



## **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**

**HARBIN PTY LTD**

**(ACN 005 339 328)**

#### **PERSONS GIVING THE UNDERTAKING**

1. This undertaking is given to the Australian Competition and Consumer Commission (the ACCC) by Harbin Pty Ltd ACN 005 339 328 (Harbin), trading as Ray's Outdoors, of 340 Melbourne Road, North Geelong in the state of Victoria under section 87B of the *Trade Practices Act 1974* (the Act).

#### **BACKGROUND**

2. Harbin is incorporated in the State of Victoria and its principle activities include the retailing of outdoor clothing, footwear, work wear, LP gas barbeques and camping equipment through Ray's Outdoors stores. This includes elastic luggage straps.
3. The ACCC is responsible for ensuring compliance with mandatory consumer product safety standards under the Act. The mandatory consumer product safety standard applicable to elastic luggage straps is the Trade Practices (Consumer Product Safety Standards) Amendment Regulation 1999 (No.1) (the Regulation).

4. In 15 June 2004 staff of the ACCC visited a number of Ray's Outdoors stores and purchased elastic tie down luggage straps.
5. An examination of the elastic tie down luggage straps purchased from Ray's Outdoors showed that the Wild Country brand elastic tie downs did not appear to comply with the Regulation. The Regulation made in October 1999 (which came into effect on 1 June 2001) requires that elastic tie down luggage straps have a permanently attached label containing the following warning:

**WARNING. Avoid eye injury. DO NOT overstretch. ALWAYS keep face and body out of recoil path. DO NOT use when strap has visible signs of wear or damage.**

According to the Regulation the word 'WARNING' is to be in upper case black letters of not less than 4mm in height; and the words 'DO NOT' and 'ALWAYS' are to be in upper case, black letters of not less than 2mm in height. The remaining text must be in lower case black letters not less than 2mm in height. The label must have a yellow background and be clearly displayed.

Wild Country brand elastic tie down luggage straps purchased from Ray's outdoors contained the following attached label:

**WARNING: Avoid eye injury. Elastic may rebound. Do not overstretch.**

The words are printed in red on a white background. The word 'WARNING' is in upper case of approximately 5mm in height while the remaining words are in upper case of approximately 3mm in height.

6. On 23 June 2004, the ACCC wrote to Harbin advising Harbin that the ACCC was of the view that Harbin had contravened section 65C of the Act (the letter).

7. Harbin has confirmed that it imported approximately 8500 Wild Country brand elastic tie down luggage straps, the last delivery being received in November 2000. The straps were sold at most Ray's Outdoors stores, located in Victoria only.
8. Once Harbin was notified of the problem by the ACCC it acted promptly to take corrective action. Harbin did the following:
  - a) within 48 hours of the receipt of the letter, Harbin withdrew all Wild Country brand elastic tie down luggage straps from point of sale in Ray's Outdoors stores in Victoria; and
  - b) Harbin volunteering to relabel Wild Country brand elastic tie down luggage straps to comply with the Regulation; and
  - c) volunteering to place recall notices in the front of all Ray's Outdoors stores in Victoria; and
  - d) volunteering to place recall notices in the Melbourne Herald Sun, Geelong Advertiser, Bendigo Advertiser, Ballarat Courier and Sunraysia Daily, being newspapers in the areas where Ray's Outdoors has stores in Victoria.

## **UNDERTAKING**

9. In resolution of the matters referred to above, Harbin undertakes that:
  - (a) it will relabel Wild Country brand elastic tie down luggage straps to comply with the regulation; and
  - (b) the remainder of the recall action of Wild Country brand elastic tie down straps will be carried out in the terms described by Harbin in paragraph eight (c) and (d) of the undertaking, and detailed in Annexure A and B to the undertaking; and
  - (c) it will not supply or offer to supply an elastic luggage strap to which a prescribed standard relates, in circumstances where the elastic luggage strap does not comply with the prescribed standard; and

- (d) it will use its best endeavours to implement an upgraded corporate trade practices compliance program, with a focus on prescribed product safety standards, that is consistent with the Australian Standard on Compliance Programs AS 3806, though tailored to Harbin's circumstances which;
  - (i) demonstrates commitment to a policy of compliance with the Act and will embed a culture of compliance throughout Harbin; and
  - (ii) identifies risk areas for trade practices contraventions and develops systems to eliminate or minimise these risks; and
  - (iii) provides that Harbin will take appropriate action concerning any persons within its control who is responsible for contraventions of the Act and will not indemnify any such person from the consequences of suit or settlement of any contraventions of the Act; and
  - (iv) provide practical and verifiable training for all Directors, employees and agents of Harbin and its subsidiaries so that contraventions and potential contraventions of the Act may be prevented or otherwise detected, referred and acted upon.

In respect of the above upgraded corporate trade practices compliance program, Harbin undertakes to implement the arrangements outlined in Annexure C to this undertaking.

#### **COMMENCEMENT OF UNDERTAKING**

10. This undertaking comes into effect when;
  - (a) this undertaking is executed by Harbin; and
  - (b) the ACCC accepts the undertaking so executed.

