

COMPETITION AND CONSUMER ACT 2010

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

by

New Aim Pty Ltd ACN 115 804 432

(trading as OzPlaza.Living)

Person giving this undertaking

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by New Aim Pty Ltd ACN 115 804 432 (trading as OzPlaza.Living) (**New Aim**) of unit 4, 313-327 Arden Street, Kensington, Victoria, for the purposes of section 87B of the *Competition and Consumer Act 2010 (the Act)*.

Background

2. New Aim is a privately-owned company that supplies a range of consumer goods in Australia through online platforms, including through eBay trading under the name OzPlaza.Living. New Aim also provides logistics, warehousing and distribution services to customers.

The Conduct

3. Section 106 of the Australian Consumer Law (ACL), contained in Schedule 2 to the Act, prohibits a person from supplying or offering to supply, in trade or commerce, consumer goods, being those 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 those goods is in force under the ACL and those goods do not comply with that safety standard.
4. *Consumer Protection Notice No. 6 of 2005, Consumer Product Safety Standard: Children's Household Cots (the Notice)* declares the safety standard for household cots that is in force under the ACL to be Australian/New Zealand Standard AS/NZS 2172:2003 titled *Cots for household use – Safety requirements*, approved by Standards Australia on 19 September 2003, subject to certain variations (**the Standard**).
5. On 11 June 2013, the ACCC purchased two samples of the 'Wooden Sleigh 3 in 1 Baby Cot' (**Sleigh Cot**) from New Aim trading as OzPlaza.Living on eBay, and arranged for the goods to be tested by a National Association of Testing Authorities Australia accredited laboratory. The testing revealed that the two samples of the Sleigh Cot did not comply with several provisions of the Standard, as summarised in Table 1 below:



**Table 1: Summary of non-compliance with
Mandatory Standard for Household Cots**

	Clause	Requirement	Failures*
1.	Clause 6: Design 6.1(g) Dimensions	With the drop side in the closed position and the mattress base in the lower position, when tested in accordance with the Standard with a force of 50 newtons, it shall not be possible for a 30mm probe to pass through any aperture between the mattress base and the sides and/or ends.	The gap between the mattress base and the drop side lower rail allowed the 30mm probe to pass through with a force less than 50 newtons.
2.	6.3(d) Locking mechanism	The force for operating the locking mechanisms on the access fastening device must be at least 50 newtons.	Both the lift and push components of the drop-side fastening device operated with less than the minimum required force.
3.	6.4(a) Drop side guides	The guides of a drop-side mechanism shall be designed and fastened to enable the drop-side to move freely up and down.	The drop-side did not always move freely up and down, as required.
4.	6.8(b) Sharp edges & points	Certain edges of the cot shall have a radius of at least 2mm or be chamfered in a way specified in the Standard.	One vertical edge in the Sleigh Cot had a radius of less than 2mm.
5.	Clause 9 – Safety & Performance 9.2(b) Entrapment test	When tested in accordance with the Standard and with a force of 50 newtons, all holes and gaps within the cot shall not allow a sphere of 30mm diameter to pass through.	The gap between the mattress base and drop side lower rail allowed the 30 mm probe to pass through with a force less than 50 newtons.
6.	9.4 Strength test 9.5 Drop side load test 9.7 Durability of drop side mechanism	The Standard requires cots to comply with the following tests: <ul style="list-style-type: none"> • strength test; • drop side load test; and • durability of drop side mechanism. 	When tested in accordance with the Standard, the joints between the slats and the drop side top rail separated, resulting in failures of these three tests. During the strength test, it was noted that the joints made a cracking sound as the force was applied to each vertical slat of the drop side.
7.	Clause 12 – Markings 12.1(a) – (f) Marking requirements	All cots shall be prominently marked on the top surface of the mattress base, or on both surfaces if the base is reversible, with specified information and warnings.	A label with the required information was not present on the mattress base, as required. The label was located in a drawer (under the mattress base), which could be assembled so the label was on the underside of the drawer.
8.	12.2 Marking legibility	The Standard specifies that warnings must be in bold, uppercase typeface of not less than 5mm high.	The warnings on a label were not in the correct font and were only 3.5mm high.

* Failures to comply in all respects with the Standard.

