

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

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

BY:

**848240 Alberta Ltd. operating as:
The Hearing Associates,
The Hearing Associates Canada,
Edmonton Hearing Associates,
Calgary Hearing Associates,
Red Deer Hearing Associates,
Winnipeg Hearing Associates,
SK Hearing Associates,
Saskatoon Hearing Associates,
Golden Mile Hearing Associates,
Keystone Hearing Associates,
Toronto Hearing Associates,
Fredericton Hearing Associates, and
Curtis Malinowski, director of the corporation.
105 - 116th Street W.,
in the City of Saskatoon, in the Province of Saskatchewan
(hereinafter called the "Supplier")**

TO:

**The DIRECTOR OF FAIR TRADING,
(hereinafter called the "Director")**

WHEREAS:

- (A) The Supplier carried on the business of assessing hearing loss, selling, and servicing hearing aids and selling extended warranties for the repair and service of hearing aids to consumers in the Province of Alberta.
- (B) During the period from December 1999 up to December 12, 2001, the Supplier, in the ordinary course of its business, through its agents, employees, or representatives did commit unfair practices contrary to the provisions of the Fair Trading Act by:
 - 1. entering into consumer transactions when the supplier knew or ought to have known that the consumers were unable to receive any reasonable benefit from the goods or services;
 - 2. doing or saying anything that might reasonably deceive or mislead consumers;
 - 3. making misleading statements of opinion that consumers were likely to rely on to the consumer's disadvantage;
 - 4. representing that the goods or services had a sponsorship,

approval, performance, characteristics, accessories, ingredients, quantities, components, uses, benefits or other attributes that they do not have;

5. representing that the supplier had a sponsorship, approval, status, qualification, affiliation or connection that the supplier did not have,
6. representing that goods are of a particular standard, quality, grade, style or model when they were not;
7. representing that a specific price benefit or advantage existed when it did not;

(C) The Director asserts that he has reason to believe that the acts or practices of the Supplier described in recital (B) constitute breaches of the Fair Trading Act.

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:

- 1) The Supplier acknowledges and admits that it has failed to comply with the Fair Trading Act and undertakes to the Director that it will not, at any time hereafter, engage in acts or practices similar to those described in recital (B) and Section 6 of the Fair Trading Act.
- 2) The Supplier undertakes to honour all warranties for those persons listed on the attachments for a period of one (1) year from the date of this undertaking, and promises to satisfactorily repair all defective hearing aids according to the terms of the warranty.
- 3) The Supplier has paid to the Director, for deposit with the Provincial Treasurer of Alberta, the sum of \$60,000; an amount that that will be distributed to consumers identified during the investigation and who suffered a loss. The Consumer Services Division of Alberta Government Services agrees to provide the Supplier, through his Counsel, with a list of all consumers that it has compensated herein, along with the amount paid to each consumer.
- 4) The Supplier will ensure that all of its officers, partners, employees, representatives and agents are forthwith acquainted with the requirements of the Fair Trading Act especially as it pertains to Part 2 - Unfair Practices and will not engage in business contrary to the Fair Trading Act.
- 5) The Supplier acknowledges the Director has the right to publicize the contents of this undertaking.
- 6) Consumer Services Division will discontinue all investigations into complaints received prior to December 12, 2001, unless the warranties are not completed.
- 7) 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.

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 Undertaking; or 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.

IN WITNESS WHEREOF the Supplier, has on the 31 day of January, 2002 caused its common seal to be hereunto affixed and attested by the signatures of its proper officers duly authorized in that behalf.

848240 Alberta Ltd.
Director

PER: _____

Curtis Malinowski,

PER: _____

ACCEPTED by the Director of Fair Trading this 5^R day of FEB, 2002.



DIRECTOR OF FAIR TRADING