

## TRADE PRACTICES ACT, 1974

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

by

HARRIS DE PTY LIMITED

ACN 051 766 280

### BACKGROUND

1. Harris DE Pty Limited ACN 051 766 280 (**Harris**) distributes and sells coffee in Australia under various brands, including the Moccona brand.
2. From 1 July 1997 until 31 December 1997 Harris, through Public Notices Pty Limited, ran a promotion (**Promotion**) in supermarkets for Moccona coffee. The Promotion featured a prize of a trip to the set of F\*R\*I\*E\*N\*D\*S for the winner and three friends. The promotion featured prizes of 1,000 mobile phones. Consumers were also able to purchase F\*R\*I\*E\*N\*D\*S merchandise.
3. The promotion comprised a canopy which appeared attached to a shelf unit display on which the coffee was placed, and specially labelled Moccona jars.

The canopy gave prominence to the prize of the trip to the set of F\*R\*I\*E\*N\*D\*S, with less prominence being given to the 1000 prizes of mobile phones. Consumers were advised to "See jars for details".

The necktags on the 50g and the 100g and 200g jars carried substantially the same message on the front of the tag:

*"WIN Friends ... Take your set of friends to the set of FRIENDS ... PLUS 1000 mobile Phones to be WON ... Claim great stuff from the MOCCONA AND FRIENDS COLLECTION ... See reverse for how to claim these items..."*

4. On the back of the tag the terms and conditions of the Promotion stated:

*“The next 1,000 valid entries will win a mobile phone valued at up to \$100.00. It will be the responsibility of the winners of each phone to carry the monthly service charges and call costs as listed at time of draw. The phone must be connected and is transferable.”*

5. On 1 May 1998 the Australian Competition and Consumer Commission (**Commission**) wrote to Harris expressing concerns that the Promotion may breach sections 52 and 53(g) of the *Trade Practices Act, 1974 (Act)*.

The Commission was concerned that no information was provided to consumers as to the terms of the mobile phone service contract, the monthly service charge, any connection fees or the relevant tariff plan. The Commission was concerned also that the identity of the relevant service provider was not adequately disclosed to consumers. While the canopy referred consumers to the Moccona jar for details of the offer, the Commission was of the view that the details of the offer were not adequately made available on the jars or elsewhere for consumers to assess the cost of the entering into the mobile phone contract should they win one of the 1,000 phones.

6. Following the letter from the Commission, Harris took steps to address the Commission's concerns by sending a Moccona gift pack to all those who received a mobile phone offer but did not accept the phone offer.
7. Following further negotiations with the Commission, Harris has developed a further programme of measures to address the Commission's concerns and has agreed to formalise these initiatives in the following undertaking under section 87B of the Act.

#### **COMMENCEMENT OF UNDERTAKING**

1. This undertaking comes into effect when:
  - (a) the undertaking is executed by Harris; and
  - (b) the undertaking so executed is accepted by the Commission.

#### **UNDERTAKING**

Harris undertakes for the purposes of section 87B of the Act that:

1. Harris will in all future promotional activity clearly disclose the existence and effect of all material conditions of any gifts, prizes or other offers.
2. Harris will in all future promotional activity ensure that any pictorial presentation or written descriptions of gifts or prizes offered accurately depicts the standard quality, value, style and/or model of the actual gift or prize subsequently supplied.
3. Within 30 days of this Undertaking Harris will identify all those who received an offer of a mobile phone.
4. Within 14 days after identification of all relevant customers under paragraph 2, Harris will write to all of those people in a form approved by the Commission offering the following three alternatives:

#### **Option 1**

A \$100.00 "discount" voucher redeemable with Harris on a mobile phone handset and/or service plan of the customer's choice. The voucher is transferable and may be used by a person nominated by the customer. Under this option, the customer or nominee will be responsible for:

- (a) purchasing a handset from a mobile phone provider; and/or
- (b) signing to a mobile phone service contract with any mobile phone provider.

Upon receipt of the discount voucher and proof of purchase/contract by Harris, Harris will send the customer or nominee a cheque for \$100.00.

Any customer wishing to accept this option must respond to Harris within 90 days of the date of the letter.

The \$100 discount voucher will also apply to any customer who has purchased a mobile phone and/or entered into a mobile phone service contract at any time since 1 January 1998.

## Option 2

One item of F\*R\*I\*E\*N\*D\*S merchandise from a selection of items on a "first come, first served basis" due to limited stock availability. Customers are to be advised that if stock runs out they will receive the payment offered under Option 3.

## Option 3

A cheque in the sum of \$20, as a goodwill payment which is in excess of the cost of coffee purchased in order to participate in the Promotion.

