

**TRADE PRACTICES ACT 1****UNDERTAKING TO THE TRADE PRACTICES
COMMISSION GIVEN FOR THE PURPOSES OF
SECTION 87B****BY****HITACHI SALES AUSTRALIA PTY LTD
A.C.N. 005 029 943****BACKGROUND**

Hitachi Sales Australia Pty Ltd ("Hitachi Sales"), has offered for sale and sold, in Australia, nickel-cadmium batteries for use in video cameras. There has appeared on the batteries a triangular symbol comprising three arrows chasing each other around a stylised version of a mobius loop.

At the time these batteries were offered for sale and sold there were no facilities in Australia available to the public 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.

Hitachi Sales 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

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

- (a) from the date of Hitachi Sales giving these undertakings, the Hitachi Sales 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 consisting of three arrows which has appeared on nickel cadmium batteries for use in video cameras ("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, Hitachi Sales 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) Hitachi Sales has given written instructions to all Hitachi Sales video camera dealers, in terms of the notice at Attachment 1 to these undertakings, requiring them to advise all future purchasers of Hitachi Sales video cameras that nicad batteries sold for use in Hitachi Sales video cameras are recyclable and can be recycled by being returned to any Hitachi Sales video camera dealer;
 - (iii) Hitachi Sales has arranged that, within three months, in all future Video Camera Instruction Manuals, a notice will appear, in easily legible type, bearing words to the following effect:

"Bring the battery to the shop from which it was purchased as soon as the post-charging battery life becomes too short for practical use. Do not dispose of the exhausted battery".
 - (iv) there has appeared in the Australian newspaper, and at least one other major newspaper circulating state-wide in each state, 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 Hitachi Sales nickel cadmium batteries bearing the "recyclable" symbol, or any other symbol, wording or mark which represents which represents that the batteries are recyclable, on the battery or on associated packaging, can be recycled by being returned to Hitachi Sales or Hitachi Sales retailers;
- (b) from the date of Hitachi Sales giving these undertakings, the Hitachi Sales 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) Hitachi Sales will, recycle, or cause to be recycled, all batteries which are, or have been, sold by the Hitachi Sales Group, 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 ("Hitachi Sales recyclable batteries") which are or have been returned to the Hitachi Sales Group and will, within three months of giving these undertakings, seek the return of such batteries to the Hitachi Sales Group by:

- (i) posting, to all past purchasers of Hitachi Sales video cameras, which were new at the time of purchase, sold in Australia (of which purchasers Hitachi Sales declares itself to have a comprehensive list), a notice in terms of the form at Attachment 2 to these undertakings;
- (ii) placing in the Australian newspaper, and at least one other major newspaper circulating state-wide in each state, an advertisement in terms approved by the Commission, of not less than half a page in size, stating to the effect that Hitachi Sales nickel cadmium batteries bearing the "recyclable" symbol, or any other symbol, wording or mark which represents that the batteries are recyclable, on the battery or on associated packaging, can be recycled by being returned to Hitachi Sales or Hitachi Sales 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, Hitachi Sales agrees that the Commission may, for the purposes of encouraging compliance with the Act, publicise where, when and to whom it wishes:

- (i) Hitachi Sales' 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 HITACHI SALES AUSTRALIA PTY. LTD
 was hereunto affixed by authority of the Board
 of Directors previously given in presence of



.....
 Director

.....
 Secretary

This *29th* day of *March* 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