

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for
the purposes of section 87B

by

VALIANT ENTERPRISES PTY LTD

ACN 107 290 997

Persons giving this undertaking

1. This undertaking is given to the Australian Competition and Consumer Commission (the ACCC) by Valiant Enterprises Pty Ltd (ACN 107 290 997) (Valiant) of 323 Warrigal Road, Cheltenham, Victoria 3192 for the purposes of section 87B of the *Competition and Consumer Act 2010* (the Act).
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Background

1. Valiant is a distributor of baby products based in Melbourne, with a distribution network across Australia of between 100-150 retail stores, including online retailers. Valiant also manufactures its own brand of products in China and imports and distributes these in Australia.
2. In or around July 2011, Valiant became aware that one of its retail customers, Belly 2 Baby, was advertising the AngelCare AC1100 baby monitor at what Valiant considered to be a low or discounted price.
3. Upon learning that Belly 2 Baby was advertising the AngelCare AC1100 baby monitor at a low or discounted price, Valiant instructed its agent, Kaz Agencies, to request that Belly 2 Baby increase the advertised price to a price specified by Valiant, being \$339.95.
4. On 25 July 2011, a representative of Kaz Agencies had a telephone conversation with a representative of Belly 2 Baby. During that conversation, the representative of Kaz Agencies requested that Belly 2 Baby increase its advertised price from \$318.00 to \$339.95. The representative of Kaz Agencies also stated that there were 'guidelines' and if Belly 2 Baby did not follow them, stock may be withheld.
5. On 25 July 2011, a representative of Kaz Agencies sent an email to a representative of Belly 2 Baby stating, among other things:
"I just noticed that the AC1100 is still at the 318 price. I was hoping as the other stores have moved their price up to 339.95 that as a favor (sic) to me you could do the same. I am getting a lot of pressure from Melbourne on this one."
6. The ACCC considers that, by engaging in the conduct described in paragraphs 3 to 5 of this Undertaking, Valiant has engaged in resale price maintenance in contravention of section 48 of the Act in that Valiant:

- 6.1. made it known to Belly 2 Baby that it would not supply the AngelCare AC1100 baby monitor to Belly 2 Baby unless Belly 2 Baby agreed not to advertise the baby monitor at a price less than a price specified by Valiant, being \$339.95;
- 6.2. attempted to induce Belly 2 Baby not to advertise the AngelCare AC1100 baby monitor for sale at a price less than a price specified by Valiant, being \$339.95;
- 6.3. communicated to Belly 2 Baby a statement of a price that was likely to be understood by Belly 2 Baby as the price below which the AngelCare AC1100 baby monitor was not to be advertised for sale.
7. Valiant acknowledges the ACCC's concerns and that, by engaging in the conduct described in paragraphs 3 to 5 of this Undertaking, it has contravened section 48 of the Act.

Commencement of Undertaking

8. This undertaking comes into effect when:
 - 8.1. the undertaking is executed by Valiant; and
 - 8.2. the ACCC accepts the undertaking so executed by Valiant.
9. Upon the commencement of this Undertaking, Valiant undertakes to assume the obligations set out in paragraphs 10 to 13 below.

Undertakings

10. Valiant undertakes, for the purposes of section 87B of the Act, that it will not, in trade or commerce, by itself, its servants or agents, or otherwise for a period of three (3) years:
 - 10.1. make it known to a retailer that it will not supply goods to the retailer unless the retailer agrees not to advertise or sell those goods at a price less than a price specified by Valiant;
 - 10.2. induce, or attempt to induce, a retailer not to advertise or sell goods for a price less than a price specified by Valiant;
 - 10.3. communicate to a retailer a statement of a price that is likely to be understood by the retailer as the price below which goods are not to be advertised or sold.

Corrective Letter

11. Valiant undertakes, for the purposes of section 87B of the Act, that it will, at its own expense, within 28 days of this Undertaking coming into effect:
 - 11.1. cause a copy of the pro forma letter set out in Annexure A to be sent to each retailer client of Valiant that purchased products during the 2011/2012

financial year, advising of the ACCC's concerns regarding the resale price maintenance conduct by Valiant; and

- 11.2. advise the ACCC when the letter set out in Annexure A has been sent to all Valiant retailer clients, and provide a list of clients to whom the letter was sent.

