



004/4423

## TRADE PRACTICES ACT 1974

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

BY

LAWSONS TRADING CO. PTY LTD (ACN 075 570 259)

#### PERSONS GIVING UNDERTAKING

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Lawson's Trading Co. Pty Ltd (ACN 075 570 259) ("Lawson's Trading") of 1 Foley Road, Ilkley in the State of Queensland, under section 87B of the *Trade Practices Act 1974* ("the Act").

#### BACKGROUND

1. Lawson's Trading is manufacturer and distributor of machinery, chemicals and know-how related to the application of specialised, solvent-free sprayed polyurethane protective coatings known as 'Armour Linings'.
2. Lawson's Trading carries on business in Australia as the franchisor of a business system involving the application and distribution of 'Armour Linings' products and processes. As part of its franchise operation, Lawson's Trading supplies equipment and services to franchisees, including training, marketing and support.
3. The Commission contends that Lawson's Trading failed to comply with the requirements of the *Trade Practices (Industry Codes – Franchising) Regulations 1998* ("Franchising Code of Conduct") in respect of the following conduct:
  - a. From January 1999 to April 2001, failing to provide Disclosure Documents to its franchisees in accordance with clauses 6(1) and 10 of the Franchising Code of Conduct;
  - b. From January 1999 to April 2001, failing to comply with clauses 11(1) or 11(2) of the Franchising Code of Conduct by not ensuring that it had received signed statements from prospective franchisees confirming that they had received advice from an independent legal adviser, business adviser or accountant or had received advice of a similar kind or in the alternative, a signed statement that the franchisees had declined to obtain such advice; and
  - c. From January 1999 to September 2002, failing to provide a Dispute Resolution Process within its 'Licence Agreements' and 'Supply Agreements' as required by clauses 26, 27, 28 and 29 of the Franchising Code of Conduct.
4. The Commission considers and Lawson's Trading admits that in the circumstances of the franchising system operated by Lawson's Trading, the conduct detailed in paragraph 3 above which occurred after July 1998 contravened section 51AD of the Act and clauses 6(1), 10, 11(1), 11(2), 26, 27, 28 and 29 of the Franchising Code of Conduct.
5. Lawson's Trading has offered, and the Commission has agreed to accept, this undertaking in accordance with section 87B of the Act.

## **UNDERTAKINGS**

6. In consequence of the matters referred to above, Lawson's Trading undertakes to the Commission pursuant to section 87B of the Act, that Lawson's Trading:
  - A. will cease and desist from engaging in the conduct described in paragraph 3 above as from the date of commencement of this undertaking;
  - B. has created an appropriate Disclosure Document and provided it to all franchisees;
  - C. where appropriate, has provided refunds of the purchase price to some franchisees and has also assisted in organising the resale of franchises for some franchisees;
  - D. will at its own expense implement and maintain a Trade Practices Compliance Program ("the compliance program") in accordance with **Annexure 1**; and
  - E. will at its own expense and within 6 months of the date of commencement of this undertaking ensure that its Director, Kenneth Lawson, attend a Trade Practices Compliance Seminar ("the Seminar"), conducted by a person chosen from a panel nominated by the Australian Compliance Institute. The Seminar will consist of presentations relating to Part IVB of the Act.

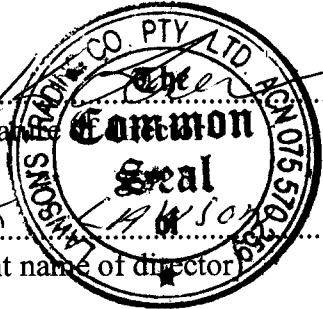
## **COMMENCEMENT OF UNDERTAKING**

7. This undertaking comes into effect when:
  - i. the undertaking is executed by Lawson's Trading; and
  - ii. the undertaking so executed is accepted by the Commission.

## **ACKNOWLEDGMENTS**

8. Lawson's Trading acknowledges the Commission's right to make this undertaking available to the public including by placing it on a register, publishing it and allowing third parties to publish it.
9. Lawson's Trading acknowledges that the Commission may issue a media release about this undertaking and may, from time to time, publicly refer to the undertaking.
10. Lawson's Trading acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

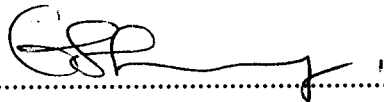
The Common Seal of **Lawson's Trading Co. Pty Ltd** )  
(ACN 075 570 259) was affixed in accordance with the )  
authority of the Board of Directors in the presence of: )

Signature  .....  
(Print name of director) **K. Lawson**

Signature of director/secretary .....  
(Print name of director/secretary) .....

