

## TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87BBY  
YAKKA PTY LIMITED  
A.C.N. 004 251 852

## BACKGROUND

1. Yakka Pty Limited ("Yakka") is a company incorporated in Victoria carrying on business and engaging in trade and commerce, inter alia, as a manufacturer and supplier of clothing in Australia.
2. Between about 16 November 1997 and 31 January 1998 ("the relevant period") Yakka, by agreement or arrangement or in association with Isuzu-General Motors Australia Limited (A.C.N. 006 962 572) ("Isuzu"), engaged in a joint promotion whereby purchasers of Holden Rodeo vehicles during the relevant period would receive \$300 worth of Yakka clothing based on recommended retail prices ("the promotion"). As part of the promotion :
  - (a) Yakka knew or expected that, as an essential element of the promotion, Isuzu and/or its retailers would advertise and publicise the promotion, and in particular, the offer to provide \$300 worth of Yakka clothing;
  - (b) Yakka caused to be published and distributed to purchasers of Holden Rodeo vehicles during the relevant period ("purchasers") instructions as to how to order the clothing from Yakka ("the ordering instructions") together with an order form ("the order form") and a list of the available clothing items for selection by the purchasers ("the product list"). The ordering instructions and the order form stated, "\$300 Yakka Workwear Pack". The ordering instructions stated, "Each item has been given a point value, based on recommended retail prices". The product list set out, in respect of each item of clothing, a figure representing the number of 'points' assigned by Yakka to the particular item;
  - (c) Yakka advised purchasers their entitlement to the clothing pursuant to the promotion was limited to items with a combined value of 100 points or less. The ordering instructions provided to purchasers stated, "Your total point value of workwear selected should not exceed 100". The order form provided to purchasers stated, at the base of a column headed 'Points', "Total must not exceed 100".
3. On or about 30 April 1998 the Commission received a complaint regarding the promotion and it commenced enquires. The Commission conducted a survey of the retail prices charged by various retail, wholesale and distribution outlets which stock Yakka work wear.

4. The survey information indicated the point values assigned by Yakka to each item of clothing were such that 100 points was less than \$300 in value. No combination of items totalling 100 points was equal to \$300 or more in value.
5. Yakka advised the Commission in correspondence and at a meeting that the value given to the items referred to in the product list are a wholesale price with a 100 percent mark up on the item. Yakka have further advised the Commission that it did not have a recommended retail price for its goods.
6. As a result of the matters generally set out in paragraphs 4-5 above, purchasers were not provided with clothing to the value of \$300 by being provided with clothing to which 100 or less points had been assigned.
7. By reason of the facts generally set out set out in paragraphs 2-5 above, the Commission alleges Yakka has contravened section 52 of the Act by engaging in conduct, in trade or commerce, that is misleading or deceptive or likely to mislead or deceive.
8. By reason of the facts generally set out in paragraphs 2-5 above, the Commission alleges Yakka has contravened subsection 53(a) of the Act by falsely representing, in trade or commerce and in connection with the supply or possible supply of goods, or their promotion, that goods are of a particular value.
9. Yakka gives these undertakings to the Commission under section 87B of the Act to address the Commission's concerns, and in particular, purchasers were entitled to expect they would be provided with \$300 retail worth of Yakka clothing.
10. In accepting these undertakings from Yakka, the Commission has noted Yakka will, at considerable cost, take action to contact purchasers and provide them with a letter of explanation regarding Yakka's miscalculation of the value of the promotion and outlining the following:
  - (i) an apology; and
  - (ii) an offer of an additional 50 points and instructions on how purchasers can redeem those points for Yakka clothing.

The Commission notes the additional points offer is worth approximately between \$100 and \$115. Yakka has provided the Commission with prompt co-operation in the investigation and resolution of this matter.

## **UNDERTAKINGS**

### **1. FUTURE CONDUCT**

1. Yakka undertakes not to engage in misleading or deceptive conduct, namely falsely representing, in trade or commerce and in connection with the supply or possible supply of goods, or their promotion, that goods are of a particular value in contravention of sections 52 and 53(a) of the Act.