Corrective Website Notice

12. Valiant undertakes for the purposes of section 87B of the Act that it will, at its own expense, within 28 days of this Undertaking coming into effect:
 - 12.1. Cause a corrective notice in the form of **Annexure B** to be published on the home page of its website (www.valiantbrands.com.au) (**the website**) and shall take all reasonable steps to ensure that the notice has the following specifications:
 - 12.1.1. The corrective notice is accessible through a prominent one-click link displayed in the top third of the home page of the website entitled "CORRECTIVE NOTICE FOR RESALE PRICE MAINTENANCE" with the following minimum specifications:
 - 12.1.1.1. the words "CORRECTIVE NOTICE FOR RESALE PRICE MAINTENANCE" to be in uppercase 18 point, bold, black, sans serif font on a white background, centred and in a bordered box;
 - 12.1.1.2. the words "Click here for further information" to be in 14 point, black, sans serif font on a white background, centred below the words "CORRECTIVE NOTICE FOR RESALE PRICE MAINTENANCE" in the same bordered box;
 - 12.1.1.3. the bordered box and its contents, including the white space, is to operate in the form of a one-click hyper-link to the corrective notice.
 - 12.2. the corrective notice is to comply with the following font and formatting specifications:
 - 12.2.1. contain in the body of text font that is no less than 11 point size;
 - 12.2.2. the border will be black;
 - 12.2.3. the Valiant, ACCC and Commonwealth logos will be in colour, centred and at least 20mm high,
 - 12.3. the corrective notice will be displayed on a stand-alone web page that is coded in standard 'HTML' format;
 - 12.4. the corrective notice will not be displayed as a 'pop-up' or 'pop-under' window; and
 - 12.5. the corrective notice will remain on the website for a period of at least 28 days.

Trade Practices Compliance Program

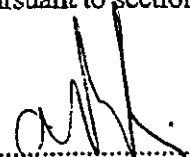
13. Valiant undertakes for the purposes of section 87B of the Act that it will, at its own expense:
- 13.1. within three (3) months of this Undertaking coming into effect, implement a Trade Practices Compliance Program to ensure that it meets the requirements set out in Annexure C for employees, agents and other persons involved in its business, being a program designed to minimise Valiant's risk of future breaches of section 48 of the Act, and to ensure Valiant is aware of its responsibilities and obligations in relation to the requirements of Part IV of the Act, in particular section 48.
 - 13.2. maintain and continue to implement the Trade Practices Compliance Program for a period of 2 years from the date of this Undertaking coming into effect; and
 - 13.3. provide a copy of any documents required by the ACCC in accordance with Annexure C.

Acknowledgements

14. Valiant acknowledges that:
- 14.1. the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of s. 87B undertakings on its website;
 - 14.2. the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications;
 - 14.3. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
 - 14.4. a summary of the ACCC Compliance Program Review reports referred to in Annexure C of the Undertaking may be held with this Undertaking in the public register.

Executed by

Valiant Enterprises Pty Ltd (ACN 107 290 997) and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.


..... Abraham Kalish
[NAME]

Director

This.....10th.....day of SEP.....2012

**UNDERTAKING GIVEN BY VALIANT ENTERPRISES PTY LTD
(ACN 107 290 997)**

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE
*COMPETITION AND CONSUMER ACT 2010***



.....
Rodney Graham Sims
Chairman
Australian Competition and Consumer Commission

This **18** day of **September**.....2012

ANNEXURE A

Letter to clients of Valiant Enterprises Pty Ltd

[To be placed on Valiant Enterprises letterhead]

[Date]

[Name of client]

[insert address]

Dear Sir/Madam (or personalise)

ACCC – Resale Price Maintenance

The ACCC is concerned that Valiant Enterprises Pty Ltd (Valiant) has engaged in resale price maintenance conduct by seeking to prevent retailers from offering a product for sale at a price below the recommended retail price specified by the supplier.

As an explanation, resale price maintenance is an attempt by a supplier to set a minimum price below which retailers cannot sell, advertise, display or offer goods for sale. Resale price maintenance is prohibited by section 48 of the *Competition and Consumer Act 2010* (the Act).

