

**TRADE PRACTICES ACT 1974****UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN FOR THE PURPOSE OF SECTION 87B OF THE
TRADE PRACTICES ACT 1974****BY****APOLLO BICYCLE CO PTY LTD****(ACN 001 914 469)****BACKGROUND**

1. Apollo Bicycle Co Pty Ltd ('Apollo') is a company incorporated in New South Wales. Apollo supplies bicycles and cycling accessories to approximately 273 retailers throughout Australia. Apollo is the sole Australian distributor of Free Agent bicycles and accessories, including Free Agent helmets.
2. Since November 1999 Apollo has supplied to its retailers approximately 6,350 helmets known as the Free Agent Street Helmet ('the Free Agent helmet').
3. In November 2000 staff of the Australian Competition and Consumer Commission ('the Commission') conducted a survey of numerous retailers of cycling accessories in New South Wales in order to determine whether or not bicycle helmets sold by the retailers complied with any of the relevant standards prescribed under the *Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Regulations 1999* ('the Standard').
4. The Commission found the Free Agent helmet offered for sale at several retailers. Affixed to the inside of the helmets was a label containing the following words:

"This helmet is designed for non-motorized use only and is intended for skate or bicycling with minimum age of 5 years."

Printed on the outside base of the boxes containing the Free Agent helmets were the words:

"...this helmet is for use with non-motorized vehicles only."

5. On 8 December 2000 the Commission wrote to Apollo informing it that the Commission was concerned that Apollo may be in breach of section 65C of the *Trade Practices Act 1974* ("the Act") by supplying a helmet, intended for cycling use, that did not comply with the Standard. In particular, the Commission advised Apollo of its concerns that the Free Agent helmet, whilst containing representations that it is suitable for cycling use, did not comply with the Standard.
6. On 12 December 2000 Apollo wrote to the Commission stating it was unable to supply evidence that the Free Agent helmet complied with the Standard.
7. On 13 December 2000 Apollo wrote to the Commission stating it had ceased supplying the Free Agent helmet to its retailer customers and that it proposed to request the retailer customers to remove the helmet from sale.
8. In February 2001, staff of the Commission conducted another survey of retailers of bicycle helmets in the Sydney metropolitan area and found several retailers who continued to sell the Free Agent helmet with the internal label, and in packaging containing the wording printed externally thereon, as referred to in paragraph 4 above.
9. The Commission wrote to Apollo on 23 February 2001 advising Apollo of its concern that Free Agent helmets were continuing to be sold and represented as suitable for bicycle use in contravention of the Standard.
10. On 2 March 2001 Apollo wrote to the Commission admitting that the Free Agent helmet does not comply with the Standard and confirming that it had ceased despatching the helmet to its retailer customers.
11. Apollo agrees that it has breached section 65C of the Act by supplying helmets, represented to be suitable for cycling, that do not comply with the Standard.

In order to address the Commission's concerns, Apollo has agreed to give the Commission undertakings pursuant to section 87B of the Act, which are set out below.

COMMENCEMENT OF UNDERTAKING

12. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Apollo; and
 - (b) the Commission accepts the Undertaking so executed.

UNDERTAKINGS

- 13 Apollo undertakes that Apollo, its agents and employees will cease to represent helmets that do not comply with the Standard as being suitable for bicycle use.
14. Apollo undertakes that, within 28 days of the date of this Undertaking coming into effect, an Apollo sales agent shall personally visit each of Apollo's retailer customers for the purpose of inspecting all Free Agent helmets and associated packaging remaining in stock at that time. With respect to any Free Agent helmets remaining in stock at any of the retailers, the sales agent shall:
- (i) remove from the helmets any labels containing the offending words described in paragraph 4 above;
 - (ii) place a permanent covering label over the offending words printed on the bottom of the packaging containing the helmet as described in paragraph 4 above;
 - (iii) ensure that any representation upon the helmets or their packaging, to the effect that the helmet is suitable for cycling use, is removed or covered over.
15. (a) Apollo undertakes, at its own expense, to place corrective advertisements in the publications described in sub-paragraph (b), in the size and form set out in Annexure A to this Undertaking:
- (i) to be placed within the first 10 pages of each publication; and
 - (ii) to be published in each publication within 21 days of the date of this Undertaking coming into effect.
- (b) The publications referred in (a) are as follows:
- (i) one major daily newspaper circulating in each capital city in each state and territory of Australia; and
 - (ii) the Newcastle Herald, Warragul Gazette and Gold Coast Bulletin.
16. (a) In relation to all Apollo retailer customers situated in a city or town that does not fall within the normal areas of distribution of the publications referred to in undertaking 15(b)(ii), Apollo undertakes that it shall use its best endeavours to secure the co-operation of each of these retailers with respect to the placement of a sign containing the wording prescribed in Annexure A.
- (b) Apollo shall use its best endeavours to ensure the sign referred to in (a) is placed in a prominent position within the shop premises of each retailer. is of A3 size and is displayed by each retailer for a period of 28

