



TRADE PRACTICES ACT 1974

**UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION GIVEN PURSUANT TO SECTION 87B OF THE TRADE
PRACTICES ACT 1974**

BY

**A. ROYALE & CO (AUST) PTY LTD
A.C.N 002 428 382**

PERSON GIVING UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by A. Royale & Co (Aust) Pty Ltd ("A. Royale") of 66-70 Meeks Road Marrickville, New South Wales, Australia under section 87B of the *Trade Practices Act 1974* ("the Act").

BACKGROUND

2. A. Royale is a company incorporated in New South Wales and carries on a business of manufacturing, importing and distributing clothing products, including silk ties and belts.
3. A. Royale has been engaged in the importation of belts since 1998. A. Royale contracts for the manufacture of belts overseas according to specifications which it supplies to the foreign manufacturer. These specifications include the marking and labelling to be placed on the belts.
4. In June 2000 the New Zealand Commerce Commission ("NZCC") commenced an investigation into a complaint made to it concerning the labelling of belts imported and supplied by A. Royale to Kmart stores in New Zealand. In

particular, the complainant alleged the subject belt had been labelled with the word "leather" when in fact it was made of bonded or reconstituted leather and other materials and contained 26% leather.

5. By way of a letter from its lawyers dated 10 August 2000, A. Royale informed the Commission of the NZCC investigation and advised that:
 - since 1998 its practice has been to label belts imported by it and comprised of a combination of leather and/or reconstituted or bonded leather, and other non-leather components, as being "leather" belts ("the subject belts");
 - the subject belts had been imported into Australia and distributed by A. Royale to Kmart and Big W Stores throughout Australia since early 1998 ; and
 - all remaining stocks of the subject belts supplied by A. Royale to Kmart and Big W stores had been withdrawn from sale by these stores.
6. The remaining stocks of the subject belts were recalled by A. Royale from Kmart and Big W stores on 14 July 2000.
7. The various styles of the subject belts supplied by A. Royale to Big W (according to A. Royale category codes) were as follows:

A/R Code	Description
16-2568	30 cm plait
16-2561	30 cm plait
16-3021	Dress stitch/Edge
16-3022	Dress stitch/Edge
16-3488	Jean
16-3981	Jean
16-4002	Port Hole
16-4003	Port Hole
16-4004	Dress Leather
16-4011	Double Loop
16-4012	Double Loop

16-4013	Saw Tooth
16-4014	Saw Tooth

8. The various styles of the subject belts supplied by A. Royale to Kmart (according to A. Royale category codes) were as follows:

A/R Code	Description
KM-001	Dress Leather
KM-002	Dress Leather
KM-003	Dress Leather
KM-004	Port Hole
KM-005	Port Hole
KM-006	Port Hole
KM-010	Casual
KM-016	Rivergum
KM-017	Rivergum
KM-018	Swivel
KM-019	Swivel
KM-020	Swivel
KM-023	Casual
KM-026	Port Hole
KM-027	Cut Edge Jean
KM-028	Cut Edge Jean
KM-031	Saw Tooth
KM-032	Saw Tooth

9. Between July 1998 and 14 July 2000 Kmart and Big W stores sold a total of 454,603 of the subject belts.
10. A. Royale agrees that, by labelling as "leather" belts which were comprised primarily of bonded or reconstituted leather, in addition to other non-leather materials, it may have breached section 52 of the Act, in that it may have engaged in misleading or deceptive conduct, and section 53(a) of the Act, in that it may

have falsely represented that goods are of a particular quality or composition. Notwithstanding A. Royale's view, the Commission is of the opinion that A. Royale has breached those sections of the Trade Practices Act.

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

COMMENCEMENT OF UNDERTAKING

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

UNDERTAKINGS

12. A. Royale undertakes that it will not engage in conduct in contravention of sections 52 and 53(a) of the Act in relation to products and accessories supplied by it.
13. (a) In order that consumers who have purchased the subject belts, and who have been misled by the "leather" label upon the belts, are given the opportunity of seeking a refund of the purchase price, A. Royale undertakes, at its own expense, to place corrective advertisements in the size and form set out in Annexure A to this Undertaking (and to provide a 1 800 freecall telephone number for a period of three months and Reply Paid address therein) in the publications described in sub-paragraph (b):
- (i) within the first ten pages of each publication; and
 - (ii) on a Saturday in each such newspaper within 28 days of the date of this Undertaking taking effect.
- (b) The publications referred to in (a) are as follows:
- (i) The Courier Mail;
 - (ii) The Sydney Morning Herald;
 - (iii) The Age;
 - (iv) The Advertiser;

- (v) The West Australian; and
- (vi) The Australian.

