

TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B

BY

CHADWICKS MODEL AGENCY PTY LTD

ACN. 000 936 612

BACKGROUND

1. In the Statement of Claim filed in proceedings number G862 of 1995 in the Federal Court on 16 November 1995, a copy of which is annexed hereto and marked "A", the Australian Competition and Consumer Commission ("the Commission") has alleged that Chadwicks Model Agency Pty Ltd ACN. 000 936 612 ("Chadwicks") engaged in the conduct of price fixing as set out in paragraph 3 and 4 below.
2. Chadwicks is engaged in the supply of the services of models, among other services throughout Australia but predominantly in Sydney and Melbourne and to a lesser extent in Brisbane ("the market"). Chadwick's is in competition with the other agents ("the Model Agents") named in the Statement of Claim, in the supply of such services in that market.
3. During a meeting of the Model Agents in May 1995 in Sydney an arrangement was made or an understanding arrived at by the Model Agents that as from 1 July 1995 each of the Model Agents would require all of their clients who had not previously paid an Agency Service Fee ["ASF"] to pay a 10% ASF on the supply by them of male and female models, hair stylists and make up artists for visual advertisements. Although not present at the meeting, between the meeting and 15 June 1995 another Model Agent agreed that it would participate in the arrangement or understanding.
4. Chadwicks gave effect to the arrangement or understanding by making statements to its customers between May and 31 August 1995 to the effect that the 10% ASF would be enforced from 1 July 1995 and all the other model agencies will be charging the Agency Service Fee.
5. Following an investigation by the Commission, it reached the view that Chadwicks had contravened the Trade Practices Act 1974 ("the Act"). The Commission contends that the conduct described above and in the Statement of Claim had the purpose and effect of fixing, controlling or maintaining the price for services to be supplied by the Model Agents in competition with each other, and that the arrangement therefore had the purpose or was likely to have the effect of substantially lessening competition within the meaning of s 45A of the Trade Practices Act 1974 ("the Act"). In making, and giving effect to the agreement Chadwicks contravened sections 45(2)(a)(ii) and 45(2)(b)(ii) of the Act.
6. Chadwicks has admitted in the above proceedings, for the purposes of section 76 and 80 of the Act, that it engaged in conduct of the type described, in contravention of sections 45(2)(a)(ii) and 45(2)(b)(ii) of the Act and has now ceased the conduct referred to in paragraphs 3 and 4. Peter Chadwick has admitted in the above proceedings that his conduct contravened section 76 of the Act.

UNDERTAKING

Chadwicks undertakes for the purposes of section 87 B of the Act that it will:

1. within four (4) months of signing this Undertaking, develop a Trade Practices Compliance Program with the following characteristics:

(a) Aim

To create a culture of compliance throughout Chadwicks and to prevent, so far as is reasonably possible, any contraventions of the Act by Chadwicks, its directors, employees or agents.

(b) Policy

the formal adoption by Chadwicks, of a policy of strict compliance with both the letter and spirit of the Act within Chadwick's;

(c) Compliance Infrastructure

The appointment of an appropriately qualified named senior executive as the Chadwicks Compliance Officer, with overall responsibility for Trade Practices compliance. The name of the nominated compliance officer to be conveyed to the Commission within four (4) months.

(d) Coverage

The compliance program is to cover all directors, employees and agents of Chadwicks whose duties could result in them being concerned in conduct that might breach the Act ("relevant staff").

(e) Education

Develop and implement an education program using the Commission's training program known as "Best and Fairest", calculated to have the relevant staff conversant with the provisions of the Act to a level where:

(i) general staff can avoid obvious contraventions and can identify more complex potential trade practices problems for referral to the appropriate person in the Chadwicks compliance infrastructure; and

- (11) persons with responsibilities within the Chadwicks compliance infrastructure can effectively carry out those responsibilities.
2. implement the Trade Practices Compliance Program within four (4) months of the signing of this Undertaking and that the Trade Practices Compliance Program will remain in force, for a minimum period of three (3) years from the signing of this Undertaking.
 3. Chadwick's Compliance Officer, will certify, by way of statutory declaration, that the following steps have been taken:
 - during the first year, all relevant Chadwick's personnel completed those parts of "Best and Fairest" appropriate to the nature of Chadwick's business;
 - all relevant Chadwick's personnel who have not completed "Best and Fairest" prior to commencement of that year, have done so during the year;
 - that all other relevant personnel have attended a seminar/talk given by Chadwick's Compliance Officer relating to the Act during that year, and in particular those provisions relating to individual pecuniary penalty; and
 - that all personnel have been made aware or reminded that it is Chadwick's corporate policy to comply with all provisions of the Act and that the nominated Compliance Officer is the company's Trade Practices Act compliance officer.

A certification is to be forwarded to the Commission within 30 days of the end of each of the 3 years.

ACKNOWLEDGMENTS

Chadwick's acknowledges that the Commission will make this Undertaking available for public inspection.

Chadwick's further acknowledges that the Commission will from time to time publish and publicly refer to this Undertaking at its discretion.

