

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

BY

BRUMAR SERVICES PTY LTD ACN 070 493 364

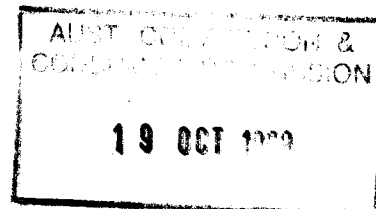
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PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (the Commission) by Brumar Services Pty Ltd ACN 070 493 364 c/- Swan Faulkner Fox, 1st Floor, 176 Fullarton Road, Dulwich SA 5065 under section 87B of the *Trade Practices Act 1974* (the Act).

BACKGROUND

1. Brumar Services Pty Ltd (Brumar) is incorporated in Victoria.
2. In the State of South Australia Brumar principally conducts a multi site franchise retail fuel operation as franchisee for the Shell Oil Company.
3. In conjunction with its retail fuel operations Brumar also offers for sale and sells various consumer goods including Aerial brand watches.
4. Prior to 29 July 1999, Brumar offered for sale and sold these Aerial watches for \$29.95.
5. As part of the New Tax System indirect tax reforms, from 29 July 1999 the Wholesale Sales Tax (WST) on goods listed in items 4 to 14 of Schedule 5 of the Sales Tax (Exemptions and Classifications) Act 1992 was reduced from 32% to 22%. Watches are included in this list of goods.
6. Retailers holding stock for sale on 29 July 1999 were entitled to a transitional credit. The refund equalled the difference between the amount of WST the retailer paid at the 32% rate and what they would have paid had the WST rate been 22%.
7. After receiving a complaint the Commission wrote to Brumar on 13 September 1999.
8. The letter alerted Brumar to the Commission's concern that in reference to the Aerial watches offered for sale by the company, the pre 29 July 1999 dollar margin on each watch was that based on a normal selling price of \$29.95. By allegedly failing to reduce the price post 29 July from \$29.95 to \$27.95 (to account for the WST reduction) it was the Commission's view that Brumar had, prima facie, engaged in conduct in contravention of the Commission's Guidelines on Price Exploitation. In these circumstances it was the Commission's view that such conduct may be in breach of section 75AU of the Act.
9. By facsimile on 15 September 1999, Mr Craig Brown, General Manager of Brumar responded to the Commission's concerns and stated that due to a failure in internal



procedure the company did not reprice the Aerial brand watches in order to account for the 29 July 1999 reduction in WST. Mr Brown stated that between 29 July 1999 and 13 September 1999 Brumar sold twenty four Aerial watches at a price of \$29.95 each.

10. In these circumstances it is the Commission's view that Brumar has engaged in conduct in contravention of the Commission's Guidelines on Price Exploitation and that such conduct is in breach of section 75AU of the Act.

COMMENCEMENT OF UNDERTAKING

This undertaking comes into effect when:

- (i) the undertaking is executed by Brumar; and
- (ii) the Commission accepts the undertaking so executed.

UNDERTAKINGS

Brumar gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-

1. It will immediately reprice all its existing stock of Aerial brand watches to reflect the WST reduction from 32% to 22% that took place on 29 July 1999.
2. It will, at its own expense, immediately place a point of sale notice in a prominent position at each and every Brumar site in South Australia where watches (Aerial or otherwise) are currently sold or have been sold since 29 July 1999. The notice will be in the same terms, form, design, size and content as that described at **Annexure A**. The point of sale notice will remain in place until close of business on 30 October 1999.
3. It will at its own expense offer a \$2 cash refund to any person who purchased an Aerial watch from a Brumar Shell outlet between 29 July 1999 and 13 September 1999 inclusive and who can show produce proof of purchase to that outlet before close of business on 30 October 1999.
4. Within two (2) months of the commencement of this undertaking taking effect, develop for consideration by the Commission, a compliance program concerning the price exploitation provision (s75AU) of the Act. Once the Commission has approved the program, Brumar will within one (1) month of receipt of such approval, implement the program at its own expense.

The program will incorporate the following features:

- (a) Aim:

The program will aim to:

- prevent so far as reasonably possible, any contravention of the price exploitation provision of the Act by Brumar, its directors, employees or agents; and
- include procedures and mechanisms to minimise the likelihood of further contraventions of the price exploitation provision of the Act.

(b) Object:

The object of implementing the compliance program is to create and maintain compliance in accordance with the *Australian Standard on Compliance, AS-3806*.

(c) Policy:

Brumar will formally adopt and enforce a policy of sanctioning any director, employee or agent who is knowingly or recklessly concerned in a contravention of the section 75AU of the Act.

(d) Compliance Infrastructure

Brumar will appoint an appropriately qualified named director as the Brumar Compliance Officer with overall responsibility for compliance.

The compliance program is to cover all directors, employees and agents of Brumar whose duties could result in them being concerned in conduct that might breach s. 75AU of the Act.

(e) Education

Brumar will develop and implement an education program calculated to have the relevant staff conversant with section 75AU of the Act to a level where:

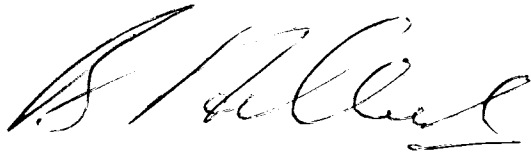
- general staff can avoid obvious contraventions and can identify more complex problems for referral to the most appropriate person in the Brumar compliance infrastructure;
- persons with responsibility within the Brumar compliance infrastructure can effectively carry out these responsibilities; and
- Brumar's Compliance Officer can address more complex issues and (if that person is not legally qualified and able to give the relevant advice), identify issues which require referral to Brumar's solicitors.
- Brumar will make whatever changes to the draft compliance program that the Commission may reasonably require.
- Brumar will then implement the compliance program within one (1) month of the Commission advising of the changes it requires to the draft program and that the compliance program will remain in force for a minimum period of two (2) years from the commencement of this undertaking.
- At the end of each twelve month period following its implementation, until the second

anniversary of the implementation of the Program, Brumar will submit the Program for review by an independent auditor. The results of these reviews are to be provided to the Commission within four weeks of their receipt by Brumar. Should the reviews identify weaknesses in the Program, Brumar will make suitable amendments to the Program. Brumar will also make any changes to its program that the Commission may reasonably require upon receipt of the review. Brumar will advise the Commission of these amendments within three weeks of receipt of a Commission direction seeking such amendments.

ACKNOWLEDGMENTS

1. Brumar acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission will, at its discretion, from time to time, publish and publicly refer to this undertaking.
2. Brumar acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from Brumar's conduct.

IN WITNESS of these undertakings and its agreement the common seal of Brumar Services Pty Ltd ACN 070 493 364 was hereunto affixed by authority of the Board of Directors in the presence of



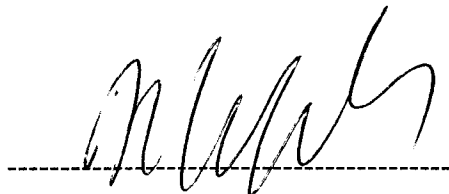
Director



Director/Secretary

This 12th day of OCTOBER 1999

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



Professor Allan Fels

Chairman

This 28 day of October 1999