

# Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth)

By Elysium Marketing Pty Ltd ACN 122 852 171

## 1. Person giving the Undertaking

- 1.1 This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Elysium Marketing Pty Ltd ACN 122 852 171 for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**) (the **Undertaking**).

## 2. Background

- 2.1 Lily's Florist is an online retailer of floral products and offers these products for sale through its website [lilysflorist.com.au](http://lilysflorist.com.au) and around 1,500 associated desktop and mobile webpages targeting specific suburbs around Australia (**Suburb-specific Websites**).
- 2.2 Elysium Marketing Pty Ltd (**Elysium Marketing**) is the trustee for the Thomson Family Trust. The Thomson Family Trust is the registered owner of the business name 'Lily's Florist' and the website domain 'lilysflorist.com.au'.
- 2.3 The Directors of Elysium Marketing are Andrew Thomson and Siobhan Thomson.
- 2.4 United Florists Pty Ltd ACN 162 272 324 (**United Florists**), a related body corporate of Elysium Marketing, conducts the 'Lily's Florist' business, and relevantly operates the Suburb-specific Websites and places advertisements with Google for Lily's Florist. United Florists has given a separate undertaking to the ACCC.
- 2.5 'Lily's Florist' partners with Petals Network Pty Ltd (**Petals**) which is a floral relay service affiliated with Teleflora US. All orders placed with 'Lily's Florist' are sent to Petals for completion by Petals' network of over 1,000 florists around Australia.

## 3. ACCC concerns

- 3.1 Between at least 1 January 2019 to 27 April 2022, United Florists, in trade or commerce, in connection with the supply or possible supply of floral products, made representations on the Suburb-specific Websites and in Google ads that Lily's Florist is a local florist or has a physical presence in a particular suburb, town or location (**Local Florist Representations**). In fact, Lily's Florist is an online florist which employs an outsourcing model, whereby orders are outsourced for fulfilment to third-party florists.

- 3.2 This Local Florist Representations were conveyed by the use of a combination of:
- (a) suburb, town or location names (including in the URLs of the Suburb-specific Websites);
  - (b) detailed suburb, town or location descriptions;
  - (c) phone numbers which used the applicable state-based prefixes; and
  - (d) imagery, other text and embedded Google Maps that displayed postcode, town or suburb location.
- 3.3 The ACCC considers that by engaging in the conduct described in paragraphs 3.1 and 3.2 above, United Florists engaged in misleading or deceptive conduct, made false or misleading representations and engaged in conduct liable to mislead the public in contravention of sections 18, 29(1)(k) and 33 of the Australian Consumer Law (**ACL**), contained in Schedule 2 to the CCA.

#### **4. Acknowledgments and Resolution**

- 4.1 As a result of the ACCC's investigation and in response to the ACCC's concerns, Elysium Marketing:
- (a) acknowledges that United Florists:
    - (i) by the conduct described in paragraphs 3.1 and 3.2 above, contravened sections 18, 29(1)(k) and 33 of the ACL; and
    - (ii) has now taken steps to cease the Local Florist Representations;
  - (b) has cooperated with and assisted the ACCC during its investigation; and
  - (c) has offered this undertaking to the ACCC.

#### **5. Commencement of this Undertaking**

- 5.1 This Undertaking comes into effect when:
- (a) this Undertaking is executed by Elysium Marketing; and
  - (b) this Undertaking so executed is accepted by the ACCC (the **Commencement Date**).
- 5.2 This Undertaking has effect for three years from the Commencement Date (the **Term**).

5.3 Upon the commencement of this Undertaking, Elysium Marketing undertakes to assume the obligations set out in paragraphs 6.1 to 6.2 below for the purposes of section 87B of the CCA.

## 6. Undertakings

### *Local Florist Representations*

6.1 Elysium Marketing undertakes that it will not, in trade or commerce, for a period of three (3) years from the Commencement Date, make the Local Florist Representations.

### *ACL Compliance Program*

6.2 Elysium Marketing undertakes to, at its own expense:

- (a) within 4 months of the Commencement Date, establish and implement a Competition and Consumer Compliance Program (**Compliance Program**) in accordance with the requirements set out in "**Annexure A**", being a program designed to minimise Elysium Marketing's risk of future breaches of the ACL and to ensure its awareness of the responsibilities and obligations in relation to the requirements of the ACL;
- (b) maintain and continue to implement the Compliance Program for a period of three (3) years from the Commencement Date; and
- (c) provide a copy of any documents required by the ACCC in accordance with **Annexure A**.

## 7. ACCC Enquiries

7.1 For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with Elysium Marketing and Elysium Marketing will respond to such enquiries within a reasonable period of time.

7.2 If requested by the ACCC during the Term of this Undertaking, Elysium Marketing will, at its own expense, cause to be produced and provide to the ACCC copies of such documents (excluding any legally privileged documents) in its power, possession or control evidencing Elysium Marketing's compliance with the obligations set out in this Undertaking.

## 8. Acknowledgements



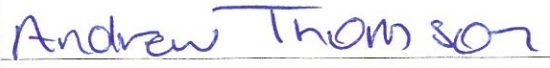

8.1 Elysium Marketing acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications;
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

8.2 Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the ACL and CCA for penalties or other remedies in the event Elysium Marketing does not fully implement and/or perform its obligations under this Undertaking or in relation to any other event.

**Executed as an Undertaking**

Executed by Elysium Marketing Pty Ltd ACN 122 852 171 pursuant to section 127(1) of the *Corporations Act 2001* by:

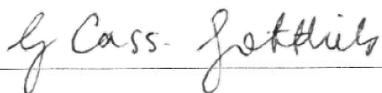
	
Signature of director	Signature of director
	
Name of director (print)	Name of director (print)
Date 12.12.2022	Date 12.12.22

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

19 December 2022

Date

and signed on behalf of the Commission:



Chair

19 December 2022

Date

**Annexure A**  
**COMPETITION AND CONSUMER COMPLIANCE PROGRAM**  
**LEVEL 1**

Elysium Marketing Pty Ltd (**Elysium Marketing**) will establish a Competition and Consumer Compliance Program (**Compliance Program**) that complies with each of the following requirements:

**Training**

1. Within 4 months of this Undertaking coming into effect, and thereafter at least once a year for 3 years, the directors of Elysium Marketing will attend practical training focusing on sections 18, 29 and 33 of the Australian Consumer Law (**ACL**) in Schedule 2 to the Competition and Consumer Act 2010 (the **CCA**).
2. Elysium Marketing will ensure that the training referred to in paragraph 1 above is administered by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law (**the Trainer**).

**Complaints handling**

3. Within 3 months of the Commencement Date, Elysium Marketing will develop procedures for recording, storing and responding to competition and consumer law complaints.

**Provision of Compliance Program documents to the ACCC**

4. Elysium Marketing will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than 3 years from the Commencement Date.
5. Elysium Marketing will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
  - 5.1. a written statement or certificate from the Trainer who conducts the training referred to in paragraph 1, verifying that such training has occurred, within 30 days after the training; and
  - 5.2. an outline of the complaints handling system referred to in paragraph 3, within 30 days after the complaints handling system is developed.

**ACCC Recommendations**

6. Elysium Marketing will implement promptly and with due diligence any recommendations that the ACCC may make that the ACCC deems material to ensure that Elysium Marketing maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.