5. Within 14 days after receipt of a customer's selection pursuant to the offer detailed in paragraph 4 above, and such documentation as may be required depending upon the option chosen, Harris will, subject to availability, dispatch to the customer the voucher, item or cheque, depending upon the option selected by the customer.
6. Within 30 days of this Undertaking coming into effect, Harris will issue to all relevant employees an update identifying the company's policy in relation to promotions and advertising material.
7.
  - (a) Within 30 days of this Undertaking coming into effect, Harris will provide to the Commission revised "Promotions Guidelines" containing an updated section dealing with prizes and promotions.
  - (b) Harris will make any amendments to its "Promotions Guidelines" reasonably requested by the Commission within 30 days of any such request.
  - (c) Harris will issue the revised "Promotions Guidelines" to all relevant employees within 30 days of making the amendments reasonably requested by the Commission.
8. Harris will within three months of this Undertaking coming into effect, review and revise its Trade Practices Compliance Programme (**Programme**) which will remain in force for a minimum period of three (3) years and which will:
  - (a) include a restatement of Harris' commitment to a culture of compliance throughout Harris and its desire to prevent, so far as is reasonably practicable,

any contraventions of the Act by Harris, its directors, employees or agents and an articulation of how this will be carried out;

- (b) ensure an appropriately qualified named senior executive being identified as:
- (i) the primary internal contact for trade practices issues;
  - (ii) the facilitator of compliance practices; and
  - (iii) responsible for a devising system for reporting trade practices issues which arise within Harris.
- (c) ensure that the senior executive responsible for compliance systems:
- has authority, recognition and support within the organisation;
  - has access to all levels in the organisation to ensure compliance;
  - has overall responsibility for design, integrity and updating of the programme;
  - has ready access to the Managing Director when required; and
  - is accountable to the Managing Director for compliance issues.
- (d) reinforcement of Harris' policy of requiring strict compliance with both the letter and spirit of the Act and the adoption and enforcement of appropriate sanctions, commensurate with the offence, against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act;
- (e) ensure that the disciplinary policy in (d) above is widely disseminated and ensure that compliance is integrated into performance reviews for employees;
- (f) ensure a detailed review by a person with appropriate knowledge of trade practices law and, if appropriate, upgrade of Harris' education programme to ensure relevant staff are conversant with the provisions of the Act to a level where:
- (i) staff are aware of the parts of the Act which are relevant to their duties, can avoid obvious contraventions of the Act and can identify more

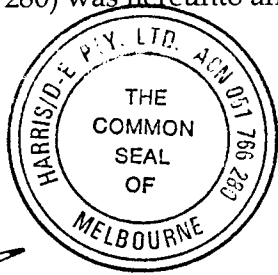
- complex potential trade practices problems for referral to the appropriate person;
- (ii) persons to whom potential trade practices problems are referred under (i) above are aware of their obligations, and of the escalation process within Harris for the referral of trade practices problems; and
- (iii) the named senior executive under 6(b) above can address more complex trade practices issues or seek legal advice as required.
- (g) ensure staff training will be:
- integrated into induction courses;
  - reviewed every six months;
  - participatory;
  - framed to reflect areas of risk; and
  - integrated into line and senior management development.
- (h) ensure staff have access to the necessary material including compliance manuals, reference material and databases;
- (i) appoint an appropriately qualified named senior executive to monitor all promotional material, produced and/or distributed by Harris to identify and prevent potential misleading and deceptive advertising;
- (j) develop a system to identify and classify compliance failure so that systemic and recurring problems are rectified;
- (k) ensure that compliance problems are rapidly reported to the Compliance Manager; and
- (l) introduce a system to monitor and review the effectiveness of the compliance programme.
9. (a) Within three months of this Undertaking coming into effect, Harris will provide to the Commission a copy of its compliance programme.

- (b) Harris will make any amendments to its compliance programme reasonably requested by the Commission within 30 days of any such request.
10. Harris shall cause, at its own expense, an independent audit of its compliance programme to be conducted annually from the date of acceptance of the undertaking for a period of three (3) years or at such other time. The audit shall be carried out by a suitably qualified compliance professional.
  11. The auditor shall review and report on:
    - (a) the company's adherence to the undertaking;
    - (b) the implementation of the compliance programme and the achievement of its objectives over the proceeding twelve months; and
    - (c) any recommended changes to the compliance programme that may be necessary to ensure achievement of its objectives.
  12. The date for the completion of the first such audit, and the provision of the auditor's report to the Commission shall be one year and one month after the signing of the undertaking. Consequently, audit reports shall be prepared and presented by or on the same date in each following year, with the last report due three years and one month after the signing of the undertaking.
  13. The Commission shall review the recommendations contained in each audit report.

#### **ACKNOWLEDGMENT**

1. Harris acknowledges that the Commission may make a public announcement of the matters contained in this undertaking.
2. Harris further acknowledges that the Commission will make this undertaking available for public inspection.
3. Harris further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising out from the alleged conduct.
4. Harris further acknowledges that the Commission will from time to time publish and publicly refer to this undertaking at its discretion.

IN WITNESS of these undertakings and its agreement the common seal of HARRIS DE PTY LIMITED (ACN 051 766 280) was hereunto affixed by authority of the Board of Directors in the presence of:



*[Handwritten signature]*  
Secretary/Director

*[Handwritten signature]*  
Director

This *8th* day of *October* 1998.

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

*[Handwritten signature]*

Professor Allan Fels

Chairman

This *21* day of *October* 1998.