This *15* day of *JANUARY* 200*4*.

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

 .....  
(Graeme Samuel)  
Chairman

This *27<sup>th</sup>* day of *JANUARY* 200*4*.

## **Annexure 1**

### ***Trade Practices Compliance Program***

Lawson's Trading will, within one (1) month of receipt of the commencement of the undertaking and at its own expense, implement the following Trade Practices Compliance Program ("the Program"):

#### **Compliance Officer**

1. Lawson's Trading will appoint an appropriately qualified Solicitor with Trade Practices experience as a Trade Practices Compliance Officer ("Compliance Officer"). The Compliance Officer will be appointed at the time the Program is implemented.

#### **Agreement Reviews**

2. Lawson's Trading will require the Compliance Officer to review any agreement that is proposed to be entered into with prospective franchisees ('Agreement Review') to ensure that it complies in all necessary respects with section 51AD of the Act and the Franchising Code of Conduct prior to its entry.

#### **Documentary Records**

3. Lawson's Trading will maintain a documentary record of the Agreement Reviews. Such documentary record will include:
  - i. A copy of the agreement;
  - ii. Written advice that the agreement has been reviewed and cleared by the Compliance Officer (including the date on which the agreement was reviewed); and
  - iii. Written advice of any possible deficiencies that were identified by the Compliance Officer and the action taken to address these possible deficiencies.
4. In addition to the above, Lawson's Trading will obtain and keep as part of the record of each Agreement Review a hard copy of the following documents:
  - (a) a copy of each disclosure document that it gives to a prospective franchisee;
  - (b) a copy of each disclosure document that it gives to a franchisee proposing to renew or extend a franchise agreement;
  - (c) a receipt signed and dated by each person to whom it gives a disclosure document or a copy of the Code stating that that person received those documents and the date that person received those documents;
  - (d) a written statement from each franchisee, prior to Lawson's Trading:
    - (i) renewing or extending a franchise agreement with that franchisee;
    - (ii) entering into an agreement to renew or extend a franchise agreement with that franchisee; or
    - (iii) receiving a non-refundable payment (whether of money or of other valuable consideration) under a franchise agreement with that franchisee

to the effect that the franchisee, has received, read and had a reasonable opportunity to understand the disclosure document and the Code;

- (e) a written statement from each prospective franchisee, prior to Lawson's Trading:
  - (i) entering into a franchise agreement with that franchisee;
  - (ii) entering into an agreement to enter into a franchise agreement with that franchisee; or
  - (iii) receiving a non-refundable payment (whether of money or of other valuable consideration) under an agreement to enter into a franchise agreement with that franchisee

to the effect that the prospective franchisee has received, read and had a reasonable opportunity to understand the disclosure document and the Code;

- (f) a signed statement from each prospective franchisee, prior to Lawson's Trading entering into a franchise agreement with that franchisee, to the effect that the prospective franchisee has been given advice about the proposed franchise agreement or franchised business, by any of:
  - (i) an independent legal adviser;
  - (ii) an independent business adviser; or
  - (iii) an independent accountant; or
- (g) for each kind of statement not received under sub-paragraph 6(f) of this undertaking, a signed statement by the prospective franchisee that the prospective franchisee:
  - (i) has been given that kind of advice about the proposed franchise agreement or franchised business; or
  - (ii) has been told that that kind of advice should be sought but has decided not to seek it; and
- (h) a hard copy of any other document that it is required by the Code to give, or obtain from, a franchisee or prospective franchisee, except for a copy of the Code.

- 5. Lawson's Trading will ensure that the documentary records of the Agreement Reviews are available to the Commission to be reviewed from time to time. Such records are to be available from one week after the date of the agreement for a period of 2 years after that date. Such records shall be provided to the Commission within 5 working days of a written request for those records.

### **Reporting**

- 6. Within 10 working days of the implementation of the Program, Lawson's Trading will provide the Commission with the notice of appointment of the Compliance Officer including name, position and contact details.

### **Duration**

- 7. The Program will remain in effect for two (2) years following the date of commencement of the undertaking.