

**TRADE PRACTICES ACT 1974****UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B****BY****YOU CAN BAKE IT FRANCHISING PTY LTD
(ACN 087 574 105)****PERSONS GIVING THIS UNDERTAKING**

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by You Can Bake It Franchising Pty Ltd (ACN 087 574 105) (You Can Bake It), 3/117 Garling Street, O'Connor, in the State of Western Australia, under section 87B of the *Trade Practices Act 1974* (TPA).

BACKGROUND

2. You Can Bake It is incorporated in Western Australia and carries on a business in Australia as a franchisor owning and operating retail stores supplying branded bread mixtures and associated home baking products. You Can Bake It also provides licences under a franchise agreement to franchisees who operate franchisee owned and operated retail stores supplying branded bread mixtures and associated home baking products.
3. You Can Bake It have offered You Can Bake It franchises since September 1999.
4. In February 2004, in response to a number of complaints that it had received from existing and past franchisees, the ACCC raised with You Can Bake It its concerns that certain sections of You Can Bake It's Disclosure Document were ambiguous and open to misinterpretation and, in the absence of any specific clarification or qualification, had the potential to mislead both existing and prospective franchisees. The ACCC's concerns related to:
 - a) figures relating to the gross profit of franchisor run stores being offered for consideration by prospective franchisees;
 - b) the lack of figures relating to the operating costs, net profits and returns of franchisee run stores;
 - c) the adequacy of information disclosure of the current position in regard to franchisee run stores including which franchisees had terminated their franchise agreement with You Can Bake It; and
 - d) training levels before and during the operation of the franchised business.

5. After further investigation, the ACCC reached the view that the conduct as set out in paragraph 4 above may have breached section 52 of the TPA.
6. You Can Bake It acknowledges the ACCC's concerns in relation to section 52 of the TPA

COMMENCEMENT OF UNDERTAKINGS

7. This Undertaking comes into effect when:
 - a. The Undertaking is executed by You Can Bake It; and
 - b. The ACCC accepts the Undertaking so executed.

Upon the commencement of this Undertaking, You Can Bake It undertakes to assume the obligations set out in paragraphs 8 to 11.

UNDERTAKINGS

8. You Can Bake It undertakes that it will not, for a period of 3 years, whether by itself, its directors, servants or agents or otherwise howsoever, in trade of commerce:
 - a) enter into a franchise agreement with a prospective franchisee unless You Can Bake It has received from the prospective franchisee a signed statement that the prospective franchisee has been given advice about the proposed franchise agreement or franchised business by any of:
 - an independent legal advisor;
 - an independent business advisor;
 - an independent accountant; or
 - for each kind of statement not received, a signed statement by the prospective franchisee that the prospective franchisee:
 - has been given that kind of advice about the proposed franchise agreement or franchised business; or
 - has been told that that kind of advice should be sought but has decided not to seek it.
9. You Can Bake It undertakes that for a period of 3 years, whether by itself, its directors, servants or agents or otherwise howsoever, in trade of commerce it will:
 - a) State clearly in its Disclosure Document precisely what training You Can Bake It will provide to franchisees upon the franchisee entering into a franchise agreement both before the franchised business begins operations and during the operation of the

franchised business and who will be responsible for providing that training.

- b) Ensure the You Can Bake It Disclosure Document is updated to ensure each new prospective franchisee is made aware of the current status of each franchise agreement including those franchisee agreements with You Can Bake It that had been terminated.
- c) Ensure that all financial information reasonably sought by a financial or legal advisor referred to in paragraph 8(a) above is provided in order for that financial or legal advisor to be able to make an informed decision when advising their client/s on whether purchasing a You Can Bake It franchise is in their client's best interests and such provision be noted on the form signed by that financial or legal advisor as required in paragraph 8(a) above.
- d) Provide both the prospective franchisee and/or their financial or legal advisor with a suitable covering letter to the financial information provided, which makes clear the limits to which that financial information can be applied and the need for independent inquiry and would include the basis (including any assumptions) upon which the information is calculated and the limitations to the use of that information.
- e) Disclose in its Disclosure Document that these Undertakings have been offered to the ACCC.

