



TRADE PRACTICES ACT 1974

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

BY

INTHEBIGCITY.COM PTY LTD (ACN 095 488 734)

AND

CRAIG ANTONY LEGGO

AND

JOHN CHARLES BARTON

PERSONS GIVING UNDERTAKING

This undertaking is given to the Australian Competition and Consumer Commission ('the Commission') by inthebigcity.com Pty Ltd ACN 095 488 734 ('IBC') of level 30 Central Plaza One, 345 Queen Street, Brisbane in the State of Queensland, and Craig Antony Leggo ('Leggo') and John Charles Barton ('Barton') under section 87B of the *Trade Practices Act 1974* ('the Act').

BACKGROUND

1. In about July 2000, Leggo and Barton together with APN Newspapers Pty Ltd ACN 009 657 943 ('APN') established a 1900 premium rate telephone service ('the 1900 service') which offered to provide callers with, inter alia: guaranteed work in Brisbane and Sydney; discounts on moving and accommodation; and a minimum number of jobs available in a number of industries. Leggo and Barton were responsible for the content of the 1900 service and continued to operate the 1900 service until about 4 April 2001.
2. Leggo and Barton, either as a partnership trading under the name of The Big City ('TBC') or as directors of IBC, together with APN also caused advertisements regarding work opportunities and the 1900 service to be published in various newspapers throughout regional Queensland and New South Wales ('the Advertisements'). The Advertisements appeared as follows:

OPPORTUNITIES GALORE!!
WORK in
BRISBANE OR SYDNEY
Over 215 vacancies in 7 industries
Choose from Sales, Marketing,
Telecommunications, Charity, Customer Service,
Advertising, Interviewing Research and much
more...
THE BIG CITY
 * *Guaranteed Offer To Every Caller Today*
\$140 in discounts on moving and
accommodation for every call
Call 1900 999 208 Now
Lines open 24 hours 7 days \$2.48/min
*inc GST mob/pub higher * Conditions apply*

WANTED!
 People to work
 in Brisbane...

Over 190 positions. Start in 48hrs.
No kidding.*

Call us today, follow our simple 3 step system,
 and you'll have work within 48 hours of arrival.
Guaranteed. Over 190 positions in sales,
 customer service, advertising, charity,
 promotions, research and more! We'll even
 help you find safe, comfy and budget
 accommodation to get you started!

"Results Guaranteed OR Your Money Back!"

1900 999 208 *Call us 24hrs!*

inthebigcity.com.au

* Cond. apply \$2.48/min (incl. GST) inc mob/pub charge

3. From about January 2001, IBC together with Leggo and Barton continued to operate the 1900 service, caused the Advertisements to be published and caused a website to be published on the internet that made representations about the 1900 service ('the website').
4. On 8 February 2001, the Commission wrote to Leggo and Barton expressing its concerns that representations in the Advertisements, on the web site and on the recorded message provided by the 1900 service were false, misleading or deceptive in that upon calling the 1900 service consumers were given information that was not up to date, the advertised discounts were not available, a sizeable proportion of the jobs were commission only, and most of the employers, accommodation providers and removalists mentioned had no knowledge of any connection with The Big City or IBC. The Commission considered that conduct to be in breach of sections 52, 53(c), 53(d) and 53B of the Act.
5. The Commission also expressed its concerns that that conduct was unconscionable in breach of section 51AB of the Act in the circumstances, which included consumers being enticed into making an expensive phone call for employment positions and that the 1900 service contained unnecessary delays, was repetitive and targeted towards persons who were in financial need, unemployed, studying or travelling.
6. The Commission also requested Leggo to provide an undertaking to the Commission to take all necessary steps to immediately withdraw and cease such advertising. Leggo and Barton have provided their full cooperation to the Commission.

