

**IN THE MATTER OF
THE FAIR TRADING ACT**

THIS UNDERTAKING is made pursuant to Section 152 of the Fair Trading Act.

BY:

Kelly Murphy
o/a Healthtek Enterprises
17523 – 107 Avenue
in the City of Edmonton, in the Province of Alberta,

and

Darryn Murphy
o/a Healthtek Enterprises
17523 – 107 Avenue
in the City of Edmonton, in the Province of Alberta

(hereinafter called the "**Supplier**")

TO:

The **DIRECTOR OF FAIR TRADING,**

(hereinafter called the "**Director**")

WHEREAS:

- (A) The Supplier is the holder of a direct selling business licence in Alberta authorized to sell Filter Queen Sales and Services.
- (B) The Supplier acknowledges that it has been advised of the prohibited practices under the Fair Trading Act.
- (C) On or about January 12, 2002 the Supplier failed to refund all money paid by within 15 days of cancellation of the contract.
- (D) On or about December 1, 2002, the Supplier failed to refund all money paid by within 15 days of cancellation of the contract.
- (E) The Department has received several complaints from consumers alleging that the Supplier's telemarketers misled them into believing they would receive a free car starter for watching a demonstration, when fact they received only a certificate for a car starter. These consumers also state they were not informed by the telemarketer of any associated costs required in order to gain any benefit from the gift, when in fact they were required to pay a minimum fee of \$150 to have the starter installed by Tec Auto Electric. Complaints of this nature have been received even after assurances by the Supplier that the script included these disclosures.

- (F) The Director asserts that he has reason to believe that the acts or practices of the Supplier described in recital (C), (D), and (E) constitute breaches of the Fair Trading Act, Section 31(2), 6(4)(a), and 6(4)(o).
- (G) The Director acknowledges that the Supplier has informed the Department that it has implemented measures to address the concerns of this Undertaking.

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:


1. The Supplier acknowledges that during the period from January 2002 to December 2002 that it failed to comply with the Fair Trading Act and undertakes to the Director that to the best of its ability, it will not engage in acts or practices similar to those described in recitals (C), (D) and (E).
2. The Supplier will, to the best of its ability, ensure that all of its existing and new officers, partners, employees, representatives, and agents and are forthwith acquainted with the requirements of the Fair Trading Act especially Part 2 – Unfair and Negative Option Practices and Part 3 Cancellation of Direct Sales Contracts and Time Share Contracts, and the Direct Selling Business Licensing and Direct Sales Cancellation and Exemption Regulations.
3. It is understood that the Supplier:
 - a. has cancelled the contracts and issued refunds to Mr. and Mrs. _____ and to Mr. _____ ;
 - b. will implement a policy for telephone solicitation personnel to ensure they explain the purpose of the solicitation and the true nature of what is being solicited, and that they accurately describe the prizes and explain all costs to be borne by the consumer in order to realize a benefit from the prize;
 - c. will ensure that its new and existing sales representatives are trained to follow fair trading practices in Alberta and that their training material reflects these practices; and
 - d. will take all steps necessary to ensure contract cancellation requirements are met;
4. The Supplier will give to the Director, payment in the favour of the Minister of Finance of Alberta, in the sum of \$1,000.00; an amount that represents a portion of the costs associated with investigating this matter. Such payment is to be made within 10 days from the date of this Undertaking.

This Undertaking will be binding upon the Supplier and its successors and assigns unless:

- a. terminated by the Director or varied with the consent of the Supplier;
 - b. varied by an Order of the Judge of the Court of Queen's Bench where the Judge is satisfied that the circumstances warrant varying the provisions of the Undertaking;
 - c. terminated by an Order of a Judge of the Court of Queen's Bench where the Judge is satisfied that the act or practice that the Supplier has undertaken to refrain from engaging in was not unfair; however, in any such case, the termination or variance does not invalidate anything done under this Undertaking prior to termination or variance.
5. The Supplier acknowledges that the Director may, upon breach by the Supplier of any term of the Undertaking, institute such proceedings and take such action under the Fair Trading Act as he may consider necessary.
 6. It is understood that the terms of this Undertaking shall be maintained as a public record pursuant to Section 152(3) of the Fair Trading Act. The Director will not actively seek publication of the Undertaking herein except to the extent necessary to comply with the Fair Trading Act.
 7. The Supplier acknowledges that it was advised by Alberta Government Services, and is aware that it is entitled to seek independent professional advice regarding the signing of this Undertaking, and the Supplier acknowledges that it is entering into this Undertaking voluntarily.

IN WITNESS WHEREOF the Supplier, has on this 2 day of April, 2003 agreed to the terms of this Undertaking.

PER: 
Kelly Murphy

PER: 
Darryn Murphy

ACCEPTED by the Director of Fair Trading this 2 day of APRIL, 2003.


DIRECTOR OF FAIR TRADING