6. New Aim supplied 400 non-compliant Sleigh Cots from on or about 1 May 2013 to on or about 3 September 2013.
7. By supplying household cots that failed to comply with provisions of the Standard outlined in Table 1 above, the ACCC considers that New Aim contravened section 106 of the ACL.
8. On 23 August 2013, the ACCC raised with New Aim its concerns regarding the supply of the Sleigh Cots. In response, New Aim:
 - 8.1. co-operated with the ACCC's inquiries; and
 - 8.2. ceased supplying the Sleigh Cot, and undertook a voluntary recall, including by:
 - 8.2.1. publishing a recall notice on the Recalls Australia website;
 - 8.2.2. informing customers who acquired a Sleigh Cot of the recall by email and subsequently by post; and
 - 8.2.3. arranging for full refunds to be provided to customers who had acquired a Sleigh Cot.
9. New Aim acknowledges that the consumer law compliance program in place at the time the Sleigh Cots were supplied was inadequate, and New Aim has made a commitment not to supply any consumer good in respect of which there is a safety standard in force under the ACL, until it has implemented an effective consumer law compliance program in accordance with paragraph 19 and Attachment C of this undertaking.
10. New Aim admits that by supplying the Sleigh Cot from on or about 1 May 2013 to on or about 3 September 2013, it contravened section 106 of the ACL.
11. New Aim has indicated a willingness to resolve the matter through the provision of an undertaking under section 87B of the Act and by the payment of one Infringement Notice totalling \$10,200 issued by the ACCC under section 134A of the Act for the alleged contravention of section 106 of the ACL in respect of the supply of the Sleigh Cot.

Commencement of undertaking

12. This undertaking comes into effect when:
 - 12.1. the undertaking is executed by New Aim; and
 - 12.2. the ACCC accepts the undertaking so executed.
13. Upon the commencement of this undertaking, New Aim undertakes to assume the obligations set out in paragraphs 14 to 19 below.

Undertakings

14. New Aim undertakes for the purposes of section 87B of the Act that, for a period of three years, commencing on the date of this undertaking coming into effect, it will not supply or offer to supply, in trade or commerce, consumer goods in respect of which there is a safety standard in force under the ACL, unless:
 - 14.1. the consumer goods comply with the relevant safety standard; and
 - 14.2. New Aim has obtained written evidence confirming that the goods comply with the relevant safety standard on either of the following bases:
 - 14.2.1. for each manufactured batch of goods that New Aim supplies or offers to supply; or
 - 14.2.2. for that model of goods, at least every six months from the date of the last written evidence of that model's compliance with the safety standard.
15. New Aim undertakes to ensure that the written evidence referred to in paragraph 14.2 above will be supplied by one of the following testing agencies:
 - 15.1. a testing agency in Australia or overseas accredited by the National Association of testing Authorities (NATA) to test to the particular safety standard;
 - 15.2. if such a NATA accredited agency does not exist in Australia, from an Australian testing agency that is equipped to perform the tests in accordance with the particular safety standard; or
 - 15.3. an overseas testing agency that carries accreditation to test to the particular safety standard from an appropriate body which has a mutual recognition agreement with NATA.

Recall notice

16. Within 60 days of this undertaking coming into effect, New Aim undertakes for the purpose of section 87B of the Act, that it will, at its own expense, send to all customers who purchased a Sleigh Cot from New Aim between 1 May 2013 and 23 August 2013 and who have not obtained a refund or other remedy from New Aim (under the conditions of the voluntary recall in force at the date of this undertaking):
 - 16.1. by post, the recall notice in the form and terms of **Attachment A** to this undertaking, with all text in no less than 12 point Times New Roman font, and with all headings and subheadings in bold, subject only to such variations as may be agreed to by the ACCC in writing; and
 - 16.2. by email, the recall notice in the form and terms of **Attachment B** to this undertaking, with all text in no less than 12 point Times New Roman font,

and with all headings and subheadings in bold, subject only to such variations as may be agreed to by the ACCC in writing.

17. Within 14 days of sending the recall notices referred to in paragraph 16 above, New Aim will provide the ACCC with written notice of compliance with that paragraph by providing copies of the recall notices sent to consumers in accordance with paragraphs 16.1 and 16.2.

