

COMPETITION AND CONSUMER ACT 2010

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

by

Brand Republic Pty Ltd

ACN 132 310 000

Person giving this undertaking

1. This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by Brand Republic Pty Ltd ACN 132 310 000 (**Brand Republic**) of 'Tower 2' Level 14, 101 Grafton Street, Bondi Junction in the State of New South Wales for the purposes of section 87B of the *Competition and Consumer Act 2010* (**the Act**).

Background

2. Brand Republic is incorporated in Australia and operates three GAP stores which retail apparel for men, women, children and babies. There are two GAP stores in Victoria and one in New South Wales.

The Standard

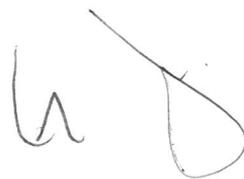
3. Section 106 of the Australian Consumer Law (**ACL**) contained in Schedule 2 of the Act prohibits a person in trade or commerce from supplying goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household use or consumption, if a safety standard for goods of that kind is in force, and the goods do not comply with that standard.
4. The *Trade Practices (Consumer Product Safety Standards) (Children's Nightwear and Paper Patterns for Children's Nightwear) Regulations 2007* (Cth) (**the Regulations**) prescribe a safety standard for children's nightwear which is in force under the ACL. The Regulations provide that Australian/New Zealand Standard 1249:2003 titled *Children's nightwear and limited daywear having reduced fire hazard*, published by Standards Australia on 29 December 2003 subject to certain variations (**the Standard**), applies to children's nightwear.
5. Clause 5 of the Standard includes the following provisions which apply to all children's nightwear:
 - 5.1 clause 5.2(b) of the Standard requires a garment to be clearly and permanently marked with its numerical size;
 - 5.2 clause 5.3(a) of the Standard requires the garment's fire hazard information label to be located inside the back neck of a top or one-piece garment. In pants, clause 5.3(a) of the Standard requires the label to be located at the waist or waistband or at the top of the centre back seam; and



5.3 clause 5.3(d) of the Standard provides that if a garment is offered for retail sale in a package that obscures the label on the garment, the package must be prominently marked with the fire hazard information and warnings that are required to be labelled on the garment.

The Conduct

6. On 3 April 2013, ACCC staff visited the GAP store at Melbourne Central shopping centre in Melbourne, Victoria, as part of a routine product safety survey of children's nightwear. The ACCC staff purchased from the store the following five different *baby GAP* branded garments which did not comply with the Standard:
 - 6.1 three different one-piece garments specified to be for the age range of 6-12 months; and
 - 6.2 two different pairs of pyjamas specified to be for the age range of 18-24 months, (collectively, **the Garments**).A photograph of the Garments is at **Attachment A**.
7. The Garments did not comply with the Standard in the following respects:
 - 7.1 all of the Garments were not marked with their numerical size, as required by clause 5.2(b) of the Standard;
 - 7.2 all of the Garments had attached a "*low fire danger*" label which was not located correctly. A "*low fire danger*" label was not attached inside their back neck, as required by clause 5.3(a) of the Standard; and
 - 7.3 one of the one-piece garments and the two pairs of pyjamas were in each case offered for sale in a package which obscured the "*low fire danger*" label attached to the garment and were not marked with any fire hazard information and warnings, as required by clause 5.3(d) of the Standard.
8. Brand Republic supplied 519 units of the Garments between 22 July 2011 and 26 May 2013. Of these, 394 units of the Garments did not comply with clause 5.3(d) the Standard. All of the Garments did not comply with clauses 5.2(b) and 5.3(a) of the Standard.
9. By engaging in the conduct described in paragraphs 6 to 8 above, the ACCC considers that Brand Republic contravened section 106 of the ACL.
10. The ACCC raised its concerns regarding the sale of the Garments with Brand Republic. In response, Brand Republic:
 - 10.1 admits that by supplying the Garments between 22 July 2011 and 26 May 2013 it contravened section 106 of the ACL; and
 - 10.2 co-operated with the ACCC and indicated a willingness to resolve the matter by the provision of an undertaking under section 87B of the Act and by the payment of five (5) Infringement Notices totalling \$51,000 issued by the ACCC under section 134A of the Act for alleged contraventions of section 106 of the ACL in respect of the sale of the Garments to the ACCC staff.