### **2. CONSUMER REDRESS**

1. Yakka undertakes:

- (a) within 7 days of signing this undertaking, to send by certified mail to each purchaser of a Holden Rodeo during the relevant period who has ordered Yakka clothing in fulfilment of the promotional offer:
  - (i) a letter in a form acceptable to the Commission, outlining an explanation of Yakka's miscalculation of the value of the promotion and providing an apology; and
  - (ii) an offer of an additional 50 points and instructions on how purchasers can redeem those points for Yakka clothing.

The letter will be in the form of Annexure "A" hereto.

The offer of an additional 50 points and the instructions on how purchasers can redeem those points for Yakka clothing will be in the form of Annexure "B" hereto.

- (b) that the Managing Director of Yakka will provide the Commission within 7 days of sending the letters referred to in (a) above with the name and address of each purchaser to whom such letter has been sent.
- (c) that the Managing Director of Yakka will notify the Commission within 7 days of sending such letters that such letters have been sent-

### **3. CORPORATE COMPLIANCE PROGRAMME**

Yakka shall create and maintain at its own expense a trade practices compliance program. In implementing this compliance program, Yakka will have regard to the Australian Standard AS 3806 Compliance Programs.

In summary, Yakka will -

- Demonstrate commitment to a policy of compliance and seek to embed a culture of compliance throughout the organisation.

- Identify risk areas for trade practices breaches and develop systems to eliminate or minimise these risks.
- State in its compliance program that it does not have a policy of indemnifying employees for breaches of the Act and that appropriate disciplinary action against those responsible will be taken on a case by case basis.
- Provide practical training for relevant staff and management so that breaches and potential breaches may be minimised or otherwise detected, referred and acted upon.

#### **4. IMPLEMENTATION**

Yakka will implement the trade practices compliance program within two months of acceptance of these undertakings. Completion of the first round of training will be within six months of acceptance of these undertakings.

In particular, Yakka shall implement the following steps -

##### **1. Commitment**

- A. Form a compliance committee of the Managing Director and Group Financial Controller to ensure that compliance matters are addressed at an appropriately senior level and on a regular basis during each year.
- B. Appoint a Compliance Manager or Senior Manager with overall responsibility for compliance systems.
- C. Ensure compliance procedures are understood by staff and other relevant third parties such as agents.

##### **2. Policy & Procedures**

- A. Produce a written policy of commitment to compliance and articulate how this will be carried out. Set in place procedures so that the policy is well understood throughout the company.

##### **3. Management Responsibility**

- A. Detail the processes involved in establishing, implementing and maintaining the compliance program and the roles and responsibilities of management, staff and other stakeholders.
- B. Ensure line managers are responsible for compliance in their immediate area.

#### **4. Resources & Authority**

A. Ensure that the Compliance Manager or Senior Manager responsible for compliance systems has -

- Authority, recognition and support within the organisation;
- Access to all levels in the organisation to ensure compliance;
- Overall responsibility for design, integrity and updating of the program; and
- Ready access to the Board when required.

B. Ensure staff have access to the necessary materials including compliance manuals and training:

C. Ensure any external compliance service providers have the resources and expertise to carry out the required tasks.

#### **5. Continuous Improvement**

A. Put in place procedures to ensure the program has regular ongoing reviews every 6 months from the implementation of the program.

#### **6. Operating Procedures for Compliance**

A. Integrate compliance considerations into appropriate systems which may include -

- computer systems
- forms
- contracts
- administrative procedures
- financial evaluations

#### **7. Training**

A. Develop and execute a practical and easily understood compliance training program for relevant staff and management in Yakka which is framed to reflect areas of risk within Yakka.

B. Keep records of such training programs including records of the date on which the training was conducted, who was in attendance and what material was covered.