Consumer remedy

18. For each customer who contacts New Aim in response to any communication issued by New Aim in connection with the recall of the Sleigh Cot, New Aim undertakes for the purpose of section 87B of the Act, that it will, at its own expense:
- 18.1. use its best endeavours to make arrangements with the customer for the Sleigh Cot to be collected and destroyed;
 - 18.2. pay all reasonable expenses associated with the recall, including expenses associated with collection and transport of the goods (including providing packaging material and/or assistance, where necessary); and
 - 18.3. provide the consumer with a refund of the full purchase price paid by the consumer to New Aim for the Sleigh Cot.

Consumer Law Compliance Program

19. New Aim undertakes for the purpose of section 87B of the Act to, at its own expense:
- 19.1. within three months of the date of this undertaking coming into effect, establish and implement a Consumer Law Compliance Program (**Compliance Program**), in accordance with the requirements set-out in **Attachment C**, being a program designed to minimise New Aim's risk of future contraventions of the ACL and ensure New Aim's awareness of its responsibilities and obligations in relation to the requirements of Part 3-3 of the ACL, in particular section 106 of the ACL;
 - 19.2. maintain and continue to implement the Compliance Program for a period of three years from the date of this undertaking coming into effect; and
 - 19.3. provide at its own expense a copy of any documents required by the ACCC in accordance with Attachment C.

Acknowledgments

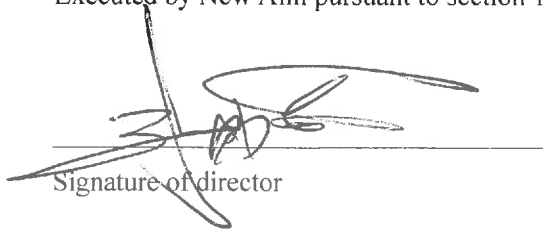
20. New Aim acknowledges that:
- 20.1. the ACCC will make this undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;

20.2. the ACCC will, from time to time, make public reference to the undertaking, including in news media statements and in ACCC publications; and

20.3. this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an Undertaking

Executed by New Aim pursuant to section 127(1) of the *Corporations Act 2001* by:


Signature of director


Signature of a director/company secretary

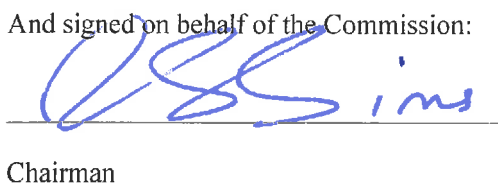
Weimei Liu (Werner)
Name of director

FUNG CAM
Name of director/company secretary

02.06.2014
Date

03/06/2014
Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* on:

And signed on behalf of the Commission:

Chairman

Date
20/6/14
Date

6 

ATTACHMENT A

[date]

[name of customer]

[address]

Dear Mr/s [name of customer]

Recall of “Wooden Sleigh 3 in 1 Baby Cot” supplied by OzPlaza.Living

The purpose of this letter is to advise you that the “Wooden Sleigh 3 in 1 Baby Cot” (Sleigh Cot) that you purchased from OzPlaza.Living through eBay (<http://stores.ebay.com.au/ozplaza-living>) during the period from around May 2013 to September 2013, does not meet the requirements of the mandatory standard for children’s household cots (*Australian/New Zealand Standard AS/NZS 2172:2003 Cots for household use*) (the standard).

One of the most serious breaches relates to the strength of the access fastening device, which could be inadvertently lowered making it possible for a child to open the side of the cot. The cot also fails to comply with other safety and performance, design, and marking requirements of the standard.

Hazard

The Sleigh Cot poses numerous risks to vulnerable infants and small children, as a direct result of failing to comply with the standard, including the risks of falls, suffocation and entrapment.

What to do

All affected customers (who have not already destroyed their cots and received a refund), should:

- stop using the cot immediately;
- not re-gift or sell any used cot; and
- contact OzPlaza.Living to arrange for the cot to be collected and destroyed (at no expense), and for a full refund.

Contact details

Email: cs@ozplaza-vic.com.au

Phone: (03) 9376 0841

(between 9am and 5pm Monday to Friday except public holidays)



Further details of the recall can be found on the Recalls Website:
<https://www.recalls.gov.au/content/index.phtml/itemId/1051213>.