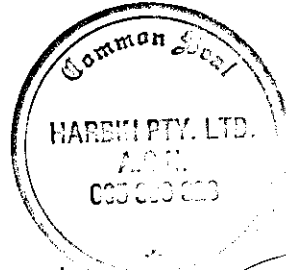
## **ACKNOWLEDGEMENTS**

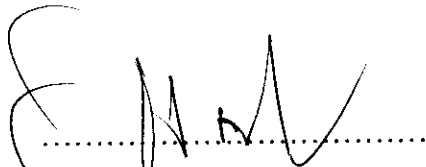
11. Harbin acknowledges the ACCC's rights to make this undertaking available for public inspection.
12. Harbin acknowledges that the ACCC may issue a media release in relation to this undertaking and may from time to time publicly refer to the undertaking.
13. Harbin acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the stated conduct.


IN WITNESS of this undertaking and its agreement, Harbin Pty Ltd, ACN 005 339 328, executes this agreement by authority of the board or directors in the presence of:

The 15 day of 9 2004

THE COMMON SEAL of  
HARBIN PTY LTD  
was affixed in accordance with  
Articles of Association:



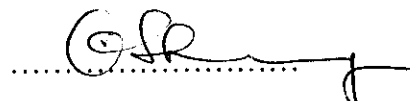
  
.....  
Director / Secretary

  
.....  
Director

R. Frost  
.....  
Name (printed)

R. Frost  
.....  
Name (printed)

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

  
.....  
Graeme Julian Samuel  
Chairman

This 21<sup>st</sup> day of September 2004

## ANNEXURE A

1. The prominent recall notice for Wild Country brand elastic tie down luggage straps is shown in Annexure B. The prominent recall notice will be a size no less than 2 column x 12 cm.
  
2. Harbin will place the prominent recall notice for Wild Country brand elastic tie down luggage straps, at its cost, in each of the following newspapers;
  - a) the Melbourne Herald Sun;
  - b) the Geelong Advertiser;
  - c) the Ballarat Courier;
  - d) the Sunraysia Daily;
  - e) the Bendigo Advertiser; and
  - f) the Shepparton Advertiser.

and the prominent recall notice will appear in each of the relevant newspapers on each of the following dates;

- g) 11<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup> and 22<sup>nd</sup> of September 2004.
  
3. Harbin will place the prominent recall notice for Wild Country brand elastic tie down luggage straps in the front of all Ray's Outdoors stores in Victoria, coinciding with the recall notices places in newspapers on the following date:
  - a) 11<sup>th</sup> day of September 2004;

and Harbin will retain those recall notices in the front of all its Ray's Outdoors stores for a period of no less the 14 days.

## **ANNEXURE B**

**Recall notice for Wild Country brand elastic tie down luggage straps**



# Product Recall

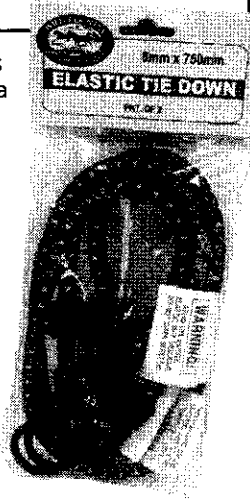
As one of Australia's largest leisure retailers, Ray's Outdoors prides itself on value, quality & service.

In our continued commitment to comply with Australian standards, we wish to recall this product due to a labelling issue. The warning should read:

**WARNING.** Avoid eye injury.  
**DO NOT** overstretch.  
**ALWAYS** keep face and body out of recoil path.  
**DO NOT** use when strap has visible signs of wear or damage.

Please return to any Ray's Outdoors store in Victoria for a full refund.

North Geelong	5278	7633
Ballarat	5331	1888
Bendigo	5442	1103
Dandenong	9706	9050
Fountain Gate	9704	1254
Frankston	9770	0012
Gardenvale	9596	3816
Hoppers Crossing	9749	4129
Geelong	5229	3278
Mentone	9584	6644
Mildura	5021	0100
Nunawading	9877	8455
Preston	9484	1422
Ringwood	9870	7777
Shepparton	5821	8900
Taylors Lakes	9449	4333
Waurm Ponds	5241	8855



**Ray's** Outdoors

## ANNEXURE C

### CORPORATE TRADE PRACTICES COMPLIANCE PROGRAM

1. Harbin shall use its best endeavors to ensure that the upgraded corporate trade practices compliance program (**the Compliance Program**) is designed and implemented so as to comply with each of the following requirements:
  - (a) The Compliance Program is to cover all officers, employees, representatives and agents of Harbin who perform duties in Australia:
  - (b) The Compliance Program is to inform the officers, employees, representatives and agents of Harbin who perform duties in Australia of the application of the *Trade Practices Act 1974* (the Act), with specific regard to conduct that may breach Part V of the Act, to Harbin's business:
  - (c) Harbin will appointment a senior officer, within 3 months of the date of this Undertaking coming into effect, whose responsibilities are to include the maintenance and continuing implementation of the Compliance Program and who reports directly to the Board (**the Compliance Officer**):
  - (d) The Compliance Program is to allow officers, employees, representatives and agents of Harbin to confidentially notify the Compliance Officer of potential breaches of the relevant provisions of the Act and the Compliance Program by Harbin:
  - (e) The Compliance Program is to include an appropriate complaints handling system consistent with Australian Standard AS4269-1995:
  - (f) The Compliance Program must require the Compliance Officer to keep and maintain a register of potential breaches and/or complaints related to the relevant provisions of the Act;

