

COMPETITION AND CONSUMER ACT 2010

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

by

Le Tian

(trading as SavingForAussie)

Person giving this undertaking

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Le Tian (trading as SavingForAussie) (**Tian**) of [REDACTED] Berwick, Victoria, for the purposes of section 87B of the *Competition and Consumer Act 2010* (**the Act**).

Background

2. Tian is a sole trader who sells a range of products (mainly small items of furniture) over the internet through the eBay website. Tian commenced trading in October 2011 and started selling furniture, including household cots, in 2012.

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 and those goods do not comply with that 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 13 June 2013, ACCC staff purchased two samples of the Canterbury Cot (**Canterbury Cot**) that were supplied on eBay by Tian, and arranged for them to be tested by a National Association of Testing Authorities Australia accredited laboratory. The testing revealed that the two samples of the Canterbury Cot did

not comply with several provisions of the Standard, which apply to all household cots, 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(b) Depth of cot	Only <u>two</u> designated positions are permitted for the mattress base (upper and lower).	The Canterbury Cot had three height positions for the mattress base, rather than, no more than two height positions, as required.
2.	6.1(b) Depth of cot	The Standard specifies minimum depth requirements, which are measured from the top of the mattress (in each base position) to the top edge of the lowest side of the cot when the access is open and closed.	The label attached to the Canterbury Cot stated that mattress thickness should not exceed 120mm, while the assembly instructions for the Canterbury Cot listed a recommended mattress thickness of 150mm. If a mattress thickness of 120mm or 150mm is taken then the Canterbury Cot is not compliant.
3.	6.1(d) Gaps	The distance between the mattress edge and the sides or ends of the cot shall be not more than 20 mm.	Using the recommended mattress length and width (1310 x 690 mm), and given the internal dimensions of the Canterbury Cot (1320 x 734 mm), there would be a gap of 22 mm between the cot and the mattress' edge (at its centred position), rather than the required gap of 20 mm or less as required.
4.	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 drop-side fastening devices operated with less than the minimum required force of 50 Newtons.
5.	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 Canterbury Cot's drop-side did not always fall freely upon disengagement, as required.
6.	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.	The Canterbury Cot contained a number of edges, including along the cot's fixed side and drop-side, which had a radius of less than the minimum required radius of 2mm.
7.	Clause 9 – Safety & Performance 9.2(b) Entrapment	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 end slat and the cot end vertical slat when the mattress base was in the lower position allowed the 30 mm probe to pass through without force in one location, and in another location with a force substantially less than 50

	Clause	Requirement	Failures*
	test		Newtons.
8.	Clause 11 – Informative labelling 11.1(c) Mattress size	Information about recommended mattress size and associated warnings required in the information leaflet.	The required statement was not in a leaflet or in the instructions.
9.	11.1(d) Fallout warning	Warning required in the information leaflet about using the lowest position before the child can sit up.	The required statement was not in a leaflet or in the instructions.
10.	11.1(e) Contact details	The manufacturer’s, importer’s or distributor’s name and contact details required in the leaflet.	The required information was not in a leaflet or in the instructions.
11.	11.1(f) Safe placement	Statements regarding the safe placement of the cot and the need to keep specified items out of reach from any position in the cot required in the leaflet.	Only part of the required statement was present in the instructions. Mention was made of never placing the product near cords from blinds or drapes, but all else was absent.
12.	11.2(b) Contact details	A label or swing tag required featuring the manufacturer’s name and address.	A label on the inside bottom of the cot end contained the manufacturer’s name but no address.
13.	11.3 Suffocation and fallout warning	A warning notice required on external packaging about the recommended mattress size.	No warning was on the external packaging of either of the two cartons the cot was supplied in.
14.	Clause 12 - Markings 12.1(b)(ii) Contact details	The importer’s name and address required on a label on the cot mattress base.	The importer’s name and address was not present on a label on the cot mattress base.
15.	12.3 Durability	Labels must pass certain durability requirements.	Certain labels showed significant fading or smearing after testing for durability.

* Failures to comply in all respects with the Standard.