Commencement of undertaking

11. This undertaking comes into effect when:
 - 11.1 the undertaking is executed by Brand Republic; and
 - 11.2 the ACCC accepts the undertaking so executed.
12. Upon the commencement of this Undertaking, Brand Republic undertakes to assume the obligations set out in paragraphs 13 to 18 below.

Undertakings

13. Brand Republic undertakes for the purposes of section 87B of the Act that for a period of 3 years, commencing the date of this Undertaking coming into effect, it will not supply or offer to supply any product which, at the time of supply or offer to supply, is subject to a safety standard for the purposes of Division 1 of Part 3-3 or an information standard for the purposes of Part 3-4 of the ACL, unless:
 - 13.1 the product complies with that standard; and
 - 13.2 where the product is subject to a safety standard, Brand Republic has first obtained written evidence, from a person with accreditation from an accreditation body to test for compliance with that standard, that the person has tested a product which is the same style/model and colour as the product for compliance with that standard and found that it complied with that standard.

The In-Store Notice

14. Brand Republic undertakes for the purpose of section 87B of the Act at its own expense to:
 - 14.1 within 14 days of the commencement of this Undertaking coming into effect, display at the customer service desk of each GAP store, a notice in the form and terms of **Attachment B** to this undertaking (**the In-Store Notice**);
 - 14.2 display the In-Store Notice in accordance with paragraph 14.1 above for a period of at least 28 days;
 - 14.3 ensure the In-Store Notice will be in the format as set out in **Attachment B**, being at least A4 size (210 mm x 297 mm); and
 - 14.4 provide to the ACCC a photograph of each In-Store Notice as displayed in each GAP store within 14 days of display.

The Website Notice

15. Brand Republic undertakes for the purposes of section 87B of the Act to, at its own expense:
 - 15.1 within 14 days of the commencement of this Undertaking coming into effect, cause to be published on the website at www.busbrand.com.au (**the Website**) a notice in the form and terms of **Attachment B** to this Undertaking (**the Website Notice**);



- 15.2 ensure the Website Notice and the link to the Website Notice referred to in paragraph 15.3.1 are displayed in accordance with paragraphs 15.1 and 15.3.1 for at least 28 days; and
- 15.3 ensure the Website Notice has the following specifications:
- 15.3.1 the Website Notice is accessible through a prominent one-click link displayed in the top third of the homepage of the Website entitled 'CHILDREN'S NIGHTWEAR SAFETY RECALL' with the following minimum specifications:
- 15.3.1.1 the words 'CHILDREN'S NIGHTWEAR SAFETY RECALL' are in 18 point, bold, black, sans serif font on a white background, centred and in a bordered box;
- 15.3.1.2 the words 'Click here for further information' are in 14 point, black, sans serif font on a white background and centred below the words 'CHILDREN'S NIGHTWEAR SAFETY RECALL' in the same bordered box;
- 15.3.1.3 the bordered box and its contents, including white space, operate in the form of a one-click hyper-link to the Website Notice;
- 15.3.2 the Website Notice is substantially the same as the notice in **Attachment B**, including font and formatting, and has a red hatched border and red safety triangle in the upper left hand corner;
- 15.3.3 the Website Notice is displayed on a stand-alone webpage; and
- 15.3.4 the Website Notice is not displayed as a 'pop-up' or 'pop-under' window.

The Newspaper Notice

16. Brand Republic undertakes for the purposes of section 87B of the Act to, at its own expense:
- 16.1 within 14 days of the commencement of this Undertaking coming into effect, cause a notice to be published in the form and terms of **Attachment B** to this undertaking in *The Age*, *Herald Sun* and *Sydney Morning Herald* (**the Newspaper Notice**);
- 16.2 use its best endeavours to ensure the Newspaper Notice:
- 16.2.1 appears within the first 15 pages of the general news section of *The Age*, *Herald Sun* and *Sydney Morning Herald*;
- 16.2.2 complies with the following minimum specifications, unless otherwise agreed in writing by the ACCC:
- 16.2.2.1 the notice is to be at least 15 cm high and 12 cm wide and have a red hatched border with the red safety triangle in the upper left hand corner;
- 16.2.2.2 the heading text 'Product Safety Recall' is to be in red text at least 16 point bold times new roman font and centred;

- 16.2.2.3 the words “Brand Republic” and “baby GAP children’s nightwear” on the second and third lines are to be in text at least 14 point bold times new roman and centred;
 - 16.2.2.4 the body text is to be at least 11 point, times new roman black font and left justified;
- 16.3 provide to the ACCC a copy of the Newspaper Notice which appeared in each publication within 14 days of publication.