Regards

[signature]

[Signature block]

ATTACHMENT B

Dear Mr/s [name of customer]

Recall of "Wooden Sleigh 3 in 1 Baby Cot" supplied by OzPlaza.Living

The purpose of this email is to advise you that the "Wooden Sleigh 3 in 1 Baby Cot" (Sleigh Cot) that you purchased from OzPlaza.Living through eBay (<http://stores.ebay.com.au/ozplaza-living>) during the period from around May 2013 to around September 2013, does not meet the requirements of the mandatory standard for children's household cots (*Australian/New Zealand Standard AS/NZS 2172:2003 Cots for household use*) (the standard).

One of the most serious breaches relates to the strength of the access fastening device, which could be inadvertently lowered making it possible for a child to open the side of the cot. The cot also fails to comply with other safety and performance, design, and marking requirements of the standard.

Hazard

The Sleigh Cot poses numerous risks to vulnerable infants and small children, as a direct result of failing to comply with the standard, including the risks of falls, suffocation and entrapment.

What to do

All affected customers (who have not already destroyed their cots and received a refund), should:

- stop using the cot immediately;
- not re-gift or sell any used cot; and
- contact OzPlaza.Living to arrange for the cot to be collected and destroyed (at no expense) and for a full refund.

Contact details

Email: cs@ozplaza-vic.com.au

Phone: (03) 9376 0841

(between 9am and 5pm Monday to Friday except public holidays)

Further details of the recall can be found on the Recalls Website:
<https://www.recalls.gov.au/content/index.phtml/itemId/1051213>.

Regards

[Signature block]

ATTACHMENT C

CONSUMER LAW COMPLIANCE PROGRAM

New Aim Pty Ltd (**New Aim**) shall establish a Consumer Law Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within one month of the date of the Undertaking coming into effect, New Aim shall appoint a Director or a Senior Manager of the business, whose responsibilities are to include the development, implementation and maintenance of the Compliance Program, and who reports directly to the company board or governing body (**the Compliance Officer**).
2. Within two months of the Undertaking coming into effect, New Aim shall appoint a qualified, internal or external compliance professional with expertise in consumer law (**the Compliance Advisor**).

Risk Assessment

3. New Aim shall instruct the Compliance Advisor to conduct a risk assessment (**the Risk Assessment**) in accordance with paragraphs 3.1 to 3.4 below:
 - 3.1. identify the areas where New Aim is at risk of breaching Part 3-3 of the ACL;
 - 3.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of New Aim should they occur;
 - 3.3. identify where there may be gaps in New Aim's existing procedures for managing these risks; and
 - 3.4. provide recommendations for action having regard to the assessment.
4. New Aim shall implement promptly and with due diligence any recommendations provided in respect of the Risk Assessment that are reasonably necessary to ensure that New Aim complies with its obligations under Part 3-3 of the ACL.

Compliance Officer Training

5. Within three months of this Undertaking coming into effect, and thereafter at least once a year for the period of the undertaking, New Aim shall ensure that the Compliance Officer attends practical training focusing on Part 3-3 of the ACL.
6. New Aim shall ensure that the training referred to in paragraph 5 is administered by a suitably qualified compliance professional or legal practitioner with expertise in

consumer law and is designed to ensure the Compliance Officer is aware of the responsibilities and obligations in relation to Part 3-3 of the ACL.

7. New Aim, within 14 days of completion of training, will provide the ACCC with a written statement from the compliance professional or legal practitioner who conducts the training, confirming the completion of the training conducted in accordance with paragraphs 5 and 6 above.

Staff Training

8. If New Aim supplies or offers to supply consumer goods in respect of which there is a safety standard in force under the ACL, New Aim shall cause all employees of New Aim whose duties could result in them being concerned with conduct that may contravene Part 3-3 of the ACL 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 consumer law, that focuses on Part 3-3 of the ACL.
9. If New Aim supplies or offers to supply consumer goods in respect of which there is a safety standard in force under the ACL, New Aim shall ensure that the Compliance Program includes a requirement that all new employees whose duties could result in them being concerned with conduct that may contravene Part 3-3 of the ACL receive, as part of their induction, practical training administered by the Compliance Officer (once trained) or a qualified compliance professional or legal practitioner with expertise in consumer law, that focuses on Part 3-3 of the ACL.