6. Tian supplied 275 Canterbury Cots from at least 1 June 2013 to on or about 10 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 Tian contravened section 106 of the ACL.
8. On 10 September 2013, the ACCC raised with Tian its concerns regarding the supply of the Canterbury Cots. In response, Tian:

- 8.1. admitted that by supplying the Canterbury Cot from at least 1 June 2013 to on or about 10 September 2013, she contravened section 106 of the ACL;
- 8.2. co-operated with the ACCC's inquiries; and
- 8.3. immediately ceased supplying the Canterbury Cot, and undertook a voluntary recall, including by:
 - 8.3.1. publishing a recall notice on the Recalls Australia website;
 - 8.3.2. informing all customers who acquired a Canterbury Cot of the recall by email; and
 - 8.3.3. arranging for full refunds or replacement cots to be provided to all customers who acquired a Canterbury Cot.
9. Tian has indicated a willingness to resolve the matter by the provision of an undertaking under section 87B of the Act and by the payment of one Infringement Notice totalling \$2,040 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 Canterbury Cot.

Commencement of undertaking

10. This undertaking comes into effect when:
 - 10.1. the undertaking is executed by Tian; and
 - 10.2. the ACCC accepts the undertaking so executed.
11. Upon the commencement of this undertaking, Tian undertakes to assume the obligations set out in paragraphs 12 to 16 below.

Undertakings

12. Tian 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, she will not supply or offer to supply, in trade or commerce, consumer goods in respect of which there is a safety standard, unless:
 - 12.1. the goods comply with the safety standard; and
 - 12.2. Tian has first obtained written evidence confirming that the goods comply with the safety standard on either of the following bases:
 - 12.2.1. for each manufactured batch of goods that Tian supplies or offers to supply; or

- 12.2.2. 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.
13. Tian undertakes to ensure that the written evidence referred to in paragraph 12.2 above will be supplied by one of the following testing agencies:
- 13.1. a testing agency in Australia or overseas accredited by National Association of testing Authorities (NATA) to test to the particular safety standard;
- 13.2. if such a NATA accredited agency does not exist in Australia, from an Australian testing agency which is equipped to perform the tests in accordance with the safety standard; or
- 13.3. 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

14. Tian undertakes, for the purposes of section 87B of the Act, that she will, at her own expense, within 14 days of this undertaking coming into effect, send to all customers who purchased a Canterbury Cot from Tian between at least 1 June 2013 and 10 September 2013 and who have not obtained a refund or other remedy from Tian (under the conditions of the voluntary recall in force at the date of this undertaking):
- 14.1. 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
- 14.2. 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.

Tian's remedy

15. For each customer who contacts Tian in response to the recall notices sent by Tian in accordance with paragraph 14 above, Tian further undertakes for the purpose of section 87B of the Act, that she will at her own expense:
- 15.1. collect or arrange for collection of the Canterbury Cot from the consumer, and destroy that cot; and
- 15.2. either provide, at the consumer's discretion, a new replacement household cot to the consumer that complies with the Standard or provide the consumer with a refund of the full purchase price paid by the consumer to Tian for the cot.

Consumer Law Compliance Program

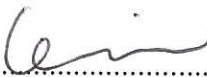
16. Tian undertakes for the purpose of section 87B of the Act to, at her own expense:
 - 16.1. within three months of the date of this undertaking coming into effect, establish and implement a Consumer Law Compliance Program (**Compliance Program**), in accordance with the requirements set-out in **Attachment C**, being a program designed to minimise Tian's risk of future contraventions of the ACL and ensure Tian's awareness of her responsibilities and obligations in relation to the requirements of Part 3-3 of the ACL, and in particular, section 106 of the ACL;
 - 16.2. maintain and continue to implement the Compliance Program for a period of three years from the date of this undertaking coming into effect (unless Tian ceases to supply or offer to supply consumer goods in respect of which there is a safety standard, in which case the Compliance Program can cease when Tian ceases to supply or offer to supply such products); and
 - 16.3. provide at her own expense a copy of any documents required by the ACCC in accordance with Attachment C.

