITS CORPORATE SECRETARY
GERALD PATRICK RYAN



acting under authority delegated pursuant to
section 93 of the AUSTRALIAN POSTAL
CORPORATION ACT 1989, in the presence of:


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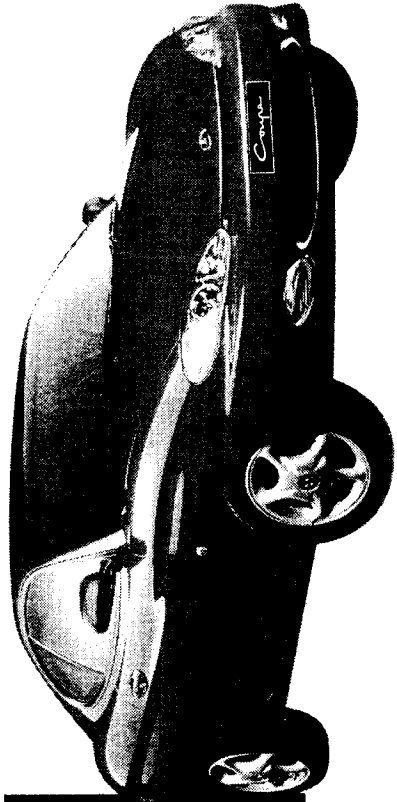
**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE TRADE
PRACTICES ACT 1974 (Cth)**


.....
(Professor Allan Fels)
Chairman

This 8 day of April 1998.

CORRECTIVE ADVERTISEMENT

PAY TWO BILLS TO **WIN!** *the thrill!*



The Australian Competition and Consumer Commission has raised concerns about certain conditions of this competition which it believes may have confused and possibly misled some of our customers. We would like to clear this up.

- If you've paid any two bills that Australia Post can accept over the counter, and you've filled out an entry form you will be eligible to win the first prize, a Hyundai Coupe FX.
- Those who pay 2 bills, 1 of which is a 'participant' bill, over the counter will be eligible for one of six \$500.00 cash prizes. A 'participant' bill is one from either Citibank, AAPT Telecommunications, Sydney Water, One.Tel, GIO Australia or Optus Communications.
- We've also agreed to offer six additional cash prizes of \$500.00 whether or not a 'participant' bill has been paid.

Any person who is concerned by these changed conditions or would like further information please contact Peter Donadel on 13 13 17.

Full contest details are available by contacting the above number or at any Australia Post retail outlet in NSW/ACT.

So hurry in! Entries close March 30.

SCHEDULE 2

Newspaper Publication List

1. The Sunday Telegraph
2. The Herald Sun
3. The Canberra Times