



## TRADE PRACTICES ACT 1974

### UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B

BY

LOVE N CARE PTY LTD  
ACN 050 109 923

#### PERSONS GIVING THIS UNDERTAKING

1. These undertakings are given to the Australian Competition and Consumer Commission (ACCC) by:

Love N Care Pty Ltd ACN 050 109 923 (Love N Care) of 297 Canterbury Road Revesby, NSW.

Under section 87B of the *Trade Practices Act 1974* (TPA).

#### BACKGROUND

2. Love N Care is incorporated under the Corporations Law and registered in New South Wales.
3. Love N Care is a wholesaler of baby products which it imports and exports. Love N Care imported into Australia a number of baby walkers, described as 'Construction' and 'Police' (the baby walkers) which were distributed to retailers for distribution and supply by retail sale. The baby walkers were labelled in red upper case writing on a white background:

#### WARNING

AVOID INJURIES. BABY CAN MOVE FAST IN THIS  
WALKER. NEVER LEAVE BABY UNATTENDED.  
DO NOT ALLOW NEAR STEPS, STAIRS, HEATER  
ELECTRICAL CORDS OR HOT OBJECTS

4. Baby walkers manufactured or imported into Australia must be labelled in accordance with the *Trade Practices (Consumer Product Safety Standard) (Baby Walkers) Regulations 2002* (the Standard) which was gazetted on 5 September 2002. The Standard requires that baby walkers are labelled with warning instructions (as per section 9.3 of F977-00 as referenced in regulation 4 of the Standard) (the warning instructions). The warning instructions are to be in contrasting colours, permanent, conspicuous and in sans serif style font. In warning instructions, the word "WARNING" shall not be less than 5mm high and the remainder of the text shall be in letter not less than 2.5mm high. The warnings shall include the following exactly as stated below:

### **WARNING**

Never leave child unattended. Always keep child in view while in walker.

The baby walkers should also be labelled with a separate stairs warning. "WARNING" shall not be less than 5mm high and shall be in black lettering on orange background surrounded by black border, the remainder of the text shall be characters whose upper case be at least 2.5mm high and shall be black lettering on a white background. The stairs warning shall be stated exactly as follows:

### **WARNING – STAIR HAZARD**

Avoid serious injury or death

Block stairs/steps securely before using walker.

Further, the walker shall address the following (there is no mandatory wording for these required statements):

- Use only on flat surfaces free from objects that could cause the walker to tip over.
- To avoid burns, keep child away from hot liquids, ranges, radiators, space heaters, fireplaces, etc.

5. Section 65C of the *Trade Practices Act 1974* (the TPA) prohibits a company from supplying consumer goods that do not comply with mandatory product safety standards.
6. Following an investigation by the ACCC, the ACCC reached the view that Love N Care, by distributing the baby walkers to a number of retailers for distribution and supply by retail sale, had contravened section 65C of the TPA, in that the baby walker did not meet the requirements of the Standard in that they were not labelled with the appropriate warning instructions.
7. The ACCC raised its concerns about the non-compliance of the baby walkers with Love N Care in August 2004. Love N Care took immediate steps to advise the overseas manufacturer that the baby walkers labelling did not conform with the Standard and organised for stickers with the correct warning label to be placed on the baby walkers in the future. Further Love N Care informed retailers to whom the baby walkers had been supplied that the baby walkers did not comply with the Standard, and advised them to remove any remaining stock of those baby walkers from sale. Love N Care also organised for stickers containing the correct labelling to be provided to retailers of the baby walkers to be placed on stock they were in possession of so as it could be returned to display.
8. Love N Care acknowledges and admits that its' supply of baby walkers described above contravened section 65C of the TPA.

## **COMMENCEMENT OF UNDERTAKINGS**

9. This Undertaking comes into effect when:
  - a. The Undertaking is executed by Love N Care; and
  - b. The ACCC accepts the Undertaking so executed.