Refunds

17. Brand Republic undertakes for the purpose of section 87B of the Act to refund to any consumer who, in response to any notice published in accordance with paragraphs 14 to 16 above, returns to it a children’s nightwear garment purchased from Brand Republic that does not have a “*low fire danger*” label attached in accordance with clause 5.3(a) of the Standard, the amount that the consumer paid to purchase the garment.

Trade Practices Compliance Program

18. Brand Republic undertakes for the purposes of section 87B of the Act to, at its own expense:
- 18.1 establish and implement a Trade Practices Compliance Program (**Compliance Program**) in accordance with the requirements set out in **Attachment C**, being a program designed to minimise Brand Republic’s risk of future contraventions of sections 106 and 136 of the ACL and to ensure its awareness of the responsibilities and obligations in relation to the requirements of sections 106 and 136 of the ACL within three months of the date of this Undertaking coming into effect;
 - 18.2 maintain and continue to implement the Compliance Program for a period of three years from the date of this Undertaking coming into effect (unless Brand Republic ceases to carry on the business of the retail sale of apparel, in which case the Compliance Program can cease when Brand Republic ceases to carry on that business);
 - 18.3 provide at its own expense, a copy of any documents required by the ACCC in accordance with **Attachment C**.

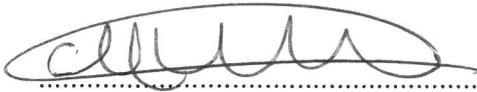
Acknowledgments

19. Brand Republic acknowledges that:
- 19.1 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;
 - 19.2 the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications;
 - 19.3 this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and

19.4 a summary of the ACCC Compliance Program review reports referred to in **Attachment C** of the Undertaking may be held with this Undertaking in the public register.

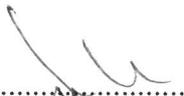
Executed by

Brand Republic Pty Ltd ACN 132 310 000 pursuant to section 127(1) of the *Corporations Act 2001*.



CIARAN MURPHY.

Secretary/Director



JOHN ANDREW MOORE

Director

This 23 day of September 2013

OR

The Common Seal of Brand Republic Pty Ltd ACN 132 310 000 was affixed in the presence of:

