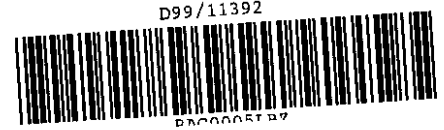


**TRADE PRACTICES ACT 19**



**UNDERTAKING TO THE TRADE PRACTICES  
COMMISSION GIVEN FOR THE PURPOSES OF  
SECTION 87B**

**BY**

**ADEAL PTY LIMITED  
A.C.N. 005 174 952**

**BACKGROUND**

Adeal Pty Limited ("Adeal"), has offered for sale and sold, in Australia, Varta "9V" ACCU Rechargeable nickel cadmium batteries described on the batteries as "Varta ACCU Plus Rechargeable". There has appeared on the batteries a triangular symbol comprising three arrows chasing each other around a stylised version of the mobius loop.

At the time these batteries were offered for sale and sold there were no facilities available to Australian consumers for the recycling of these batteries.

The Trade Practices Commission has alleged that the presence on the batteries of the triangular symbol would lead consumers in Australia to believe that the batteries can, as a matter of practicality, be recycled in the sense that, after their useful life in the hands of the first consumer, they can be processed so that they can be reused in their present form by another consumer or their components can be used in another product cycle. Further that, in the absence of facilities to recycle the batteries in this way, the presence on the batteries and on associated packaging of the triangular symbol is misleading and deceptive in contravention of section 52 of the *Trade Practices Act 1974* ("the Act") and constitutes a representation that they have performance characteristics or benefits they do not have, in contravention of section 53(c) of the Act.

Adeal has acknowledged that its conduct, in offering for sale and selling the batteries in the circumstances described, has resulted in contraventions of the Act and has agreed to give the following undertakings for the purposes of section 87B of the Act.

## UNDERTAKINGS

Adeal Pty Limited ("Adeal") undertakes, for the purposes of section 87B of the *Trade Practices Act 1974*, on behalf of itself and any and all subsidiaries of Adeal Pty Limited and any and all business entities controlled by Adeal Pty Ltd or its subsidiaries ("the Adeal Group") that:

- (a) from the date of Adeal giving these undertakings, the Adeal Group will not, in trade or commerce, sell or distribute or otherwise make available batteries displaying, on the batteries or on associated packaging, the triangular symbol comprising three arrows chasing each other around a stylised version of the mobius loop, which has appeared on Varta "9V" Battery ACCU brand rechargeable nickel cadmium batteries described on the batteries as "Varta ACCU Plus rechargeable" ("the recyclable symbol"), or any other symbol, wording or mark which represents that the batteries are recyclable, unless:
  - (i) at the time of the sale, distribution or making available, Adeal has available to it facilities for the recycling of the batteries and believes, on reasonable grounds, that it will have available to it such facilities at the time when the batteries have reached the end of their useful lives;
  - (ii) Adeal has previously obtained, or taken all reasonable steps to obtain, the agreement of any retailer to whom it sells, distributes or otherwise makes available the batteries, that the retailer will return to Adeal, within a reasonable time, any of the batteries returned to the retailer; and
  - (iii) there has appeared in the Australian Photography Magazine, the Australian Camera Magazine and the Australian Videography Magazine, on at least three occasions, an advertisement, in terms approved by the Trade Practices Commission ("Commission"), of not less than half a page in size, stating to the effect that Adeal Nicad batteries bearing the "recyclable" symbol or any other symbol, wording or mark which represents that the batteries are recyclable, on the battery or associated packaging, can be recycled by being returned to Adeal or Adeal retailers;
- (b) from the date of Adeal giving these undertakings, the Adeal Group will not, in trade or commerce, represent in any way that any battery which

it sells or distributes or otherwise makes available is recyclable unless that battery can be sold, distributed or made available in accordance with undertaking (a) above; and

- (c) Adeal will, recycle, or cause to be recycled, all batteries which are, or have been, sold by the Adeal Group, whether Varta brand, Hama brand, Twinn brand or otherwise, displaying on the batteries or on associated packaging, the recyclable symbol, or any other symbol, wording or mark which represents that the batteries are recyclable ("Adeal recyclable batteries") which are or have been returned to the Adeal Group and will, within three months of giving these undertakings, seek the return of such batteries to the Adeal Group by:
- (i) taking all reasonable steps to obtain the agreement of all retailers to whom it has sold, distributed or otherwise made available Adeal recyclable batteries, that the retailer will return to Adeal, within a reasonable time, any such batteries returned to the retailer and that the retailer will display, for as long as is reasonably necessary given the life expectancy of the batteries, at all its points of sale for Adeal batteries, prominent signs stating that any Adeal recyclable battery can be recycled by being returned to Adeal or Adeal retailers, or cardboard boxes bearing prominent signs stating that any Adeal recyclable battery can be recycled by being returned to Adeal or Adeal retailers;
  - (ii) providing to retailers who agree to display them, the signs or boxes stating that any Adeal recyclable battery can be recycled by being returned to Adeal or Adeal retailers;
  - (iii) placing in the Australian Photography Magazine, the Australian Camera Magazine and the Australian Videography Magazine, on at least three occasions, an advertisement, in terms approved by the Commission, of not less than half a page in size, stating to the effect that Adeal Nicad batteries bearing the "recyclable" symbol, or any other symbol, wording or mark which represents that the batteries are recyclable, on the battery or associated packaging, can be recycled by being returned to Adeal or Adeal retailers.

For the purposes of these undertakings, a battery will be taken to have been recycled if, subsequent to its initial manufacture, it has been processed, other than by being recharged by an end-user, so that it can be reused as a battery or so that its component parts or materials have been recovered with the

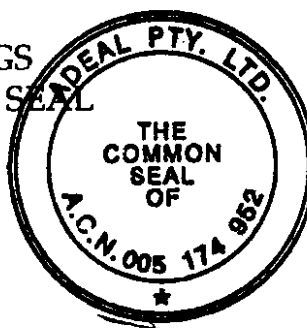
intention that they will be used in the manufacture of batteries or other products.


In addition to giving these undertakings, Adeal agrees that the Commission may, for the purposes of encouraging compliance with the Act, publicise where, when and to whom it wishes:

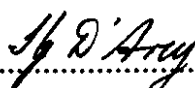
- (i) Adeal's acknowledgment that it has contravened the Act; and
- (ii) the contents of these undertakings.

IN WITNESS OF THESE UNDERTAKINGS  
AND ITS AGREEMENT THE COMMON SEAL  
OF ADEAL PTY. LTD

was hereunto affixed by authority of the  
Board of Directors previously given in  
presence of




  
.....  
Director

  
.....  
Secretary

This *18th* day of *April* 1994

ACCEPTED BY THE TRADE PRACTICES COMMISSION PURSUANT TO  
SECTION 87B OF THE TRADE PRACTICES ACT 1974

  
.....  
(Professor Allan Fels)  
Chairman

This *15* day of *may* 1994