

TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN PURSUANT TO SECTION 87B

BY

ACEPARK PTY LTD ACN 077 906 186
(of Level 5, Seabank Building, 12-14 Marine Parade,
Southport in the State of Queensland)

BACKGROUND

- 1 Acepark Pty Ltd ACN 077 906 186 ("Acepark") sells a computer software betting / investment program ("the computer software program") to members of the public. From time to time, it has operated under, or associated itself with, the business names "Autotab Investments" and "Offtrack Investments".
- 2 Following an investigation by the Australian Competition and Consumer Commission ("the ACCC"), the ACCC has reached the view that Acepark contravened sections 51AB, 52, 53(c), 53(d) and 59(1) of the *Trade Practices Act 1974* ("the Act") in that Acepark:
 - (a) engaged in unconscionable conduct in connection with the supply of goods or services to persons in contravention of section 51AB of the Act;
 - (b) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of section 52 of the Act;
 - (c) falsely represented that goods or services have performance characteristics, uses or benefits they do not have in contravention of section 53(c) of the Act;
 - (d) falsely represented that it had an affiliation it does not have in contravention of section 53(d) of the Act;
 - (e) made a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any business activity that it has represented as one that can be carried on, at or from a person's place of residence in contravention of section 59(1) of the Act.
- 3 In February 1999, and subsequently throughout March 1999 and April 1999, the ACCC brought to Acepark's attention its view that Acepark's conduct contravened sections 51AB, 52, 53(c), 53(d) and 59 of the Act.
- 4 On Thursday, 29 April 1999, representatives from the ACCC and Acepark met to discuss the ACCC's view.
- 5 Acepark has fully co-operated with the ACCC by offering enforceable undertakings pursuant to section 87B of the Act.

UNDERTAKINGS

6 Acepark hereby undertakes for the purposes of section 87B of the Act:

- (a) that, by no later than 21 days from the date on which the ACCC signs this document, it will discontinue any legal proceedings instituted against Ms Angela Booth, Mr Resurrecion Barredo and Mr Barry Voges for recovery of payments under their respective contracts to purchase the computer software program and that it releases each of those parties from any further claims arising from or in connection with their respective contracts;
- (b) that, by no later than 21 days from the date on which the ACCC signs this document, the Bill of Sale taken over Ms Booth's motor vehicle will be set aside and removed from all relevant Registries in Australia and that Ms Booth will be fully and finally discharged from all obligations under that Bill of Sale;
- (c) that, by no later than 21 days from the date on which the ACCC signs this document, the following payments made by each of Ms Booth, Mr Barredo and Mr Voges to purchase the computer software program will be refunded to them:
 - (i) Ms Booth \$4,000.00;
 - (ii) Mr Barredo \$7,250.00;
 - (iii) Mr Voges \$ 500.00.
- (d) that, subject to receiving satisfactory proof from each of Ms Booth, Mr Barredo and Mr Voges as to the amounts they lost whilst attempting to operate the computer software program, it will compensate each of them, within 21 days of receiving such proof, for such losses;
- (e) that, within 21 days of the date on which the ACCC signs this document, it will conduct a thorough review of all its advertising and selling practises to ensure that any statements concerning profitability, performance characteristics and efficacy of the computer software program are realistic, justifiable and not misleading or deceptive;
- (f) that, within 21 days from the date on which the ACCC signs this document, it will implement a proper, structured system for handling complaints from customers/members of the public about the computer software program, such system to include the keeping of a record which contains the following:
 - (i) the name of each complainant and the date upon which each complaint is made;
 - (ii) the name of each person to whom each complaint is made;
 - (iii) precise details of the nature of each complaint;
 - (iv) precise details of the steps taken to investigate each complaint; and

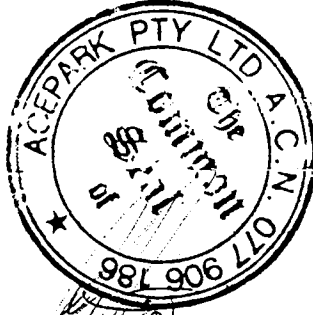
- (v) precise details of the outcome of each investigation into each complaint;
- (vi) precise details of the final decision made in respect of each complaint.

ACKNOWLEDGMENTS

- 8 Acepark acknowledges that this undertaking will be placed on the ACCC's Public Register and may be referred to by the ACCC at its discretion.
- 9 Acepark further acknowledges that this undertaking in no way derogates from the rights or remedies available to any other person arising from the alleged conduct.

IN WITNESS OF THESE UNDERTAKINGS

THE COMMON SEAL OF
 ACEPARK PTY LTD ACN 077 906 186
 was hereunto affixed by authority of the Board of
 Directors in the presence of:



.....
 Secretary / Director

.....
 Director

This 6th day of July 1999

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

.....
 (Handwritten signature)

Chairman

This 27 day of July 1999