.....
Secretary/Director

.....
Director

This.....day of.....2013

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

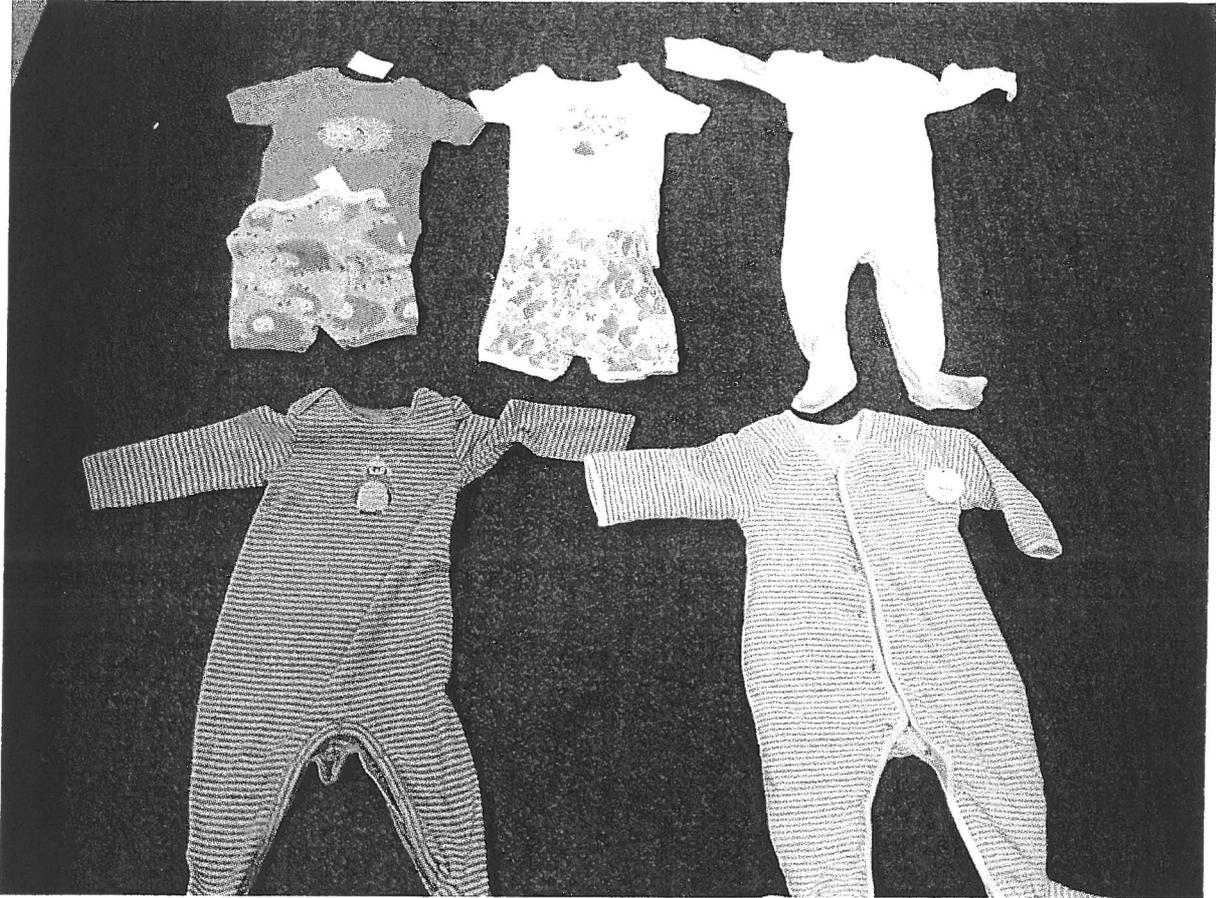


Rodney Graham Sims

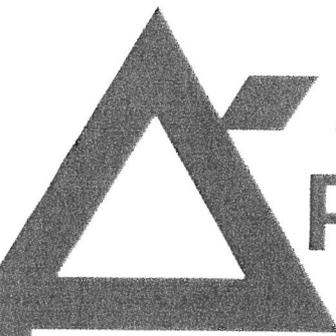
Chairman

This 16th day of October 2013

ATTACHMENT A



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Product Safety Recall

Brand Republic

baby GAP children's nightwear

[colour photos of the Garments to be inserted here]

Between at least July 2011 and May 2013 Brand Republic Pty Ltd sold from its GAP stores in Victoria and New South Wales a variety of *baby GAP* branded children's pyjamas and one-piece garments. The "low fire danger" label attached to some of the garments was not in the position required by the mandatory product safety standard for children's nightwear.

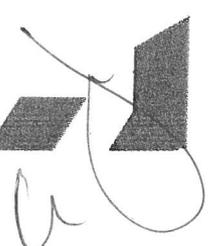
The labels on those garments were attached on a side seam of the one-piece garments and the pyjama tops and not inside their back neck, as required by the Standard. This may result in the fire warning labels not being seen by a child's carer.

Photos of some of the garments which are the subject of this recall appear above.

Consumers who purchased any of the *baby GAP* garments photographed above, or who purchased any other *baby GAP* garment which was labelled in the manner outlined above, should return it to their nearest GAP store for a full refund.

For any queries, please phone Brand Republic on [insert contact telephone number]

**See www.recalls.gov.au for
Australian Product Recall Information**



ATTACHMENT C

TRADE PRACTICES COMPLIANCE PROGRAM

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

Appointments

1. Within two months of the date of this Undertaking coming into effect Brand Republic will appoint a Director or a Senior Manager with suitable qualifications or experience in corporate compliance as **Compliance Officer** with responsibility for ensuring the Compliance Program is effectively designed, implemented and maintained.

