

TRADE PRACTICES ACT 1974**UNDERTAKINGS TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN UNDER SECTION 87B****BY****VIKING OFFICE PRODUCTS PTY LIMITED****A.C.N. 061 239 807****Background**

1. Viking Office Products Pty Limited ("Viking") is incorporated under the Corporations Law, and is a subsidiary of a United States company, Viking Office Products Inc. Viking's principal activity involves the sale and distribution of a range of stationery and office products through a direct marketing system.
2. In 1995, following an investigation by the Australian Competition and Consumer Commission ("ACCC"), Viking provided undertakings dated 23 April 1995 under section 87B of the Trade Practices Act 1974 ("the Act"). The allegations included:
 - (a) advertising products as having a recommended retail price ("RRP") when there is no RRP specified by the relevant manufacturer or wholesaler;
 - (b) representing that an amount of its own calculation (being the stated RRP plus sales tax) is the manufacturer's or wholesaler's RRP for that item where the manufacturer's or wholesaler's RRP already includes sales tax; and
 - (c) advertising prices of items by superimposing them on pictures of goods of a different character.
3. In February 1998, the ACCC again received a complaint in relation to Viking's direct mail catalogue advertising. Officers of the ACCC conducted an investigation into the comparison prices being used by Viking as to whether or not the claimed savings were genuine savings.

4. Viking conducts its business by producing and distributing around Australia a range of catalogues to both potential and existing customers. The catalogues include the following:

- Price Buster Catalogue – sent to prospective customers only
- Buyers Guide – sent to existing customers only
- Sales Catalogues – sent to existing customers only
- Various specialist catalogues, eg Office Furniture Sale Catalogue – sent to existing customers only, and depending on a particular customers buying patterns.

The Buyers Guide lists the full range of products, and does not feature “savings” or discounted prices. The other catalogues offer “savings”, when compared to the Buyers Guide. These other catalogues ask customers to compare a “Regular Price” contained in the Buyers Guide, to an “on Sale” price, adding a “Save Up to XX%” to emphasise the comparison made.

5. The ACCC conducted an analysis of three products (“the Products”) which were promoted as having a “Regular Price”. The analysis revealed:

(a) the Products were offered for sale to a significant number of customers at prices less than the “Regular Price”;

(b) sales of the Products at the “Regular Price” accounted for a very small percentage of the total sales of the Products; and

(c) the bulk of sales of the Products had been made at prices substantially less than the “Regular Price”.

6. Viking has, in recent catalogues, made a number of wording changes. For example, the “Discount Buyers Guide” became the “Office Supply Buyers Guide” (“Buyers Guide”); the “Regular Price” became the “Buyers Guide Price”; and the “sale” price became the “Discount Price”. However, these wording changes did not alleviate ACCC concerns as they did not remove the misleading impression created by the comparison.

7. The ACCC considers that:
- (a) the representations constitute misleading or deceptive conduct and contravene section 52 of the Act; and
 - (b) the representations may also involve a contravention of section 53(e) of the Act.
8. In a meeting with the ACCC, the Chairman of Viking, Mr Irwin Helford, agreed that Viking had made some “mistakes”, and that some of Viking’s practices had been “sloppy”. Mr Helford further stated that Viking intends to always be truthful and will correct any misconceptions in its catalogues.
9. The parties have agreed to resolve this matter by the giving and accepting of undertakings in the terms contained herein.

UNDERTAKINGS

Definitions

The following definitions apply to the Background, the Undertakings and the Acknowledgments sections of this document.

“ACCC” means the Australian Competition and Consumer Commission.

“the Act” means the *Trade Practices Act 1974*.

“Two price advertising” means a price comparison made between a “sale” or “discount” price and a previous price.

1. Viking Office Products (“Viking”) will only engage in two price advertising where the price compared to is the price at which that product was available for a reasonable period and where reasonable quantities of that product have been sold recently to numerous customers.

Where Viking engages in “two price advertising”, it will implement the following procedure.

- A. When Viking offers products at a savings or a discount price, the savings stated will clearly indicate the basis on which the comparison is made. The reference will be to the source of the comparison price and the quantity against which the comparison is made. For example:

“Save up to 25% from our Buyer’s Guide price for 12.”

In addition Viking will clearly indicate that the savings or discount may vary according to the quantities purchased. For example:

“Savings may vary according to quantities purchased.”

Such a reference will appear on the page on which a savings or discount price is offered.

- B. Viking will prominently print on the order page, in every Viking catalogue containing “two price advertising”, a statement describing the source of the comparison. In addition, in every Viking catalogue containing a general benefits page and which contains “two price advertising”, a prominent statement to the same effect will be printed. For example:

“The savings indicated compare to prices in our [*insert date*] Buyer’s Guide issued to all Viking customers.”

- C. Where Viking offers products to its customers at different savings or discount prices in more than one catalogue current at any one time, it will prominently print on:

- the order page;
- the general benefits page; and
- the page on which a savings or discount price is offered

in every Viking catalogue containing “two price advertising”, a statement to the following effect:

“Discounts may vary by catalogue.”

This procedure is not required in respect of prices advertised in the then current Sales or Specialist Catalogues issued immediately prior to a half yearly Buyers Guide where the prices advertised in the Buyers Guide are less than or different from those advertised in the subsequent Buyers Guide and the said Sales or Specialist Catalogues have expired not more than three weeks after the release of the Buyers Guide.