## **UNDERTAKINGS**

10. Love N Care undertakes to the ACCC for the purposes of section 87B of the TPA that:
  - (a) It will not in future supply any baby walkers that do not fully comply with the relevant mandatory consumer product safety and information standards that apply.
  - (b) It will provide the correct labelling to its' manufacturer for future reference.
  - (c) It shall ensure that stickers with the correct warning as per the Standard are printed and attached to any non-compliant baby walkers in the possession of Love N Care. Further, it will provide these stickers to any retailer/distributor to whom Love N Care has provided baby walkers.
  - (d) Ten percent of all inward container stock will be opened randomly and checked to ensure the correct warning labels are present on the baby walkers. If there are any problems with the random check the balance of the stock within that container will be isolated and further checks of stock will be undertaken to ensure compliance with the Standard. A ledger book will be kept for records indicating the number of walkers checked at the warehouse (and the date that these checks were completed) and if there were any non-complaint baby walkers found with the container. Any non-compliant baby walkers will be raised with the manufacturer immediately.
  - (e) It will, by its sales staff or other servants or agents, within 14 days of this Undertaking taking effect, complete a cycle of attendances upon those retailers to which it supplies to ensure that the baby walkers comply with the Standard.
  - (f) Love N Care will provide stickers with the correct labelling as per the Standard to all parties to whom the baby walkers were distributed to.
  - (g) Spare warning labels will be kept in Love N Care's Sydney warehouse in case they are required.

11. Love N care undertakes that, at its own expense, it shall cause to be published in a major daily newspaper in each State or Territory of Australia in which non-complaint baby walkers were distributed by Love N Care, an advertisement in the in the size and form set out in Annexure A to this Undertaking and shall use its best endeavours to ensure that such advertisement is:
  - (a) Of a size not less than three columns wide by 15cm deep;
  - (b) In text which is in a type size no less than 10 point;
  - (c) Within the first 10 pages of each newspaper; and
  - (d) Published once in each newspaper with the notice appearing within 14 days of the signing of this Undertaking.
12. Love N Care will:
  - (a) At its own expense in a period of not more than six months of this Undertaking taking effect, use its best endeavours to design, implement and make provision to maintain and audit, a Trade Practices Compliance Program (Compliance Program) that, while appropriate to the size and nature of Love N Care's business, is consistent with the Australian Standard for Compliance Programs AS-3806 relating to those provisions of the TPA which are relevant to the conduct of its business but must specifically include section 65C of the TPA. The Compliance Program shall be maintained for a period of not less then three years;
  - (b) prior to the implementation of the Compliance Program, ensure the Compliance Program is approved by a suitably qualified compliance professional (Compliance Professional) with expertise in trade practices law who is independent of Love N Care and has no conflict of interest in providing this service to Love N Care;
  - (c) retain the Compliance Professional to provide the ACCC with a report confirming that the Compliance Program has been implemented and is in accordance with this Undertaking. This report will be provided to the ACCC within six months of the Compliance Program coming into effect;
  - (d) cause a review of the Compliance Program to be undertaken by the Compliance Professional annually from the date of this Undertaking for a period of three years. The Compliance Professional shall conduct the reviews and report to the ACCC

within 30 days of each annual review to confirm that the review has been conducted.

#### ACKNOWLEDGEMENTS

17. Love N Care acknowledges that the ACCC will make this Undertaking available for public inspection.
18. Love N Care further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
19. Love N Care further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct.
20. Love N Care further acknowledges the reports referred to in this Undertaking and the Trade Practices Compliance Program as in force from time to time may be held with this Undertaking on the Public Register.

IN WITNESS of these Undertakings and its agreement the Common Seal of Love N Care Pty Ltd (ACN 050 109 923) was hereunto affixed by authority of its Board of Directors in the presence of:



Director:

Terry Elchukh

Director/Secretary:

Gazi Elchukh

DATED this 7<sup>th</sup> day of December 2004.

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

Chairman:

[Signature]

DATED this 17<sup>th</sup> day of December 2004.

## "Annexure A"

### Public Notice

#### Love N Care Pty Ltd Baby Walkers

Love N Care Pty Ltd (Love N Care) would like to advise consumers that it has supplied baby walkers that do not comply with the *Trade Practices (Consumer Product Safety Standard) (Baby Walkers) Regulations 2002* (the Standard) in that the baby walkers are not labelled in accordance with the Standard. The fault was brought to the attention of Love N Care by the Australian Competition and Consumer Commission.

The Standard requires baby walkers to be labelled:



#### WARNING

Never leave child unattended. Always keep child in view while in walker

and



#### WARNING – STAIR HAZARD

Avoid serious injury or death

Block stairs/steps securely before using walker

Baby walkers should also contain warnings with regards to other safety issues such as flat surfaces and injury.

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

Love N Care is offering to re-label all non-compliant baby walkers and advises any consumers who may have purchased the baby walkers to return them to the store where they were purchased and the correct labels will be applied. The correct labels will also be available directly from Love N Care.

For further information please contact Mr Gary Martin at Love N Care at:

Love N Care Pty Ltd

(insert address here)

(insert telephone # here)

insert ACCC logo here

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