7. The Commission also wrote to APN on 8 February 2001, expressing the same concerns except in relation to the website, and requesting APN to provide an undertaking to the Commission to withdraw the Advertisements from all of its newspapers immediately. Despite assurances from APN on 19 February 2001 that it had instructed all newspapers in the APN group to immediately cease publishing the Advertisements, similar advertisements were still published. Those Advertisements appeared as follows:

PEOPLE needed Urgent-lyl Guaranteed work in Bris/Syd within 48 hrs!!*
Over 200 positions in 7 industries; call 24hrs on 1900 999 208 (\$2.48 p/min, mob/pub more).
 *Conditions apply.

8. On 2 April 2001, the Commission instituted Federal Court proceedings Q65 of 2001 against IBC, Leggo, Barton, APN and Mr David Cowan ('Cowan'), the Group Product Development Manager of APN ('the proceedings'). The conduct is set out in the application filed in the proceedings.
9. On 9 April 2001, the Commission obtained interlocutory injunctions against IBC, Leggo and Barton effectively restraining them from engaging in the conduct, and APN gave an undertaking to the Court in similar terms.
10. IBC, Leggo and Barton acknowledge that the representations in the Advertisements, the website and the 1900 service were likely to have misled or deceived consumers and constitute contraventions of sections 52, 53(c), 53(d) and 53B of the Act.
11. IBC, Leggo and Barton also acknowledge that their conduct may have amounted to unconscionable conduct in contravention of section 51AB of the Act.
12. As part of the resolution of the proceedings, IBC, Mr Leggo and Mr Barton have agreed to:
- (a) consent orders to recommend to the Court, which include an injunction restraining each of them from engaging or being involved in similar conduct for period of 5 years;
 - (b) make provision for refunds to callers of the 1900 service;
 - (c) corrective advertising, to inform the public of the conduct and the availability of refunds;

- (d) implement and maintain a trade practices compliance training program, to ensure, so far as reasonably possible that they are not involved in further contraventions of Part IVA or Part V of the Act; and
 - (e) provide their full cooperation and assistance to the Commission in respect of the other respondents to the proceedings.
13. Leggo and Barton have also undertaken to use their best endeavours to operate IBC in such a manner as to ensure that IBC is able to meet its obligations under the orders to be recommended to the Court.
14. IBC, Leggo and Barton have offered the Commission this undertaking in accordance with section 87B of the Act.
15. The Commission has agreed to accept the undertaking from IBC, Mr Leggo and Mr Barton under section 87B of the Act.

COMMENCEMENT OF UNDERTAKING

16. This undertaking comes into effect when:
- (a) the undertaking is executed by IBC, Leggo and Barton; and
 - (b) the undertaking so executed is accepted by the Commission.

UNDERTAKINGS

Consent orders

17. IBC, Leggo and Barton undertake:
- (a) to consent to orders to recommend to the Court in terms of the orders attached to this undertaking and marked **Annexure A**; and
 - (b) that they will use their best endeavours to ensure that IBC complies in all respects with the orders agreed between IBC and the Commission to be recommended to the Court, or such other orders as the Court may make.

Corrective advertisements

18. IBC, Leggo and Barton undertake to:

- (a) cause to be published at their own expense corrective advertisements in newspapers in the form and size and typeface of the advertisement attached to this undertaking and marked **Annexure B**, or such other form or size or typeface as the Commission may approve in writing, and with any variations or modifications that may be required by the Commission to take into account the position of the other respondents to the proceedings;
- (b) publish the corrective advertisements so as to advise members of the public:
 - (i) that the Advertisements contained representations that were false and misleading and may have been unconscionable contrary to the Act in the following respects:
 - (A) the 'jobs' were not guaranteed as stated;
 - (B) nearly all 'jobs' were really offered on commission only basis rather than wages, and were for sub-contractors rather than employees;
 - (C) many of the 'jobs' on the recorded message were out of date and not available;
 - (D) there was not as many 'jobs' as the advertisements stated;
 - (E) the discounts on moving and accommodation said to be available through TBC or IBC either did not exist or were out of date or were generally available to the public; and
 - (F) callers were misled into calling the numbers and then were given information that was incorrect or out of date;
 - (ii) a refund of call charges is available to those persons who telephoned the 1900 service; and
 - (iii) how those persons may obtain a refund;
- (c) place the corrective advertisements in the employment section of each newspaper where the Advertisements previously appeared;
- (d) cause the corrective advertisements to be published from such time as may be advised in writing by the Commission with at least 14 days

