



TRADE PRACTICES ACT 1974

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

BY

**NEC INFORMATION SYSTEMS AUSTRALIA PTY LTD
A.C.N. 002 068 546**

BACKGROUND

NEC Information Systems Australia Pty Ltd ("NECISA"), has offered for sale and sold, in Australia, nickel metal hydride battery packs for exclusive use in certain NEC hardware products upon which there appears a triangular symbol comprising three arrows chasing each other around a stylised version of the mobius loop ("battery packs").

The Trade Practices Commission has alleged that the presence on the battery packs of the triangular symbol would lead consumers in Australia to believe that the battery packs 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 returned to NECISA via consumer accessible and publicised collection arrangements and then 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 such consumer accessible and publicised collection arrangements leading to recycling of the battery packs in this way, the presence on the battery packs 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.

NECISA denies that the presence of the triangular symbol on the battery packs is misleading or deceptive or constitutes a representation that they have a performance characteristic or benefit that they do not have. Nevertheless, without any admission of contravention of the Act, NECISA has agreed to give the following undertakings for the purposes of section 87B of the Act.

UNDERTAKINGS

NEC Information Systems Australia Pty Ltd ("NECISA") undertakes, for the purposes of section 87B of the Trade Practices Act 1974, that:

- (a) from the date of NECISA giving these undertakings, it will not, in trade or commerce, sell or distribute or otherwise make available battery packs for exclusive use in NEC computer hardware displaying, on them 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 nickel metal hydride battery packs sold by NECISA, for use in NECISA computer hardware products incorporating the battery packs ("the recyclable symbol"), or any other symbol, wording or mark which represents that the battery packs are recyclable, unless:
 - (i) at the time of the sale, distribution or making available, NECISA has available to it facilities for the recycling of the battery packs and believes, on reasonable grounds, that it will have available to it such facilities at the time when the battery packs have reached the end of their useful lives;
 - (ii) NECISA has previously obtained, or taken all reasonable steps to obtain, the agreement of every service centre to which it sells, distributes or otherwise makes available the battery packs, that the service centre will return to NECISA, within a reasonable time, any of the battery packs returned to the service centre; and
 - (iii) NECISA inserts information leaflets, in terms of the form at Annexure C to these undertakings, with the sales packaging of new computer hardware products incorporating the battery packs and new replacement rechargeable nickel metal hydride battery packs; and
- (b) from the date of NECISA giving these undertakings, the NECISA Group will not, in trade or commerce, represent in any way that any battery pack which it sells or distributes or otherwise makes available is recyclable unless that battery pack can be sold, distributed or made available in accordance with undertaking (a) above; and
- (c) NECISA will recycle, or cause to be recycled, all battery packs which are, or have been, sold by NECISA, displaying on the battery pack or on associated packaging, the recyclable symbol, or any other symbol, wording or mark which represents that the battery packs are recyclable ("NECISA recyclable battery packs") which are or have been returned to NECISA and will, within three months of giving these undertakings, seek the return of spent battery packs to NECISA by:

- (i) posting, to all past purchasers of NECISA computer hardware products incorporating rechargeable battery packs, which were new at the time of purchase, sold in Australia (of which purchasers NECISA declares itself to have comprehensive information which is stored on the NECISA Warranty System database), a notice in terms of the form at Annexure B to these undertakings;
- (ii) taking all reasonable steps to obtain the agreement of all service centres to which it has sold, distributed or otherwise made available NECISA recyclable battery packs, that the service centre will return to NECISA, within a reasonable time, any such battery packs returned to the service centre and that the service centre will display, for as long as is reasonably necessary given the life expectancy of the batteries, at all its points of sale of NECISA computer hardware products, prominent signs in terms of a point of sale advertising display containing the wording as per Annexure A that any NECISA recyclable computer hardware battery pack can be recycled by being returned to the NECISA main service centre or NECISA service centres;
- (iii) providing to all service centres which agree to display them, the signs stating that any NECISA recyclable computer hardware battery pack can be recycled by being returned to the NECISA service centres; and
- (iv) inserting information leaflets, in terms of the form at Annexure C to these undertakings, with the sales packaging of new computer hardware products incorporating the battery packs and new replacement rechargeable nickel metal hydride battery packs.

