

TRADE PRACTICES ACT 1974

**Undertaking to the Australian Competition & Consumer Commission
given for the purposes of Section 87B**

by

Maurice Kain Textiles Limited
 MKT ACN 856 616 294

1. Background

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- 1.1 Maurice Kain Textiles Limited (ACN 856 616 294) ("MKT") is the exclusive Australian distributor of fabrics manufactured by the United Kingdom fabric manufacturer, Sanderson.
 - 1.2 Sanderson fabrics are distributed to retailers throughout Australia by MKT's Sanderson division.
 - 1.3 The Sanderson range of fabrics is positioned in the soft furnishings market as a highly exclusive range. MKT's Sanderson division expects retailers of the Sanderson product meet a high standard of retail presentation, and has formulated certain criteria setting out those requirements ("**Customer Criteria**").
 - 1.4 Bargain Upholstery Fabrics ("**BUF**") has been a retailer of the MKT range of fabrics for about five years. It has also in that time purchased Sanderson fabric from MKT, including discontinued lines and off-cuts. In September 1998, the Sanderson division decided that BUF did not meet the Customer Criteria and by letter of 23 September notified BUF that it no longer intended to supply BUF with Sanderson fabrics. It also notified BUF of the Customer Criteria. In October 1998 the Sanderson division refused to fill an order for Sanderson fabric placed by BUF ("**Conduct**").
 - 1.5 The Australian Competition & Consumer Commission ("**ACCC**") has alleged that the Conduct constitutes resale price maintenance in breach of section 48 of the *Trade Practices Act, 1974* (Cth) ("**TPA**").
 - 1.6 MKT does not admit that the Conduct constitutes resale price maintenance in breach of section 48 of the TPA.
 - 1.7 MKT gives the undertakings set out in part 2 below.

2. Undertakings

2.1 MKT undertakes for the purposes of section 87B of the TPA:

- (a) it will not in future engage in conduct which contravenes section 48 of the TPA in its dealings with retailers of the Sanderson range of fabrics in that it will not:
 - (i) make it known to a retailer of Sanderson fabric that it will not supply goods to that retailer unless the retailer agrees not to sell those goods at a price less than the price specified by MKT; or
 - (ii) withhold the supply of goods to a retailer of Sanderson fabric for the reason that the retailer:
 - A. has not agreed as mentioned in paragraph (i); or
 - B. has sold, or is likely to sell, goods supplied to it by MKT, at a price less than a price specified by MKT as the price below which the goods are not to be sold.
- (b) it will:
 - (i) within 1 month of the date of this undertaking write to all of its current Sanderson retailers and specifically draw to their attention that MKT does not in any way seek to control the price at which those retailers sell Sanderson fabrics to their customers and that the retail price of Sanderson fabrics is wholly within those retailers' discretion;
 - (ii) specify in all price lists for Sanderson fabrics words to a similar effect; and
 - (iii) ensure that new Sanderson retailers appointed by MKT are notified in writing at the time of their appointment of MKT's policy in this respect;
- (c) it has provided a written guarantee, approved by the ACCC, to BUF in respect of continued supply of the Sanderson range of fabrics to BUF;
- (d) it will:
 - (i) within 1 month of the date of this undertaking, deliver Trade Practices Compliance Training to its directors and senior management and its sales staff employed in

the Sanderson division, as advised and conducted by its legal advisers;

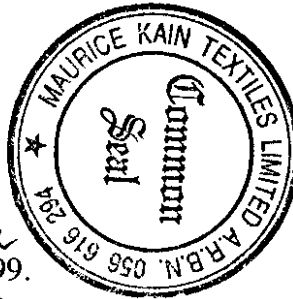
- (ii) include in the Trade Practices Compliance Training training in relation to the provisions of Part IV, IVA and V of the TPA, which are applicable to the business operations of MKT;
- (iii) put in place a permanent checking and monitoring mechanism, and nominate a compliance officer, to reduce the risk of future breaches of the TPA and to ensure that any potential breaches are reported to senior management;
- (iv) appoint a compliance officer who is a senior manager of MKT and who will have direct responsibility for the implementation and operation of the compliance program;
- (v) give a copy of the trade practices compliance manual to the ACCC once the program has been implemented;
- (vi) 12 months following implementation of the compliance program, cause an independent audit of the compliance program to be carried out, which will include administering questionnaires to test staff knowledge; updating the compliance manual and preparing a written audit report, which will be copied to the ACCC; and
- (vii) ensure that the compliance officer meets with officers of the ACCC 2 years after implementation of the compliance program to:
 - A. discuss the progress of trade practices compliance within MKT, including the form, content and coverage of its ongoing trade practices compliance program;
 - B. report on the trade practices issues that have arisen for MKT since implementation of the compliance program;
 - C. discuss the operation of MKT's trade practices reporting and vetting requirements; and
 - D. allow the ACCC to assess the capacity of MKT to comprehend and impart an understanding of the developments in trade practices law and compliance.

3. Acknowledgements

- 3.1 MKT acknowledges that the ACCC will make this undertaking available for public inspection.
- 3.2 MKT further acknowledges that the ACCC may publicly refer to this undertaking.

IN WITNESS ^{MS-} of these undertakings and its agreement the common seal of Maurice Kain Textiles Limited (ACN ^{as} 856 616 294) was hereunto affixed by authority of the Board of Directors in the presence of:

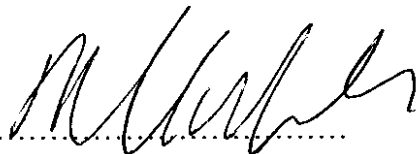
.....
Secretary/Director



.....
Director

This 1ST day of ~~NOVEMBER~~ ^{DECEMBER} 1999.
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ACCEPTED BY THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974.



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Professor Allan Fels
Chairman

This 12 day of *December* 1999.