

**TRADE PRACTICES ACT 1974****UNDERTAKINGS TO THE TRADE PRACTICES  
COMMISSION GIVEN FOR THE PURPOSES OF  
SECTION 87B****BY****FUJI XEROX AUSTRALIA PTY LTD  
A.C.N. 003 341 819****BACKGROUND**

Fuji Xerox Australia Pty Ltd ("Xerox") has advertised for sale and has sold mobile telephones to consumers and business customers.

Xerox advertised mobile phones in a full page advertisement which appeared on page 44 of the Good Weekend supplement of the Sydney Morning Herald ("SMH") published on 23 October 1993 and also on page 6 of the SMH published on 27 October 1993.

The Trade Practices Commission ("the Commission") contends that the above mentioned advertisements breach provisions of the Trade Practices Act 1974 in the following ways:

- in relation to the Good Weekend advertisement, misleading or deceptive statements in relation to price (section 52, 53(e)). The advertisement stated an instalment price for mobile telephones which might lead people to believe that the price stated was the total price, when this was not the case.
- in relation to both advertisements, failure to disclose limitation in Easy Payment Plan (section 52). Instalment payments were only available to "registered businesses".
- in relation to both advertisements, failure to disclose cash price (section 53C). In both cases, only the instalments relating to the financing package are quoted for the mobile telephones.

Xerox has acknowledged the Commission's opinion that Xerox's conduct in allowing the advertisements in the form 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.

*D.*

## UNDERTAKINGS

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

- (1) with regard to an **Internal Inquiry**,

Xerox will, within six weeks of signing these undertakings: have conducted an internal investigation calculated to identify how the apparent contraventions under discussion came about; have produced a report of the findings made by that investigation and will have provided a copy of that report to the Trade Practices Commission ("the Commission");

- (2) with regard to an **Internal Compliance Program**,

Xerox will, within three months of signing these undertakings, have developed and instituted a three year Trade Practices Compliance program, in a form approved by the Commission, for Xerox, all subsidiaries of Xerox and all business entities controlled by Xerox ("the Group") with the following characteristics:

- (a) **Aim**

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

- (b) **Group Policy**

The formal adoption, or reaffirmation, by the Company, of a policy of strict compliance with both the letter and spirit of the Act throughout the Group and the adoption, or reaffirmation, and enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act.

- (c) **Compliance Infrastructure**

The appointment of an appropriately qualified senior executive as the Group Compliance Officer with overall responsibility for Trade Practices compliance. The creation within the group of suitable audit referral procedures to enable potential Trade Practices problems to be identified and dealt with appropriately.

- (d) **Coverage**

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

(e) Education

Development and implementation of an education program calculated to have the relevant staff conversant with the provisions of the Act to a level where:

- general staff can avoid obvious contraventions and can identify more complex potential Trade Practices problems for referral to the appropriate person in the Group compliance infrastructure;
- persons with responsibilities within the Group compliance infrastructure can effectively carry out those responsibilities; and
- the Group 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 the Group's legal advisers;

(f) Ascertainment

Development and implementation of a program of ascertainment to measure objectively the effectiveness of the compliance program and provision to the Commission on each anniversary of the commencement of the compliance program a "Certificate of Efficacy" in a form approved by the Commission in which Xerox reports to the Commission on the implementation and effectiveness of the compliance program.

(3) with regard to **Magazine Publications,**

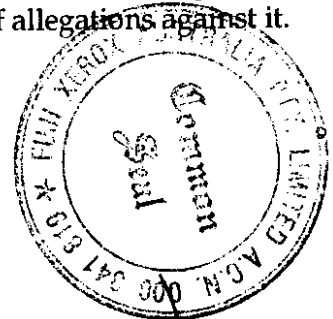
- (a) Xerox will, within three months of signing these undertakings, commission an article to be published, with the approval of the Commission, in the periodical "Marketing Magazine" which will promote the need for awareness with the Trade Practices Act and the adoption of a "culture of compliance" with the Act across all activities relating to the marketing of mobile phones in Australia;
- (b) Xerox will negotiate an arrangement with the editor and publisher of "Marketing Magazine" to establish a regular column to be published in the magazine and to be made up from case extracts from the Trade Practices Commission's own publications or case transcripts. This column is to appear at least 4 times a year over at least 1 year, and is to be approved by the Commission prior to publication;
- (c) Xerox will undertake to send copies of the article referred to in (3)(a) above to all major participants in the mobile telephone industry suitably bound in a cardstock cover bearing on the face thereof "Trade

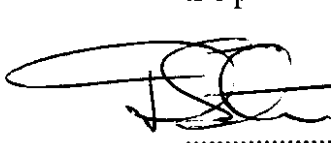
Practices Act...Trade Practices Act Compliance in the Mobile Phone Industry" and the corporate logo of the Commission, all in a format and colouring to be agreed by the Commission, such cover to also carry reference to the source of the article and the fact that the bound article is produced by Fuji Xerox Australia Pty Limited, and the article to be preceded, inside the front cover, by a page with a printed statement, to be agreed by the Commission, which gives reasons why the article is relevant to the recipient, and which advises on the Commission's booklet *Advertising and Selling*, and advises where that booklet can be acquired as an additional educative reference.


In addition to these undertakings, Xerox agrees that the Commission may, for the purposes of encouraging compliance with the Act, publicise the Commission's opinion that Xerox has contravened the Act; and the contents of these undertakings as follows:

- (i) in private meetings held with a view to encouraging other parties which have allegedly contravened the Act to enter into similar undertakings to these; and
- (ii) in such other circumstances as the Commission may in its reasonable discretion elect, after consultation with Xerox, and having regard to Xerox's concern regarding the publication of allegations against it.

IN WITNESS OF THESE UNDERTAKINGS  
AND ITS AGREEMENT THE COMMON SEAL OF  
FUJI XEROX AUSTRALIA PTY LIMITED  
was hereunto affixed by authority of the  
Board of Directors previously given in  
the presence of



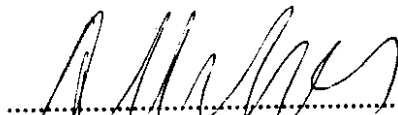
  
.....  
Director

  
.....  
Secretary



This                      day of                      1994

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

  
.....  
(Professor Allan Fels)  
Chairman

This                      30                      day of                      June                      1994