Trade Practices Compliance Program

- 10. You Can Bake It further undertakes that it will, within a period of not more than three months of this Undertaking coming into effect, use its best endeavours to implement and make provision to maintain and audit, a Trade Practices Compliance Program (Compliance Program) in accordance with the provisions of Annexure A to this Undertaking for the purpose of ensuring that the officers and employees of You Can Bake It are aware of their responsibilities and obligations under section 52 and 51AD of the TPA.
- 11. You Can Bake it undertakes that the Compliance Program will be audited on an annual basis for a period of 3 years after the Compliance Program is designed and implemented.

ACKNOWLEDGEMENTS

- 12. You Can Bake It acknowledges that the ACCC will make this Undertaking available for public inspection.

13. You Can Bake It further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
14. You Can Bake It further acknowledges that this Undertaking in no way derogates from the rights and remedies that may be available to any other person arising from the alleged conduct of You Can Bake It referred to in paragraph 4 above.

IN WITNESS of these Undertakings and its agreement the Common Seal of You Can Bake It (ACN 087 574 105) was hereunto affixed by authority of its Board of Directors in the presence of:

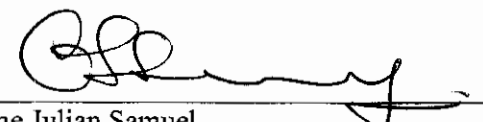
Director: 

Director/Secretary: 



This 14TH day of DECEMBER 2004.

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



Graeme Julian Samuel
Chairperson

This 18th day of January 2004⁵

Annexure A

**COMPLIANCE PROGRAM ELEMENT OF
Section 87B UNDERTAKINGS**

1. In order to ensure, as best it can, that You Can Bake It Franchising Pty Ltd's (You Can Bake It) future conduct does not contravene sections 52 and 51AD of the *Trade Practices Act 1974* (hereafter "the TPA"), You Can Bake It will implement, at its own expense, a compliance program consistent with AS-3806-19981 (hereafter "the compliance program").
2. You Can Bake It undertakes that, within 28 days of the date of execution of this undertaking, it will identify and retain an independent compliance professional with expertise in the TPA (hereafter "the compliance professional") for the purpose of developing and implementing the compliance program.
3. YCBI undertakes that it will implement such a compliance program within 180 days of the date of execution of this Undertaking.
4. The compliance program will remain in force for a minimum period of three years from the date of its implementation, and during that time the ACCC may request its amendment to accord with relevant changes to the TPA
5. As part of the implementation of the Compliance program, You Can Bake It will:
 - (a) establish a complaint handling system;
 - (b) develop a register of TPA related breaches and/ or complaints;
 - (c) use its best endeavours to ensure that compliance with the TPA becomes part of normal business practice in the company; and
 - (d) develop a system to ensure that any advertising or promotional material is reviewed by a person nominated by You Can Bake It to carry out the responsibilities of being the compliance manager before such advertising or promotional material is published or broadcast.
6. At the end of each 12 month period following the execution of this undertaking, You Can Bake It will cause, at its own expense, an independent auditor who is a compliance professional acceptable to the ACCC, to review the compliance program and report to the ACCC for approval as follows:
 - (a) The auditor will conduct a critical review of both the compliance management system and its effectiveness in securing compliance with the TPA;
 - (b) The auditor will make such recommendations as he/she considers necessary to ensure that the compliance program has been implemented

throughout You Can Bake It and is effective in securing compliance with sections 52 and 51AD of the TPA by You Can Bake It;

- (c) The auditor will provide the ACCC with a copy of the audit report no later than 30 days after the anniversary of the execution of this undertaking; and
 - (d) You Can Bake It will implement promptly and with due diligence any recommendations which the auditor may make.
7. The ACCC may request for an audit of the compliance system, at You Can Bake It's expense, between the regular audit periods described under Clause 5 above, if the ACCC has sufficient reason to suspect that the compliance program is not being implemented effectively.
8. You Can Bake It will, if requested by the ACCC, provide documents and information in respect of matters which are the subject of the compliance program resulting from this undertaking.