notice, but not until such time as the proceedings have been resolved, whether by settlement or consent orders or otherwise, as against the other respondents; and

- (e) cause the corrective advertisements to be published continually for no less than 3 months and with the same frequency as the Advertisements previously were published in the respective newspapers.

Refunds

19. IBC, Leggo and Barton undertake, joint and severably, to:

- (a) pay to the Commission the amount of \$14,411.74 for the purpose of making refunds to all persons who called the 1900 service;
- (b) pay the amount of \$14,411.74 to the Commission as follows:
 - (i) a lump sum payment in the amount of \$7,205.87 to the Commission within 30 days of the commencement of this undertaking ('the first lump sum payment'); and
 - (ii) a further lump payment in the amount of \$7,205.87 within 60 days of making the first lump sum payment

provided that should any payment not be made on or before the due date, immediately pay the balance of the amount of \$14,411.74 then outstanding to the Commission.

20. IBC, Leggo and Barton acknowledge that:

- (a) the Commission proposes to apply the sum payable to it pursuant to the preceding undertaking:
 - (i) firstly to effect refunds to persons who used the 1900 service in response to the Advertisements;
 - (ii) if there is any sum remaining thereafter, secondly to reimburse the Commission's costs in the proceedings; and
 - (iii) if there is any sum remaining thereafter, thirdly to be used in such manner as the Commission considers, in its absolute discretion, appropriate to protect consumers or promote consumer awareness of their rights under Part IVA or Part V of the Act; and
- (b) notwithstanding the proposals referred to in the preceding paragraph, no trust in favour of IBC, Leggo or Barton or any other person whatsoever

is, or is intended to be, hereby created, that the Commission is not required to account to IBC, Leggo or Barton or any other person in respect of the uses to which the sum is put and that the Commission may apply the funds in any manner and for any purpose it considers, in its absolute discretion, to be appropriate.

Trade Practices Compliance Program

21. IBC, Leggo and Barton undertake that:

- (a) IBC will implement a trade practices compliance program for staff that is in accordance with the Australian Standard for Compliance Programs AS3806-1998, with particular regard to Part IVA and Part V of the Act ('the Program');
- (b) the Program will aim to create a culture of compliance within IBC and to prevent, so far as is reasonably possible, any contraventions of the Act by IBC or by its officers, employees or agents;
- (c) IBC will appoint an appropriately qualified senior officer as the compliance officer with overall responsibility for trade practices compliance;
- (d) the Program will cover all officers, employees and agents of IBC whose duties could result in their being concerned in conduct that might breach the Act;
- (e) the Program will include:
 - (i) a timetable for the Program;
 - (ii) a compliance manual, a copy of which will be distributed to each staff member;
 - (iii) operating procedures, compliance registers and audit documents;
 - (iv) education and training;
 - (v) effective monitoring;
 - (vi) a reporting system;
 - (vii) record keeping, including a report on the implementation and maintenance of the Program to be given to the Commission one year from the commencement of this undertaking;

- (f) IBC will submit a draft of the Program to the Commission within 30 days of the commencement of this undertaking;
- (g) IBC will incorporate into the Program, and implement as part of the Program, any reasonable changes to the draft program that are recommended by the Commission in writing;
- (h) IBC will implement the Program within 30 days of the Commission advising whether any changes are required to the draft program, as referred to in subparagraph (g) above; and
- (i) the Program will remain in force for a minimum period of three years from the date of its implementation.

