



## TRADE PRACTICES ACT 1974

### UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION UNDER SECTION 87B OF THE TRADE PRACTICES OF THE TRADE PRACTICES ACT 1974

#### BACKGROUND

1. Freelaw Pty Ltd (ACN 083 094 437) trading as Super Toyworld ("Toyworld") is a company incorporated in Queensland carrying on business and engaged in trade and commerce, inter alia, as a retailer of bicycles in the Northern Territory.
2. In December 1999 and June 2001, staff of the Australian Competition and Consumer Commission ("ACCC") conducted surveys of bicycle retailers in the Darwin and Palmerston area to ensure that the bicycles being sold complied with the mandatory safety standard AS:NZS 1927:1998 Safety requirements – Pedal bicycles ("the Standard").
3. In December 1999, some bicycles sold by Toyworld were found not to comply with the Standard:
  - the end protectors on the brake cables were missing
  - no bells or warning devices were attached
  - no reflectors were attached
  - no owners manuals were attached
4. In December 1999, the ACCC wrote to Toyworld expressing concern that Toyworld may be in breach of section 65C of the Trade Practices Act 1974 ("the Act") by supplying bicycles, intended for cycling/road use, that did not comply with the Standard. In particular, the ACCC requested that Toyworld ensure that bicycles sold to the public comply with the standard and to put in place a plan to ensure that future supplies of bicycles comply with the Standard. Toyworld agreed to comply with this request.
5. On a subsequent visit to Toyworld staff found that all bicycles complied with the Standard.
6. On 29 June 2001, the ACCC visited Toyworld as part of the 2001 bicycle survey and again identified bicycles not compliant with the Standard:
  - the end protectors on the brake cables were missing
  - no bells or warning devices were attached
  - no reflectors were attached
7. The non-compliance was raised with the Manager at the time and he assured ACCC staff that the faults identified would be rectified immediately. On 12 July 2001, staff visited Toyworld to find that some bicycles were still not compliant with the Standard. Of particular concern was that the end protectors were missing from the brake cables.
8. Toyworld acknowledges that by providing bicycles for sale not compliant with the Standard, Toyworld has contravened section 65C.

The ACCC has agreed to accept this undertaking from Toyworld under section 87B of the Act.

## **COMMENCE OF UNDERTAKINGS**

9. This undertaking comes into effect when:

- (a) the undertaking is executed by Toyworld; and
- (b) the undertaking so executed is accepted by the ACCC

### **Undertakings**

#### **10. Supply of Bicycles**

Toyworld undertakes:

- that Toyworld will cease supplying bicycles that do not comply with the Standard; and
- ensure that all future supplies of bicycles comply with the Standard.

#### **11. Advertisement**

Toyworld undertakes that:

- Toyworld will at its own expense, within two weeks of the signing of this undertaking, place an advertisement in the Saturday NT News in the size and form set out in Annexure A to this undertaking;
- The advertisement will be at least two columns and be printed in at least 10 point text; and be placed within the first 5 pages of the newspaper.

#### **12. Corporate Compliance Program**

Toyworld undertakes that:

- Toyworld will create and maintain at its own expense a trade practices compliance program. In implementing this compliance program Toyworld will have regard to the Australian Standard AS 3806 Compliance Programs, with particular regard to Part V of the Act (“the Program”).
- The Program will aim to create a culture of compliance within Toyworld and to prevent, so far as is reasonably possible, any contraventions of the Act by Toyworld, or its officers, employees or agents.
- Toyworld will analyse and respond to the trade practices matters resulting in this undertaking.
- Toyworld will identify risk areas for trade practices breaches and develop systems to eliminate or minimise these risks.
- Toyworld will take action internally against those responsible for breaches and will not indemnify them.

- Toyworld will provide practical and verifiable training for all relevant staff and management so that breaches and potential breaches may be prevented or otherwise detected, referred and acted upon.