Valiant acknowledges the ACCC's concerns that its conduct breached the Act. Valiant is cooperating with the ACCC to resolve the matter.

Please note that as a retailer you are, and always have been, free to discount or set a minimum price at which you advertise or sell products you purchase from any supplier. This freedom is protected by the Act and any recommended retail price or RRP used or set by any supplier is a suggestion only.

As part of the resolution to this matter, Valiant has provided a court enforceable undertaking to the ACCC pursuant to section 87B of the Act. This enforceable undertaking is to minimise the risk of any resale price maintenance issues arising in the future, and I am writing to you as a condition of the undertaking (which you can view on the ACCC's undertaking register at www.accc.gov.au).

If you have any questions regarding this letter please contact (name of Valiant contact person).

Yours Sincerely

(Name and title of authorised person)

CORRECTIVE NOTICE

A correction from Valiant Enterprises Resale Price Maintenance

[insert Valiant logo]

In July 2011, Valiant Enterprises Pty Ltd (Valiant) became aware that one of its retail customers, Belly 2 Baby, was advertising the AngelCare AC1100 baby monitor (the AC1100) at what Valiant considered to be a low or discounted price.

Upon learning that this retailer was advertising the AC1100 at a low or discounted price, Valiant requested that the retailer increase the price at which it was advertising the product to a price specified by Valiant. Valiant stated that if the retailer did not increase their advertised price, Valiant would withhold supply of stock.

The ACCC considers that Valiant has engaged in a conduct known as resale price maintenance. Resale price maintenance is an attempt by a supplier to set a minimum price below which retailers cannot sell, advertise, display or offer goods for sale. Resale price maintenance is prohibited by section 48 of the *Competition and Consumer Act 2010* (the Act).

Valiant acknowledges the ACCC's concerns that its conduct breached the Act.

In response to the ACCC's concerns, Valiant has provided a court enforceable undertaking to the ACCC pursuant to section 87B of the Act. This enforceable undertaking is to minimise the risk of any resale price maintenance issues arising in the future. The undertaking can be viewed on the ACCC's undertaking register at www.accc.gov.au.

Please note that retailers are free to discount or set a minimum price at which they advertise or sell products they purchase from any supplier. This freedom is protected by the Act and any recommended retail price or RRP used or set by any supplier is a suggestion only.



Australian
Competition &
Consumer
Commission

Annexure C

TRADE PRACTICES COMPLIANCE PROGRAM REQUIREMENTS

Valiant Enterprises Pty Ltd (Valiant) will establish a Trade Practices Compliance Program (Compliance Program) that complies with each of the following requirements:

1. Appointments

- 1.1. Within one month of the date of the Undertaking coming into effect Valiant will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the Compliance Program (Compliance Officer).

2. Compliance Officer Training

- 2.1. Valiant will ensure that, within 2 months of the Undertaking coming into effect, the Compliance Officer attends practical training focusing on section 48 of the *Competition and Consumer Act 2010* (the Act).
- 2.2. Valiant shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law;
- 2.3. Within 14 days of completion of the training conducted in accordance with 2.1 and 2.2 above, Valiant will, provide the ACCC with a written statement from the compliance professional or legal practitioner who conducts the training, confirming the training was completed within the time frame specified in 2.1 above and was conducted in accordance with 2.1 and 2.2 above.

3. Staff Training

- 3.1. Valiant will cause all employees of Valiant whose duties could result in them being concerned with conduct that may contravene section 48 of the Act to receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or a qualified compliance professional or

legal practitioner with expertise in trade practices law, that focuses on section 48 of the Act.

4. Complaints handling

4.1. Valiant will within two months of the Undertaking coming into effect:

4.1.1. develop procedures for recording, storing and responding to trade practices complaints; and

4.1.2. provide the ACCC with an outline of the complaint handling system implemented by Valiant.

5. Valiant will ensure that the Compliance Officer reports to their director(s) or governing body, if additional to the Compliance Officer, every 12 months on the continuing effectiveness of the Compliance Program.
6. Valiant will ensure that the Compliance Officer reports to the ACCC, if so requested, every 12 months on the continuing effectiveness of the Compliance Program.
7. Valiant shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program, within 14 days of a written request from the ACCC.