2. Within two months of the date of this Undertaking coming into effect Brand Republic shall appoint a qualified, internal or external, compliance professional with expertise in trade practices issues (**the Compliance Advisor**). Brand Republic shall instruct the Compliance Adviser to conduct a Competition and Consumer Act risk assessment (**Risk Assessment**) in accordance with 2.1 – 2.4 below:
 - 2.1. identify the areas where Brand Republic is at risk of breaching sections 106 and 136 of the Australian Consumer Law (**ACL**) contained in Schedule 2 of the *Competition and Consumer Act 2010* (**the Act**);

 - 2.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Brand Republic should they occur;

 - 2.3. identify where there may be gaps in Brand Republic's existing procedures for managing these risks; and

 - 2.4. provide recommendations for action having regard to the assessment.

Compliance Policy

3. Brand Republic will, within 30 days of the Compliance Advisor being appointed, issue a policy statement outlining Brand Republic's commitment to trade practices compliance (**the Compliance Policy**). Brand Republic will ensure that the Compliance Policy:



- 3.1. is written in plain language;
- 3.2. contains a statement of commitment to compliance with the Act;
- 3.3. contains a strategic outline of how commitment to trade practices compliance will be realised within Brand Republic;
- 3.4. contains a requirement for all staff to report any Compliance Program related issues and trade practices compliance concerns to the Compliance Officer;
- 3.5. contains a guarantee that whistleblowers will not be prosecuted or disadvantaged in any way and that their reports will be kept confidential and secure; and
- 3.6. contains a clear statement that Brand Republic will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the Act and will not indemnify them.

Complaints Handling System

4. Brand Republic will ensure that the Compliance Program includes a trade practices complaints handling system. Brand Republic shall use its best endeavours to ensure this system is consistent with AS/ISO 10002:2006 *Customer satisfaction - Guidelines for complaints handling in organizations*, though tailored to Brand Republic's circumstances. Brand Republic will ensure that staff and customers are made aware of the complaints handling system.
5. Brand Republic will ensure that the Compliance Program includes whistleblower protection mechanisms to protect those coming forward with trade practices complaints. Brand Republic shall use its best endeavours to ensure that these mechanisms are consistent with Australian Standard 8004, though tailored to Brand Republic's circumstances.

Reports to Board/Senior Management

6. Brand Republic will ensure that the Compliance Officer reports to the Board and/or senior management meetings every three months on the continuing effectiveness of the Compliance Program.

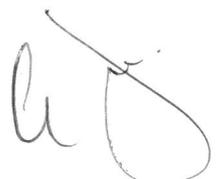
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Training

7. Brand Republic will ensure that the Compliance Program provides for regular (at least once a year) and practical training for all directors, officers, employees, representatives and agents of Brand Republic, whose duties could result in them being concerned with conduct that may contravene sections 106 and 136 of the ACL. Brand Republic must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
8. Brand Republic will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new directors, officers, employees, representatives and agents, whose duties could result in them being concerned with conduct that may contravene sections 106 and 136 of the ACL.

Product Safety

9. Brand Republic will from no later than one month after the Compliance Advisor being appointed:
 - 9.1. maintain up-to-date copies, at its business premises, of all prescribed consumer product safety standards and prescribed consumer information standards that relate to products Brand Republic supplies;
 - 9.2. design, implement and maintain procedures to ensure that the products it supplies or offers to supply that are subject to a prescribed safety and/or information standard under the Act, comply with that standard;
 - 9.3. design, implement and maintain procedures to ensure that it will not supply or offer to supply any product that is subject to a safety standard prescribed under the Act which is in force for the purposes of Division 1 of Part 3-3 of the ACL (**the subject product**) unless it has received written evidence, from a person with accreditation from an accreditation body to test for compliance with that standard, that the person has tested a product which is the same style/model and colour as the subject product for compliance with that standard and found that it complied with that standard;
 - 9.4. develop, implement and maintain recall procedures that enable products supplied by Brand Republic that do not comply with a prescribed safety and/or information standard under the Act to be efficiently and effectively withdrawn from the market and returned to Brand Republic.



Supply of Compliance Program Documents to the ACCC

10. Brand Republic shall, at its own expense, within four months of the date of this Undertaking coming into effect, cause to be produced and provided to the ACCC copies of each of the documents constituting the Compliance Program and implement promptly and with due diligence any recommendations that the ACCC may make that are reasonably necessary to ensure that Brand Republic maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.

