

TRADE PRACTICES ACT 1974

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



BY

GORDON CHARLES MANAGEMENT PTY LTD

ACN 003 234 768



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 Gordon Charles Management Pty Ltd ("Gordon Charles") engaged in conduct having the purpose, or having^{or} being likely to have the effect, of fixing, controlling or maintaining price as set out in paragraph 3 and 4 below. 
 2. Gordon Charles is engaged in the arranging of the supply of the services of models, among other services, throughout Australia but predominantly in Sydney ("the market"). Gordon Charles 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. Gordon Charles accounts for 3% of the market.
 3. The income of model agents comprises commission payable by talent and an agency booking or service fee ("ASF") payable by customers. While most customers pay the ASF, some customers decline to pay it.
 4. 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 each of the Model Agents would require each customer not already paying an ASF to pay an ASF on the arranging for supply by them of male and female models, 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.
 5. Gordon Charles gave effect to the arrangement or understanding by making statements to one customer and one casting agent between May and 26 July 1995 to the effect that the ASF would be required to be paid and that it could no longer be ignored.
 6. Following an investigation by the Commission, it reached the view that Gordon Charles 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 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
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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 Gordon Charles contravened sections 45(2)(a)(ii) and 45(2)(b)(ii) of the Act.

7. Gordon Charles had admitted in the above proceedings, for the purposes of sections 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~~ but following receipt of legal advice had ceased the impugned conduct by 26 July 1995, which was more than a month prior to correspondence from the Commission in the matter. Gordon Charles Donald has admitted in the above proceedings that his conduct contravened section 76 of the Act.
8. Neither the Commission nor Gordon Charles are aware of any damage having been suffered by customers or talent as a result of the conduct.

UNDERTAKING

Gordon Charles 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 Gordon Charles and to prevent, so far as is reasonably possible, any contraventions of the Act by Gordon Charles, its directors, employees or agents.

(b) Policy

The formal adoption by Gordon Charles, of a policy of strict compliance with both the letter and spirit of the Act within Gordon Charles.

(c) Compliance Infrastructure

The appointment of Mr Gordon Charles Donald as the Gordon Charles Compliance Officer, with overall responsibility for Trade Practices compliance.

(d) Coverage

The compliance program is to cover all directors, employees and agents of Gordon Charles 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 Gordon Charles compliance infrastructure; and
- (ii) the Gordon Charles Compliance Officer can address more complex trade practices issues and (if that person is not legally qualified and able to give the relevant advice) identify issues which require referral to Gordon Charles solicitors.

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 years from the signing of this Undertaking.

3. Gordon Charles Donald, as designated director responsible for compliance with the Trade Practices Act, will certify, by way of statutory declaration, that the following steps have been taken:

- during the first year, all relevant Gordon Charles personnel completed those parts of "Best and Fairest" appropriate to the nature of Gordon Charles business;



