

CONSENT AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 1999, **BETWEEN** the **FAIR TRADING COMMISSION** a Body Corporate with offices at 52 Grenada Crescent, Kingston 5, in the parish of Saint Andrew (hereinafter called the Commission) of the **FIRST PART** and **GALLERIA LIMITED** of the **SECOND PART**.

WHEREAS:

- (1) **Richard Bourke** (hereinafter called the 1st Complainant) lodged a complaint with the Commission alleging that he saw an advertisement in the Gleaner Newspaper on September 27, 1995, in which Galleria Limited advertised an "AWIA - NSX - V50 "Stereo Sound System (hereinafter called the "stereo system") for the special price of Twenty Thousand Two Hundred and Ninety-Five Dollars (\$20,295.00). The advertisement which carried a photograph of the stereo system, showed four (4) separate speakers, two (2) each on the left and right of the stereo system. Induced by the advertisement, the 1st Complainant asked Mr. Tom Zoll, his Agent, to purchase the stereo system. However, when it was delivered he realized that it had two (2) speakers instead of four (4) as advertised. When this was brought to the attention of Galleria Limited, the 1st Complainant was informed that the stereo system is sold with only two (2) speakers and that the advertisement which appeared in the Gleaner newspaper was an error.
- (2) By representing in its advertisement that the stereo system was sold with four (4) speakers, when in fact it is sold with only two (2), Galleria Limited breached Section 37 of the Fair Competition Act which prohibits businesses from making false or misleading representations to the public.

AND WHEREAS:

- (3) **Donovan and Althea Daley** (hereinafter called the 2nd Complainants) lodged a complaint with the Commission alleging that on October 27, 1995, they noticed an advertisement in the Gleaner newspaper in which Galleria Limited advertised an 18 cubic foot Westinghouse refrigerator with Icemaker for the bargain price of Thirty Thousand Six Hundred and Ninety-Five Dollars (\$30,695.00). In reliance on that advertisement, the 2nd Complainants went to Galleria Limited on November 11, 1995 and paid for the refrigerator. They were advised that delivery would be within a week. However, on or around December 1995, they were

informed that the refrigerator was not in stock. On January 3, 1996, the 2nd Complainants were encouraged by Galleria Limited to purchase a 20 cubic foot Roper refrigerator for Forty-Six Thousand Dollars (\$46,000.00), which was more expensive than the Westinghouse refrigerator and did not have an Icemaker. It was agreed that the sum of Thirty Thousand Six Hundred and Ninety-Five Dollars (\$30,695.00) previously paid for the Westinghouse refrigerator, would be used as a deposit on the replacement. On January 29, 1996, the 2nd Complainants completed the purchase of the Roper refrigerator and paid Four Thousand Dollars (\$4,000.00) for an Icemaker, which Galleria Limited assured them was compatible with the refrigerator. Shortly thereafter, the 2nd Complainants learned that the Roper refrigerator and the Icemaker they bought were in fact not compatible.

- (4) Galleria Limited, by offering the 18 cubic foot Westinghouse refrigerator at a bargain price, that is, a price less than its ordinary selling price and not intending to supply or having reasonable grounds for believing it could supply the good at that price, for a period and in quantities that are reasonable, having regard to the relevant market, the nature and size of its enterprise and the nature of the advertisement; breached Section 40 of the Fair Competition Act.

IT IS HEREBY AGREED BETWEEN THE PARTIES:

- (5) That with respect to the 1st Complainant, Galleria Limited will assess the value, in money's worth, of two additional speakers of the type advertised and pay the said amount to the 1st Complainant.
- (6) That Galleria Limited will refund to the 2nd Complainant, the sum of Four Thousand Dollars (\$4,000.00) representing the cost of the Icemaker.
- (7) That Galleria Limited will donate a 12 cubic foot refrigerator to the S.O.S. Children's Village in Stony Hill, Saint Andrew.
- (8) That Galleria Limited will issue a public apology (to be drafted by the Staff of the Commission) in the Gleaner and Observer Newspapers, regarding both the misleading advertisement and the sale of goods at a bargain price without adequate stock, referred to respectively at paragraphs 2 and 4 hereof.
- (9) That Galleria Limited will pay the Commission the sum of One Hundred Thousand Dollars (\$100,000.00) as costs, in two (2) monthly instalments of Fifty Thousand Dollars (\$50,000.00) on the date of signing and the balance of (\$50,000.00) within forty-five (45) days of the date hereof.

- (10) That the parties hereto agree to waive any and all further procedural steps, all rights to seek judicial review or otherwise to challenge or contest the validity of this Agreement.
- (11) That the Commission will file a Notice of Discontinuance in the Supreme Court, in Suite No. 068 of 1997 – Fair Trading Commission v. Galleria Limited.
- (12) That should Galleria Limited fail to implement the terms agreed to herein within thirty (30) days of the date hereof, the Commission may thereafter withdraw its acceptance of this Agreement and take such action as it considers appropriate and so notify Galleria Limited.
- (13) That the Commission reserves the right to use the facts of the two complaints referred to herein, in its public education programme.
- (14) That Galleria Limited understands and accepts that formal proceedings may be instituted by the Commission if it fails to abide by this Agreement.

EXECUTED UNDER THE COMMON SEAL OF)
 GALLERIA LIMITED)
 BY)
 IN THE PRESENCE OF:)
John Galbraith)
 WITNESS

[Signature]
 DIRECTOR

 DIRECTOR/SECRETARY

EXECUTED FOR AND ON BEHALF OF)
 FAIR TRADING COMMISSION)
 BY A. B. STEWART STEPHENSON)
 IN THE PRESENCE OF:)
[Signature]
 WITNESS

A. B. Stewart Stephenson
 EXECUTIVE DIRECTOR