For the purposes of these undertakings, a battery pack 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 pack or so that its component parts or materials have been recovered with the intention that they will be used in the manufacture of battery packs or other products.

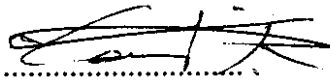
In addition to giving these undertakings, NECISA agrees that the Commission may, for the purposes of encouraging compliance with the Act:

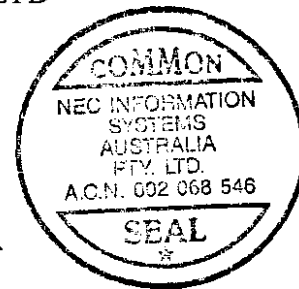
- (i) publicise where, when and to whom it wishes the full details set out in the Background to these undertakings, details of steps taken by NECISA to advise its customers about NECISA's recycling facilities and procedures, and the details of those procedures.

(ii) publicise where, when and to whom it wishes, the full contents of these undertakings, including the Background statement, providing that it has previously consulted with NECISA in regard to the intended publicity.

IN WITNESS OF THESE UNDERTAKINGS
AND ITS AGREEMENT THE COMMON SEAL
OF NEC INFORMATION SYSTEMS AUSTRALIA PTY. LTD
was hereunto affixed by authority of the
Board of Directors previously given in
presence of

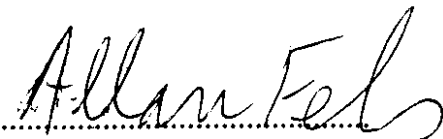

.....
Director


.....
Secretary



This *2nd* day of *June* 1994

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


.....
(Professor Allan Fels)
Chairman

This *30th* day of *June* 1994

ANNEXURE A

Text for Point Of Sale stand as follows:-

**Help NEC
Help the Planet...**

**recycle your
NEC Notebook Batteries**

Return Here

or

**Any NEC *Personal Care* Authorised
Service Centre**

NEC

NEC Information Systems Australia Pty Ltd

A C N 002 068 546

ANNEXURE B

BE ENVIRONMENTALLY AWARE -- RECYCLE YOUR USED NOTEBOOK BATTERIES!

Dear Customer,

Thank you for buying the multi award-winning **NEC Versa notebook computer**. Like thousands of fellow Australian users, you too can look forward to many year's trouble free, flexible and upgradeable computing, thanks to the Versa.

To help in your efforts to be environmentally friendly, NEC has instituted a global environmental policy -- called the **NEC Eco Action Plan 21**, under our overall NEC Environmental Charter.

Part of this Plan incorporates a policy of assisting NEC customers in the recycling of used Nickel Metal Hydride (NiMH) batteries, used to power our Versa notebooks. This policy is in place throughout Australia, thanks to the efforts of NEC Information Systems Australia Pty Ltd, supplier in this country of the Versa range of notebook computers.

Basically, NEC Information Systems Australia's aim is to help reduce the number of dead, discarded NiMH batteries throughout the country.

When your batteries finally fail, please return them to either your nearest Authorised NEC Information Systems Australia Service Centre, or direct to NEC Information Systems Australia's Main Service Centre at Unit 7/65A Ashmore St, Alexandria, NSW 2015

We then forward these batteries to our recycling agent, which, in turn, disposes of them thoughtfully and according to prevailing Australian environmental laws.

Thank you again for buying an NEC Versa notebook computer -- a product from a globally environmentally aware company.

Yours sincerely,

Greg M Berrington,
Manager Quality Assurance,
NEC Information Systems Australia Pty Ltd

(List of authorised Service Centres throughout Australia)

ANNEXURE C

Text for Leaflet Inserts:-

**Help NEC
Help the Planet ...**

**Recycle your old
NEC Notebook Rechargeable
Batteries**

**Return to NEC Information Systems
or
Any NEC *Personal Care* Authorised
Service Centre**