Cooperation

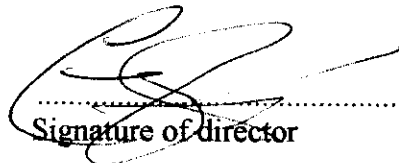
- 22. IBC, Leggo and Barton undertake to provide timely and full further cooperation in the Commission's case against the other respondents in the proceedings, APN and Cowan. That will involve, inter alia:
 - (a) making themselves reasonably available to the Commission or its solicitors or counsel at all reasonable times to give a full and frank account of their knowledge of, and involvement in, the conduct, to discuss evidence against the other respondents and prepare and finalise affidavits;
 - (b) swearing affidavits for the proceedings against the other respondents as and when requested from time to time;
 - (c) filing affidavits in the proceedings, if required by the Commission, setting out their full knowledge of, and involvement in, the conduct;
 - (d) providing affidavits in any other cases filed in relation to this conduct;
 - (e) giving full and frank evidence in Court consistent with their affidavits whenever needed;
 - (f) generally provide all reasonable cooperation with the Commission until all litigation against all respondents is finalised; and
 - (g) using all reasonable endeavours to have any additional staff of IBC cooperate fully with the Commission.
- 23. Leggo and Barton undertake that they will use their best endeavours to ensure that IBC complies in all respects with the undertakings it has given herein.

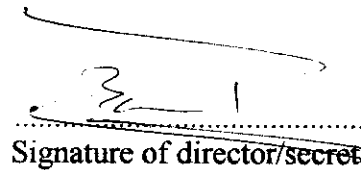
ACKNOWLEDGMENTS

- 24. IBC, Leggo and Barton acknowledge that this undertaking requires each of them to comply in all respects with the undertakings that each of them has given herein, notwithstanding any failure by those other persons to comply with the undertakings given herein.
- 25. IBC, Leggo and Barton acknowledge the Commission's right to make this undertaking available for public inspection, including by placing it on a register, publishing it and allowing third parties to publish it.
- 26. IBC, Leggo and Barton acknowledge and accept that this undertaking in no way derogates from any rights and remedies that may be available to any other person arising from the alleged conduct.

IN WITNESS of these undertakings and this agreement:

~~The Common Seal of INTHEBIGCITY.COM PTY LTD~~
~~(ACN 095 488 734) was affixed in accordance with the~~
~~authority of the Board of Directors in the presence of:~~
 SIGNED FOR AND ON BEHALF OF INTHEBIGCITY.COM PTY LTD
 BY IT'S DIRECTORS


 Signature of director


 Signature of director/secretary

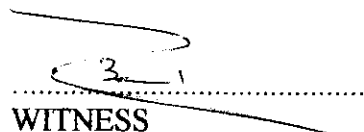
CRAG ANTONY LEGGO
 (Print name of director)

JOHN CHARLES BARTON
 (Print name of director/secretary)

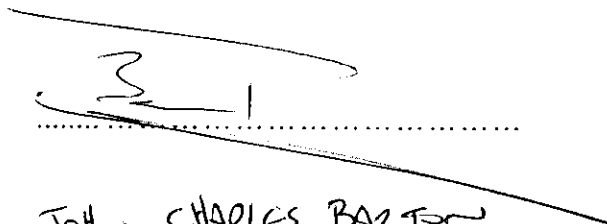
This 28th day of JUNE 2001


AND SIGNED BY:


 CRAG ANTONY LEGGO


 WITNESS

This 28th day of June 2001


 JOHN CHARLES BARTON
 28/6/01.

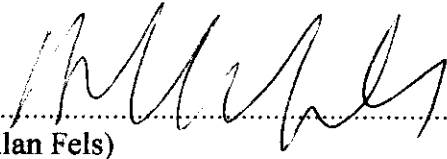

JOHN CHARLES BARTON

10.


WITNESS

This 28th day of June 2001

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 9 day of July 2001