days, commencing from the date which is 21 days from the date of this Undertaking coming into effect.

17. Apollo shall, within 28 days of the date of this Undertaking coming into effect, advise the Commission in writing of the dates of publication of each advertisement required by undertaking 15.
18. Apollo shall, within 28 days of the date of this Undertaking coming into effect, advise the Commission in writing of the names of each retailer customer who has agreed to display signage in accordance with undertaking 16.
19. Apollo undertakes that it shall use its best endeavours to ensure that its retailer customers do not make representations, either expressly or impliedly, to consumers to the effect that any helmet supplied by Apollo which does not comply with the Standards is suitable for cycling use.
20. Apollo undertakes that, within three months of the date of this Undertaking coming into effect, it will design, implement and make provision to maintain and audit, at its own expense, a trade practices compliance program ("Compliance Program") that is in accordance with the Australian Standard for compliance programs, AS-3806, relating to those provisions of the Act which are relevant to the conduct of Apollo's business which:
 - (a) demonstrates commitment to a policy of compliance and will embed a culture of compliance throughout Apollo;
 - (b) analyses and responds to the trade practices matter resulting in this Undertaking;
 - (c) identifies risk areas for trade practices contraventions and develops systems to eliminate or minimise these risks;
 - (d) provides that Apollo will take appropriate action concerning any person within its control who is responsible for contraventions of the Act and will not indemnify any such person from the consequence of suit or settlement in respect of any contravention of the Act; and
 - (e) provides practical and verifiable training for all relevant staff and management so that contraventions and potential contraventions of the Act may be prevented or otherwise detected, referred and acted upon.
21. In respect of undertaking 20, the Compliance Program will incorporate the following:

Commitment

 - (a) Appoint a Compliance Manager or Senior Manager with overall responsibility for compliance.
 - (b) Implement adequate procedures to check for trade practices compliance.

- (c) Ensure that compliance procedures are understood by staff and other relevant third parties, such as agents, distributors and advertising representatives.

Policy & Procedures

- (d) Produce a written policy of commitment to compliance and articulate how this will be carried out. Set in place procedures so that the policy is well understood throughout the company. Ensure procedures are laid down to assess compliance against predetermined objectives and assessment criteria.

Management Responsibility

- (e) Detail the processes involved in establishing, implementing and maintaining the compliance program and the roles and responsibilities of management, staff and other stakeholders.
- (f) Ensure that line managers are responsible for compliance in their immediate area.

Resources & Authority

- (g) Ensure that the Compliance Manager has:
 - (i) Authority, recognition and support within the organisation;
 - (ii) Access to all levels in the organisation to ensure compliance; and
 - (iii) Overall responsibility for design, integrity and updating of the program.
- (h) Ensure that staff have access to the necessary materials, including compliance manuals and training, reference material and databases.
- (i) Ensure that any external compliance service providers have the resources and expertise to carry out the required tasks.

Continuous Improvement

- (j) Put in place procedures to ensure that the program has regular ongoing reviews.

Record Keeping

- (k) Keep an accurate record of compliance failures and complaints and of the rectification of such failures and complaints.

Identification, Rectification and Reporting

- (l) Develop a system to identify and classify compliance failure so that systemic and recurring problems are rectified.

- (m) Ensure that compliance problems are rapidly reported to the Compliance Manager.

Monitoring & Review

- (n) Introduce a system to monitor and review the effectiveness of the compliance program.