14. A. Royale shall, within 28 days of the date of this Undertaking coming into effect, advise the Commission in writing of the date of publication of each corrective advertisement pursuant to Undertaking 13.
15. A. Royale shall, upon receipt of a call to its 1 800 freecall telephone number, obtain caller details and within seven days provide the caller with a stamped addressed envelope for the return of the belt to A. Royale. On receipt of the belt A. Royale will within seven days confirm if the belt is within one of the refund categories and, if so, provide a return cheque.
16. A. Royale 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 A. Royale's business which:
 - (a) demonstrates commitment to a policy of compliance and will embed a culture of compliance throughout A. Royale;
 - (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 A. Royale 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.
17. In respect of 16 above, 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.

Training

- (k) Develop and execute a practical and easily understood compliance training system throughout the company which is:
 - (i) integrated into induction courses;
 - (ii) reviewed at least every six months;
 - (iii) participatory;
 - (iv) verifiable by independent third parties;
 - (v) framed to reflect areas of risk; and
 - (vi) part of line and senior management development.

Record Keeping

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

Identification, Rectification and Reporting

- (m) Develop a system to identify and classify compliance failure so that systemic and recurring problems are rectified.
- (n) Ensure that compliance problems are rapidly reported to the Compliance Manager.

Monitoring & Review

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

Accountability

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

Approval of Compliance Program

- (q) A. Royale 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 A. Royale and has no conflict of interest in providing this service to A. Royale.
- (r) A. Royale 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 the date of this Undertaking coming into effect.

Audit of the Compliance Program

- (s) A. Royale 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.
- (t) The audit will be conducted by a suitably qualified compliance professional who is independent of A. Royale and has no conflict of interest in providing audit services to A. Royale.
- (u) The auditor will review and report in writing on:
 - (i) A. Royale's adherence to this Undertaking;
 - (ii) The particulars of the compliance program, A. Royale's implementation of the compliance program and the achievement of its objectives; and

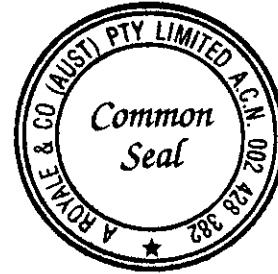
- (iii) Any recommended changes to the compliance program that may be necessary to ensure achievement of its objectives.
 - (v) A. Royale will make changes to the compliance program as recommended by the auditor in the report referred to above.
 - (w) If requested by the Commission, A. Royale will provide forthwith to the Commission:
 - (i) the name of the auditor;
 - (ii) the information upon which it relies in determining the auditor is independent from A. Royale; and
 - (iii) information showing whether any recommendations by the auditor have been implemented.
18. These undertakings will be operative for five years commencing from the date the undertakings are executed by both parties.

ACKNOWLEDGEMENTS

- A. Royale acknowledges that the Commission will make this Undertaking available for public inspection.
- A. Royale acknowledges that the Commission may issue a media release about this Undertaking and may, from time to time, publicly refer to the Undertaking.
- A. Royale acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct of A. Royale.

IN WITNESS TO THIS UNDERTAKING

In Witness of this Undertaking the Common Seal
of **A. ROYALE & CO (AUST) PTY LTD** was
affixed hereunto by authority of the Board of
Directors in the presence of:



.....
Director

.....
Secretary

Accepted by the **AUSTRALIAN COMPETITION & CONSUMER COMMISSION**
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974

.....
Professor Allan Fels, Chairman

This 8 day of August 2001.

ANNEXURE A

REFUND OFFER AND APOLOGY From A. Royale & Co (Aust) Pty Ltd

A. Royale advises consumers that between April 1998 and July 2000 it supplied Kmart and Big W stores with belts labelled "leather" when, in fact, the belts were made of bonded or reconstituted leather, and other non-leather materials. They should not have been labelled "leather". A. Royale advised the ACCC of the mislabelling, withdrew the belts from sale and relabelled them.

A. Royale acknowledges that by incorrectly labelling its belts it may have engaged in misleading or deceptive conduct or made false representations in relation to the quality or composition of goods.

A. Royale offers all consumers who have been misled into purchasing wrongly labelled belts a refund of the purchase price. Consumers should first contact A. Royale on 1800 ... for full information regarding which belts have been wrongly labelled. Affected consumers will receive a postage-paid envelope from A. Royale, in which they may return the wrongly labelled belt for a full refund of its purchase price.



This Notice has been placed at the cost of A. Royale & Co (Aust) Pty Ltd as the result of an undertaking given to the Australian Competition and Consumer Commission.