

96/485

TRADE PRACTICES ACT 1974

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

BY

PRISCILLA'S MODEL MANAGEMENT PTY LTD

ACN.

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- 1 -

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 Priscilla's Model Management Pty Ltd ("Priscilla's") engaged in the conduct of price fixing as set out in paragraph 3 and 4 below.
2. Priscilla's is engaged in the arranging of 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"). Priscilla'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 each of the Model Agents would require all of their clients who had not previously paid an agency booking or service fee ("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, another model agent agreed that Priscilla's would participate in the arrangement or understanding.
4. Priscilla's gave effect to the arrangement or understanding by making statements to its customers between the May meeting and 21 August 1995 to the effect that the ASF would be insisted on and that it could no longer be ignored. The arrangement or understanding was enforced on Priscilla's customers as from 1 July 1995.
5. Following an investigation by the Commission, it reached the view that Priscilla's 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 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 Priscilla's contravened sections 45(2)(a)(ii) and 45(2)(b)(ii) of the Act.

- 2 -

6. Priscilla's 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 has now ceased the conduct. Priscilla Leighton-Clark has admitted in the above proceedings that ~~his~~ ^{her} conduct contravened section 76 of the Act.

UNDERTAKING

Priscilla's undertakes for the purposes of section 87 B of the Act that it will:

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

(b) Policy

The formal adoption by Priscilla's, of a policy of strict compliance with both the letter and spirit of the Act within Priscilla's.

(c) Compliance Infrastructure

The appointment of Priscilla Leighton-Clark as the Priscilla's Compliance Officer, with overall responsibility for Trade Practices compliance.

(d) Coverage

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

- 3 -

(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 Priscilla's compliance infrastructure; and
 - (ii) the Priscilla's 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 Priscilla's 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. Priscilla Leighton-Clark, 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 Priscilla's personnel completed those parts of "Best and Fairest" appropriate to the nature of Priscilla's business;
 - all relevant Priscilla'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 Priscilla Leighton-Clark re: 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 Priscilla's corporate policy to comply with all provisions of the Act and that Priscilla Leighton-Clark 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.

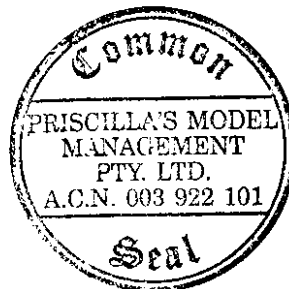
ACKNOWLEDGMENTS

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

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

Priscilla's further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any person arising from the alleged conduct.

IN WITNESS OF THESE UNDERTAKINGS)
AND ITS AGREEMENT THE COMMON)
SEAL OF PRISCILLA'S MODEL)
MANAGEMENT PTY LTD)
was hereunto affixed by authority of the Board)
of Directors in the presence of:)



[Signature]
.....
Director/Secretary
Acting

[Signature]
.....
Director

This 26th day of November, 1996

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

[Signature]
.....
(Professor Allan Fels)
Chairman

This 27 day of *[Signature]* 1996