Review

11. Brand Republic shall, at its own expense, cause annual reviews of the Compliance Program (**the Reviews**) to be carried out in accordance with each of the following requirements:

- 11.1. **Scope of the Reviews** – the Reviews should be broad and rigorous enough to provide Brand Republic and the ACCC with a supportable verification that Brand Republic has in place a program that complies with each of the requirements detailed in paragraphs 1 – 10 above and to provide the Review reports and opinions detailed at point 12 below;

- 11.2. **Independence of Reviewer** – Brand Republic shall ensure that the Reviews are carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:

- 11.2.1. did not design or implement the Compliance Program;

- 11.2.2. is not a present or past staff member or director of Brand Republic;

- 11.2.3. has not acted and does not act for Brand Republic in any trade practices related matters;

- 11.2.4. has not and does not act for or consult to Brand Republic or provide other services on trade practices related matters other than Compliance Program reviewing; and

- 11.2.5. has no significant shareholding or other interests in Brand Republic.



11.3. **Evidence** – Brand Republic shall use its best endeavours to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in Brand Republic’s possession or control, including without limitation:

11.3.1. enquiries of any officers, employees, representatives, agents and stakeholders of Brand Republic;

11.3.2. Brand Republic’s records, including Brand Republic’s complaints register/reports and any documents relevant to Brand Republic’s training or induction program; and

11.3.3. documents created by Brand Republic’s consultants and legal practitioners for use in Brand Republic’s Compliance Program.

11.4. Brand Republic shall ensure that the first Review is completed within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter.

Reporting

12. Brand Republic shall use its best endeavours to ensure the Reviewer sets out the findings of the Review in two separate reports as set out below:

Company Compliance Program Review Report (to be provided to Brand Republic)

12.1. Brand Republic’s Company Compliance Program Review Report will provide particular and specific information regarding the performance of the Compliance Program to the corporation including:

12.1.1. if, and to what extent, the Compliance Program of Brand Republic includes all the elements detailed in paragraphs 1 – 11 above;

12.1.2. if, and to what extent, the Compliance Program adequately covers the parties and areas identified in the initial Risk Assessment;

12.1.3. if, and to what extent, the trade practices training is effective;

- 12.1.4. if, and to what extent, Brand Republic's complaints handling system is effective;
- 12.1.5. if, and to what extent, Brand Republic is able to provide confidentiality and security to whistleblowers, and staff are aware of the whistleblower protection mechanisms; and
- 12.1.6. recommendations for rectifying deficiencies in 12.1.1-12.1.5 above that the Reviewer thinks are reasonable necessary to ensure that Brand Republic maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

ACCC Compliance Program Review Report (to be provided to ACCC)

- 12.2. The ACCC Compliance Program Review Report will provide particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:
 - 12.2.1. details of the evidence gathered and examined during the Review;
 - 12.2.2. the name and relevant experience of the person appointed as the company Compliance Officer;
 - 12.2.3. the Reviewer's opinion on whether Brand Republic has in place a Compliance Program that complies with the requirements detailed in paragraph 1-11 above;
 - 12.2.4. actions recommended by the Reviewer to ensure the continuing effectiveness of Brand Republic's Compliance Program;
 - 12.2.5. confirmation that any actual and potential inadequacies in Brand Republic's Compliance Program have been brought to the attention of the Compliance Officer and the Board;
 - 12.2.6. confirmation that the Reviewer has revisited any actual and potential inadequacies in Brand Republic's Compliance Program identified in any previous Company Compliance Program Review Report, and assessed how they have been addressed by Brand Republic;
 - 12.2.7. any reservations that the Reviewer might have about the reliability and completeness of the information to which the Reviewer had access in the conduct and reporting of the Review; and



12.2.8. any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.

12.3. Brand Republic will ensure that the Review Reports are completed and provided to Brand Republic within two months of each Review.

12.4. Brand Republic will retain the Company Compliance Program Review Report and cause the ACCC Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.

12.5. Brand Republic acknowledges that a brief statement regarding the ACCC Compliance Program Review Report may be included in the ACCC's section 87B public register.

13. **Recommendations** – Brand Republic shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that Brand Republic maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.

14. If requested by the ACCC Brand Republic shall, at its own expense, provide to the ACCC copies of documents and information in respect of matters which are the subject of the Compliance Program.

15. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Brand Republic shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting ACCC Compliance Program Review Report to be provided to the ACCC.