Acknowledgments

17. Tian acknowledges that:

- 17.1. 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;
- 17.2. the ACCC will, from time to time, make public reference to the undertaking, including in news media statements and in ACCC publications; and
- 17.3. this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by


.....
Le Tian

This.....*4th*.....day of.....*June*.....2014

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


.....

Rodney Graham Sims
Chairman

This.....*4th*.....day of.....*August*.....2014

ATTACHMENT A

[date]

[name of customer]

[address]

Dear Mr/s [name of customer]

Recall of “Canterbury Cots” supplied by SavingForAussie

The purpose of this letter is to advise you that the “Canterbury Cot” that you purchased from SavingForAussie through eBay (<http://stores.ebay.com.au/savingforaussie2011>), between at least 1 June 2013 and on or about 10 September 2013, does not meet the requirements of the mandatory standard for cot safety (*Australian/New Zealand Standard AS/NZS 2172:2003 Cots for household use*) (the standard).

One of the most concerning 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, informative labelling and marking requirements of the standard.

Hazard

The Canterbury 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 or replacement cot), should:

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

Contact details

Email: savingforaussie@gmail.com
Phone: (03) 9016 0288
(between 9am and 5pm Monday to Friday except public holidays)

Further details of the recall can be found on the Recalls Website:
<http://www.recalls.gov.au/content/index.phtml/itemId/1051456>.

Regards

[signature]

[Signature block]

ATTACHMENT B

Dear Mr/s [name of customer]

Recall of “Canterbury Cots” supplied by SavingForAussie

The purpose of this email is to advise you that the “Canterbury Cot” that you purchased from SavingForAussie through eBay (<http://stores.ebay.com.au/savingforaussie2011>), between at least 1 June 2013 and on or about 10 September 2013, does not meet the requirements of the mandatory standard for cot safety (*Australian/New Zealand Standard AS/NZS 2172:2003 Cots for household use*) (the standard).

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

Hazard

The Canterbury 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 or replacement cot), should:

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

Contact details

Email: savingforaussie@gmail.com

Phone: (03) 9016 0288

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Further details of the recall can be found on the Recalls Website:
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Regards

[Signature block]

ATTACHMENT C

CONSUMER LAW COMPLIANCE PROGRAM

LEVEL 1

Le Tian (**Tian**) will establish a Consumer Law Compliance Program (**Compliance Program**) that complies with each of the following requirements:

1. Training

- 1.1. Within three months of this undertaking coming into effect, Tian will attend practical training focusing on Part 3-3 of the Australian Consumer Law (**ACL**) contained in Schedule 2 to the *Competition and Consumer Act 2010* (the **Act**).
- 1.2. Tian will ensure that the training referred to in paragraph 1.1 is administered by a suitably qualified, compliance professional or legal practitioner with expertise in Consumer Law.
- 1.3. Tian will provide a written statement or certificate from the Consumer Law professional who conducts the training referred to in paragraph 1.1 to the Australian Competition and Consumer Commission (**ACCC**) within 14 days of completion of the training verifying that such training has occurred.

2. Complaints handling

2.1. Tian will:

- 2.1.1. develop procedures for recording, storing and responding to Consumer Law complaints within two months of this undertaking coming into effect; and
- 2.1.2. provide the ACCC with an outline of the complaints handling system developed in accordance with paragraph 2.1.1, within four months of the undertaking coming into effect.

3. **Product safety**

3.1. Tian will:

- 3.1.1. maintain up-to-date copies, at her business premises, of all prescribed safety standards that relate to consumer goods that Tian supplies or offers to supply;
 - 3.1.2. ensure that all consumer goods supplied or offered for supply by Tian that are subject to a prescribed safety standard under the ACL, comply with the relevant standard;
 - 3.1.3. establish and maintain recall procedures that enable products supplied by Tian that do not comply with a prescribed safety standard under the ACL to be efficiently and effectively recalled, withdrawn from the market and returned to Tian; and
 - 3.1.4. provide the ACCC with copies of documents developed in accordance with paragraph 3.1.3, within four months of the undertaking coming into effect.
4. If requested by the ACCC, Tian will provide, at her own expense, copies of any other documents or information in respect of matters which are the subject of the Compliance Program.