- (g) The Compliance Program is to ensure that compliance with the Act is discussed at regular Board and/or senior management meetings of Harbin:
  - (h) The Compliance Program is to ensure that compliance with the Act becomes part of normal business practice within Harbin:
  - (i) The Compliance Program must require the development of a disciplinary policy or code for those employees and agents of Harbin who do not comply with the Compliance Program or the relevant provisions of the Act:
  - (j) The Compliance Program must require that compliance with the Compliance Program and the relevant provisions of the Act is a Key Performance Indicator for all employees of Harbin:
  - (k) The Compliance Program is to provide for the conducting of regular trade practices training (at least once a year) by internal legal counsel and/or a solicitor or compliance professional with expertise in trade practices law for all officers, employees, representatives and agents of Harbin: and
  - (l) The Compliance Program is to provide for an induction program on trade practices compliance issues to be undertaken by all new officers, employees, representatives and agents of Harbin within three months of his or her engagement.
2. Harbin shall, at its own expense, within 3 months of the date of this Undertaking coming into effect, cause to be produced and provided to the ACCC copies of each of the documents constituting the Compliance Program, together with a letter confirming that the Compliance Program has been implemented in accordance with the requirements of this Undertaking.

3. In order to ensure that the Compliance Program complies with each of the requirements set out above, Harbin shall retain an independent compliance professional with expertise in trade practices law (**the Compliance Professional**), for the purpose of assisting in developing the Compliance Program. The Compliance Professional will qualify as independent on the basis that he or she is not a present or past staff member or director of Harbin and has no shareholding or other interests in Harbin.
  
4. Harbin shall, at its own expense and for the purpose of ensuring that it maintains and continues to implement the Compliance Program, cause annual audits of the Compliance Program (**the Audits**) to be carried out in accordance with each of the following requirements:
  - (a) Harbin shall ensure that the Audits are carried out by an independent compliance professional with expertise in trade practices law (**the Auditor**). The Auditor will qualify as independent on the basis that he or she:
    - (i) is not a present or past staff member or director of Harbin;
    - (ii) has not acted or does not act for Harbin;
    - (iii) is not retained by Harbin in any other capacity, either currently or in the past;
    - (iv) has not and does not provide consultancy or other services for Harbin; and
    - (v) has no shareholding or other interests in Harbin.
  
  - (b) Harbin shall use its best endeavors to ensure that the Auditor:

- (i) conducts a critical review as to whether the Compliance Program has been implemented in compliance with each of the requirements of this Undertaking; and
  - (ii) makes such recommendations as he/she considers necessary to ensure that the Compliance Program complies with each of the requirements of this Undertaking;
- (c) Harbin shall ensure that the Audits are able to be conducted by the Auditor on the basis of any relevant information in Harbin's possession or control, including without limitation any of the following sources of information:
  - (i) investigations of any officers, employees, representatives and agents of Harbin to find out how compliance processes are implemented and understood;
  - (ii) enquiries of customers about their experience with Harbin and its products/ services;
  - (iii) Harbin's records, including Harbin's complaints register and any documents relevant to Harbin's training or induction program; and
  - (iv) documents created by Harbin's consultants and solicitors for use in the Corporation's Compliance Program.
- (d) Harbin shall use its best endeavors to ensure that the first Audit is completed within one year and one month of this Undertaking coming into effect and that each subsequent Audit is completed within one year thereafter;
- (e) Harbin shall use its best endeavors to ensure that the findings in relation to each of the Audits are set out in a written report (**the Audit**

**Reports)** and provided to Harbin within 14 days of the completion of each of the Audits. The Audit Reports are to include a record of any potential contraventions of relevant provisions of the Act and the Compliance Program that were identified during the Audits and the action taken to address the potential contraventions.

5. Harbin shall implement promptly and with due diligence the recommendations which the Auditor may make that are reasonably necessary to ensure that Harbin maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
6. Harbin shall, at its own expense, cause to be produced and provided to the ACCC copies of each of the Audit Reports within 14 days of Harbin receiving them.
7. Harbin shall also, at its own expense, if requested by the ACCC, provide copies of any other documents and information in respect of matters which are the subject of the Compliance Program.
8. Harbin, in implementing the Compliance Program will:
  - a) maintain up to date copies, at its business premises, of all prescribed consumer product safety standards and prescribed consumer information standards that relate to products that Harbin supplies; and
  - b) ensure that products it supplies that are subject to a prescribed safety and/or information standard under the Act, comply with the relevant standard; and
  - b) develop a recall procedure that enables swift recovery of products that do not comply with prescribed safety and/or information standards under the Act.