## **Implementation**

Toyworld will commence to develop and implement the trade practice compliance program as follows:

- Within 2 months of the date of the signing of the undertaking provide a draft of the compliance program to the ACCC.
- Within 4 months of the date of the signing of the undertaking fully implement the compliance program.

In particular Toyworld shall implement the following steps:

### **(a) Commitment**

- Appoint a compliance manager with overall responsibility for compliance systems.
- Implement adequate procedures to check for trade practices compliance.
- Ensure compliance procedures are understood by staff and other relevant third parties such as agents and advertising representatives.

### **(b) Policy and Procedures**

- Produce a compliance manual, a copy of which shall be distributed to all staff.

### **(c) Management Responsibility**

- Detail the processes involved in establishing, implementing and maintaining the compliance program and the roles and responsibilities of management, staff and other stakeholders.
- Ensure that line managers are responsible for compliance in their immediate area.
- Ensure that compliance problems are rapidly reported to the Compliance Manager.
- Education and training, designed to have the relevant staff conversant with the provisions of the Act to a level where
  - general staff can avoid obvious contraventions and can identify more complex potential trade practice problems for referral to the compliance manager
  - persons with responsibilities within the Toyworld compliance infrastructure can effectively carry out those responsibilities
  - the compliance manager can address more complex trade practices issues and (if that person is not legally trained and able to give the relevant advice) identify issues which require referral to solicitors

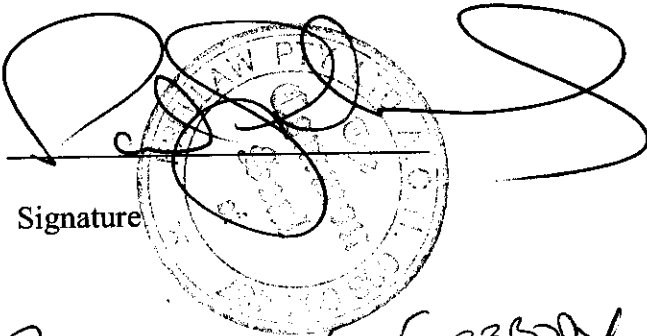
### **(d) Resources & Authority**

- 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
- Ensure that staff has access to the necessary materials, including compliance manuals and training, reference material and databases.

Dated: August 2001

THE COMMON SEAL of Freelaw Pty Ltd )

was duly affixed in accordance with )  
its Articles of Association in the presence of )


  
Signature

PAUL VICTOR FREEBODY

Print Name

PAUL FREEBODY Director

Office Held

  
Signature

KIM FREEBODY

Print Name

KIM FREEBODY Secretary

Office Held

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B  
of the Trade Practices Act 1974.



Chairperson

Dated: 5 September  
August 2001

## Annexure A

ACCC CORRECTIVE ADVERTISING

### **An apology from Freelaw Pty Ltd trading as Super Toyworld**

The Australian Competition and Consumer Commission (ACCC) has raised concerns with Toyworld for supplying pedal bicycles that do not comply with the mandatory standard, AS/NZ 1927:1998 pedal bicycles – safety requirements (the Standard).

Toyworld advises that it has supplied bicycles which were missing:

- End protectors on brake cables
- Bells or warning devices
- Reflectors

The Standard requires pedal bicycles to have:

- Control cables provided with end protectors
- A bell or suitable warning device
- Front, rear, side and pedal reflectors

It is a breach of section 65C of the *Trade Practices Act 1974* to supply bicycles that have a prescribed consumer product safety standard and which do not comply with that standard.

Toyworld acknowledges to have supplied bicycles that do not comply the Standard and is offering to rectify all bicycles purchased from Toyworld that are non-compliant with the Standard.

For further information please contact Toyworld at:

Jape Homemaker Village  
Lot 9585 Bagot Road, Millner, NT 0810  
or phone 8948 3600



**Australian Competition & Consumer Commission**

This corrective advertisement has been placed at the cost of Toyworld pursuant to undertakings given to the Australian Competition and Consumer Commission.