Complaints handling system

10. Within three months of the undertaking coming into effect, New Aim shall:
 - 10.1. develop procedures for recording, storing and responding to consumer law complaints; and
 - 10.2. provide the ACCC with an outline of the complaint handling system.

Product Safety

11. If New Aim supplies or offers to supply consumer goods in respect of which there is a safety standard in force under the ACL, New Aim shall:
 - 11.1. maintain up-to-date copies, at its business premises, of all product safety standards in force under the ACL that relate to goods New Aim supplies;
 - 11.2. ensure that the goods supplied that are subject to a safety standard in force under the ACL, comply with the relevant safety standard;
 - 11.3. ensure that its Compliance Program includes:
 - 11.3.1. pre-shipping product safety compliance inspections for such goods;

11.3.2. regular visual audits of goods subject to safety standards held at New Aim's warehouse(s) to confirm compliance with the relevant safety standard; and

11.3.3. recall procedures that enable products supplied by New Aim that do not comply with safety standards in force under the ACL to be efficiently and effectively withdrawn from the market and returned to New Aim.

Internal reporting

12. New Aim shall ensure that the Compliance Officer reports to New Aim's director(s), governing body, or senior management group every six months on the continuing effectiveness of the Compliance Program.

Review

13. If New Aim supplies or offers to supply consumer goods in respect of which there is a safety standard in force under the ACL, New Aim shall, at its own expense, cause an annual review of the Compliance Program elements (**the Review**) to be carried out in accordance with each of the following requirements:

13.1. **Scope of the Review** – New Aim shall ensure that the Review is broad and rigorous enough to:

13.1.1. provide New Aim and the ACCC with a supportable verification that New Aim has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of New Aim;

13.1.2. provide the Review Report and opinions detailed at paragraph 14 below; and

13.1.3. provide New Aim and the ACCC with a supportable verification that New Aim has in place a product safety compliance program that complies with the requirements of the Undertaking and is suitable for the size and structure of New Aim.

13.2. **Independence of Reviewer** – New Aim shall ensure that the Review is carried out by a suitably qualified, independent compliance professional with expertise in consumer law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:

13.2.1. did not design or implement the Compliance Program;

13.2.2. is not a present or past staff member or director of New Aim;

13.2.3. has not acted and does not act for New Aim in any consumer law related matters;

- 13.2.4. has not and does not act for or consult to New Aim or provide other services on consumer law related matters other than Compliance Program reviewing; and
- 13.2.5. has no significant shareholding or other interests in New Aim.
- 13.3. **Evidence** – New Aim shall use its best endeavours to ensure that the Review is able to be conducted on the basis that the Reviewer has access to all relevant sources of information in New Aim's possession or control, including without limitation:
 - 13.3.1. enquiries of any employees, representatives, agents and stakeholders of New Aim;
 - 13.3.2. documents created by New Aim's consultants, legal practitioners and accountants for use in New Aim's Compliance Program;
 - 13.3.3. if New Aim supplies or offers to supply consumer goods in respect of which there is a safety standard, all documents required to assess New Aim's compliance with the relevant safety standards under the ACL.
- 13.4. **Timing** - New Aim 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

- 14. If New Aim supplies or offers to supply consumer goods in respect of which there is a safety standard in force under the ACL, New Aim shall comply with the following reporting requirements:
 - 14.1. New Aim shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in a Compliance Program Review Report, which will provide particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:
 - 14.1.1. details of the evidence gathered and examined during the Review;
 - 14.1.2. the name and relevant experience of the person appointed as the Compliance Officer;
 - 14.1.3. the Reviewer's opinion on whether New Aim has in place effective staff training, complaints handling programs that comply with the requirements of the Undertaking; and
 - 14.1.4. actions recommended by the Reviewer to ensure the continuing effectiveness of New Aim's Compliance Program.

- 14.2. New Aim shall use its best endeavours to ensure that each Compliance Program Review Report is completed and provided to New Aim within one month of completion of the Review.
- 14.3. New Aim will cause the Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
- 14.4. New Aim 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 New Aim maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.
15. If requested by the ACCC, New Aim shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
16. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, New Aim shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Compliance Program Review Report to be provided to the ACCC.