- D. When a Viking catalogue uses words such as “Save up to”, Viking will give proper prominence to the words “up to”. In any case, the size of the words “up to” shall not be less than 75% of the font size of the word “save” and shall be in a style and colour such that the words are clear and legible.
2. A. Within two months of the signing of this undertaking Viking will conduct at its own expense an internal review of its existing trade practices compliance program. If necessary and within four months of the signing of this undertaking Viking will, at its own expense, use its

best endeavours to ensure that the program is AS 3806 compliant by taking the following steps:

Viking will:

- demonstrate commitment to a policy of compliance and embed a culture of compliance throughout the organisation;
- analyse and respond to the trade practices matters resulting in this undertaking;
- identify risk areas for trade practices breaches and develop systems to eliminate or minimise these risks;
- state that the company will take action internally against those responsible for breaches; and
- provide practical and verifiable training for all relevant staff and management so that breaches and potential breaches may be prevented or otherwise detected, referred and acted upon.

In particular, Viking will –

1. Commitment

- (a) Form a compliance committee of the Board or ensure that compliance matters are standing items at Board meetings.
- (b) Appoint a Compliance Manager or Senior Manager with overall responsibility for compliance systems.
- (c) Implement adequate procedures to check for trade practices compliance.
- (d) Use its best endeavours to ensure that compliance procedures are understood by staff and other relevant third parties eg agents, distributors and advertising representatives.

2. Policy & Procedures

- (a) Produce a written policy of commitment to compliance and articulate how this will be carried out.
- (b) Set in place procedures so that the policy is well understood throughout the company.
- (c) Ensure procedures are laid down to assess compliance against predetermined objectives and assessment criteria.

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 that line managers are responsible for compliance in their immediate area.

4. Resources & Authority

- (a) Ensure that the Senior Executive 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;
 - Ready access to the Board when required.
- (b) Ensure that staff have access to the necessary materials including compliance manuals and training, reference material and databases.
- (c) Ensure that 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 that the program has regular ongoing reviews.

6. Operating procedures for compliance

- (a) Integrate compliance considerations into:
- computer systems;
 - forms;
 - contracts;
 - administrative procedures;
 - financial evaluations;
 - management performance evaluations (line and senior).

7. Training

- (a) Develop and execute a practical and easily understood compliance training system throughout the company. Training will be:
- integrated into induction courses;
 - reviewed annually;
 - participatory;
 - verifiable by third parties;
 - framed to reflect areas of risk;
 - integrated into line and senior management development.

8. Complaints Handling System

- (a) Implement a visible and accessible complaints handling system which complies with Australian Standard AS 4269.

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) Develop a disciplinary policy for breaches of the Act by employees and ensure that the policy is widely disseminated.
- (b) Ensure that compliance is integrated into performance reviews for 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.

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 is accountable to the Board for compliance issues.

- B. 1. Viking undertakes, at its own expense, to cause an independent audit of its compliance program to be conducted annually from the date of the Commission's acceptance of these undertakings for a period of 3 years. The audit shall be carried out by a suitably qualified compliance professional who is entirely independent of Viking. Such a professional will qualify as independent on the basis that he or she:
 - (a) is not a present or past staff member or director of Viking;

- (b) has not acted or does not act for Viking;
 - (c) is not retained by Viking in any other capacity;
 - (d) has not and does not provide consultancy or other services for Viking; and
 - (e) has no substantial shareholding or other interest in Viking.
2. The auditor, as appropriate, shall report on;
- (a) Viking's adherence to these undertakings;
 - (b) the internal review of the Viking compliance program and any steps taken to make the program AS 3806 compliant as outlined in undertaking 2A;
 - (c) the achievement of the compliance program objectives over the prior twelve months; and
 - (d) any recommended changes to the compliance program that may be necessary to achieve 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 these undertakings by the Commission. Subsequently, audit reports will be prepared and presented on or before the same date in each following year, with the last report due 3 years and one month after the date of acceptance of these undertakings by the Commission.
4. The Commission shall review the recommendations contained in each audit report. Viking shall implement the auditor's reasonable recommendations unless the Commission advises otherwise within one month of its receipt of the audit report.
3. Viking undertakes, at its own expense, to complete a community service obligation. The function of the community service obligation is to inform the direct mail industry about the application of the *Trade Practices Act 1974* to the industry.

Viking shall carry out an industry awareness program to address trade practices information and compliance needs of businesses operating in the direct mail industry. The program is to consist of a publication within an Australian Direct Marketing Association's industry journal. Viking shall submit to the Commission for its approval, within 2 months of the acceptance of these undertakings by the Commission, the planned content of the publication. Viking shall make those changes reasonably suggested by the Commission. Viking

shall use its best endeavour to ensure that the publication occurs within 2 months of the approval of the content by the Commission.

ACKNOWLEDGMENTS

- 1. Viking acknowledges that the ACCC may make a public announcement of the matters contained in these Undertakings.
- 2. Viking further acknowledges that the ACCC will make these undertakings available for public inspection.
- 3. Viking further acknowledges that the ACCC will from time to time publish and publicly refer to these Undertakings at its discretion.
- 4. Viking further acknowledges that these Undertakings in no way derogates from the rights and remedies available to any third parties arising from the alleged conduct.

IN WITNESS OF THESE UNDERTAKINGS AND ITS AGREEMENT:

The common seal of)
VIKING OFFICE PRODUCTS PTY LIMITED (ACN 061 239 807))
 was hereunto affixed by authority of the)
 Board of Directors in the presence of:)



[Handwritten Signature]
 Irwin Helford
 Chairman

[Handwritten Signature]
 Anne Cashman
 General Manager

Dated this 13 day of May 1999

Accepted by the **Australian Competition and Consumer Commission** pursuant to section 87B of the Trade Practices Act 1974.

[Handwritten Signature]
 (Professor Allan Fels)
 Chairperson

Dated this 13 day of May 1999