#### **8. Complaints Handling System**

A. Yakka currently maintains, and will continue to maintain, a complaint handling system which complies with ISO9002.

**9. Record Keeping**

- A. Keep an accurate record of compliance failures and complaints and of the rectification of such failures and complaints.

**10. Employee Compliance**

- A. Incorporate in its compliance manual a clear statement that Yakka does not condone or support breaches of the Act and that appropriate disciplinary action will be taken against any employees responsible for any breach, on a case by case basis.
- B. Yakka will incorporate into the job description of the Compliance Manager a set responsibility to raise and discuss any compliance breaches with relevant employees.

**11. Identification and Rectification**

- A. Develop a system to identify and classify compliance failure so that systemic and recurring problems are rectified.

**12. Reporting**

- A. Ensure that compliance problems are rapidly reported to the Compliance Manager or Senior Manager.

**13. Monitoring & Review**

- A. Introduce a system to monitor and review the effectiveness of the compliance program.

**14. Accountability**

- A. Ensure that the Compliance Manager or Senior Manager is accountable to the Board for compliance issues.

**5. AUDITING OF CORPORATE COMPLIANCE PROGRAMME**

- 1. Yakka shall cause, at its own expense, an audit of its compliance program to be conducted annually from the date of acceptance of the undertaking for a period of 2 years or at such other time as specified in the undertaking. The audit shall be carried out by either by the legal firm Corrs Chambers

Westgarth or a suitably qualified compliance professional who is entirely independent of Yakka. Such a professional will qualify as independent on the basis that he or she:

- is not a present or past staff member or director of Yakka;
- has not acted or does not act for Yakka;
- is not retained by Yakka in any other capacity;
- has not and does not provide consultancy or other services Yakka;
- has no substantial shareholding or other interest in Yakka.

2. The auditor shall review and report on -
  - A. Yakka's adherence to the undertaking.
  - B. The implementation of the compliance program and the achievement of its objectives over the preceding twelve months.
  - C. Any recommended changes to the compliance program that may be necessary to ensure achievement of its objectives.
3. 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 date of acceptance of the undertaking. The second and final audit report shall be prepared and presented to the Commission by or on the anniversary of same date in the following year.

#### **EFFECTIVE DATE**

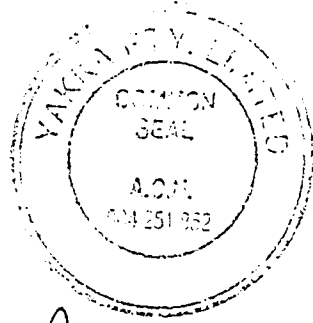
1. These undertakings will be effective forthwith upon acceptance by Yakka and the Commission.

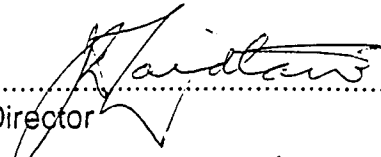
#### **ACKNOWLEDGMENTS**

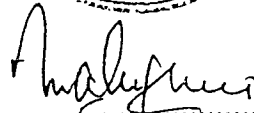
1. Yakka acknowledges the Commission will make the undertaking available for public inspection.
2. Yakka acknowledges the Commission may from time to time publicly refer to this undertaking.
3. Yakka acknowledges this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct.

IN WITNESS OF THIS UNDERTAKING:

THE COMMON SEAL OF )  
YAKKA PTY LIMITED )  
was affixed hereto by )  
authority of the Board of Directors )  
in the presence of: )

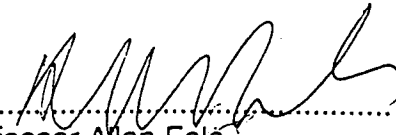


  
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Director )  
Name (Printed): JOHN D LAIDLAW

  
.....  
~~Director SECRETARY~~  
PETER J WAKEFIELD

This 27<sup>th</sup> day of AUG. 1998.

Accepted by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**  
pursuant to section 87B of the Trade Practices Act 1974.

  
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Professor Allan Fels  
Chairman

This 3 day of  1998