Accountability

- (o) Ensure that the Compliance Manager is accountable to the Board for compliance issues.

Approval of Compliance Program

- (p) Apollo undertakes that, prior to the implementation of the Compliance Program, it shall ensure the Compliance Program is approved by a suitably qualified compliance professional with expertise in trade practices law who is independent of Apollo and has no conflict of interest in providing this service to Apollo.
- (q) Apollo shall retain the compliance professional to provide the Commission with a report confirming that the Compliance Program is in accordance with this Undertaking, and this report will be provided to the Commission within four months of this Undertaking coming into effect.

Audit of the Compliance Program

- (r) Apollo shall cause, at its own expense, an independent audit of its Compliance Program to be conducted annually for the period of three years from the date of this Undertaking coming into effect. The dates for completion of the first, second and third such audits shall be one, two and three years respectively from the date of this Undertaking coming into effect.
- (s) The audit will be conducted by a suitably qualified compliance professional who is independent of Apollo and has no conflict of interest in providing audit services to Apollo.
- (t) The auditor will review and report in writing on:
 - (i) Apollo's adherence to this Undertaking;
 - (ii) The particulars of the compliance program, Apollo's implementation of the compliance program and the achievement of its objectives; and
 - (iii) Any recommended changes to the compliance program that may be necessary to ensure achievement of its objectives.
- (u) Apollo will provide a copy of the audit reports to the Commission within 14 days of any such request being made by the Commission to Apollo.

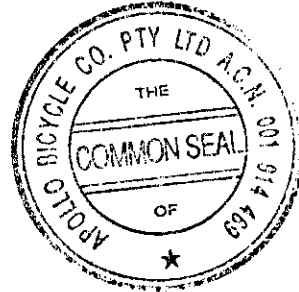
- (v) If requested by the Commission, Apollo will provide forthwith to the Commission:
- (i) the name of the auditor;
 - (ii) the information upon which it relies in determining the auditor is independent from Apollo; and
 - (iii) information showing whether any recommendations by the auditor have been implemented.

ACKNOWLEDGEMENTS

- 22. Apollo acknowledges that the Commission will make this Undertaking available for public inspection.
- 23. Apollo acknowledges that the Commission will, from time to time, publicly refer to this Undertaking.
- 24. Apollo acknowledges and accepts that this Undertaking in no way derogates from the rights and remedies available to any person arising from the conduct of Apollo infringing section 65C of the Act.

IN WITNESS TO THESE UNDERTAKINGS

In Witness of this Undertaking the Common Seal of **APOLLO BICYCLE CO PTY LTD** was affixed hereunto by authority of the Board of Directors in the presence of:



[Handwritten signature]

Director

[Handwritten signature]

Secretary

This 3rd day of July 2001

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974

[Handwritten signature]

Professor Allan Fels
Chairman

This 11 day of July 2001

Annexure A

An Apology from Apollo Bicycle Co Pty Ltd

Free Agent Street Helmets

The Australian Competition and Consumer Commission (ACCC) has recently raised concerns with Apollo Bicycle Co Pty Ltd (Apollo) in relation to representations that the Free Agent Street Helmet, imported and distributed by Apollo to retailers throughout Australia, is suitable for cycling use.

It is a breach of section 65C of the *Trade Practices Act* 1974 to represent a helmet as being suitable for cycling use if it does not comply with the mandatory standards for bicycle helmets under the Act.

Apollo advises that the Free Agent Street Helmet does not comply with the mandatory standards, and is therefore not suitable for use as a cycling helmet. Apollo apologises to any consumers who may have been misled by representations contained upon the helmet and its packaging to the effect that the helmet is suitable for use when cycling. The Free Agent Helmets may still be used for non-cycling purposes.

Apollo offers a full refund to all consumers who have been misled into purchasing a Free Agent Street Helmet, as a result the representations that it is suitable for cycling use. For further information please contact Apollo Bicycle Co Pty Ltd at 15 Brunson Street, Bayswater, Vic 3153 Tel (03) 9729 4400.



This corrective advertisement has been placed at the cost of Apollo Bicycle Co Pty Ltd pursuant to undertakings given to the Australian Competition and Consumer Commission.