



Section 87B Undertaking
by Coventry Group Limited ACN 008 607 102 trading as
Independent Motor Mart

THIS UNDERTAKING is given to the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (“ACCC”)** by **COVENTRY GROUP LIMITED ACN 008 670 102 (“COVENTRY”)** of 253 Walter Road, Morley, Western Australia 6062 trading as **INDEPENDENT MOTOR MART (“IMM”)** under section 87B of the *Trade Practices Act 1974*.

BACKGROUND

- 1 IMM sells automotive products and accessories in the Northern Territory as a business division of Coventry.
- 2 Elastic luggage straps are the subject of a mandatory safety standard and must be labelled in accordance with the *Trade Practices (Consumer Product Safety Standards) Regulations 1979 (“Regulations”)*. Section 65C of the *Trade Practices Act 1974 (“Act”)* requires compliance with mandatory safety standards.
- 3 On 6 October 2004, staff of the ACCC Darwin office attended the IMM Casuarina store and located a Ratchet Tie Down Set - 12 piece (“**Ratchet Set**”) for sale, which was supplied to IMM by Pro-Kit Pty Ltd. The Ratchet Set included elastic luggage straps that did not have the label required by the Regulations.
- 4 IMM and Coventry have cooperated with the ACCC throughout its investigations. IMM agreed to withdraw the Ratchet Set from sale at IMM stores.
- 5 On 13 December 2004, a staff member from the ACCC Darwin office again visited the IMM Casuarina store and bought a Ratchet Set, which would indicate that the withdrawal of the Ratchet Set from sale was not fully successful.
- 6 The ACCC has expressed concern at IMM’s compliance with section 65C of the Act and with the Regulations and requested that IMM implement an effective trade practices compliance program for IMM management and staff dealing with mandatory product safety standards.
- 7 Coventry acknowledges that IMM, by its conduct has contravened section 65C of the Act.

- 8 IMM and Coventry are committed to ensuring consumer safety in the products they sell, complying with the law and co-operating with the ACCC. In order to overcome the ACCC's concerns, IMM has offered to give this Undertaking to the ACCC.
- 9 Coventry is currently developing a detailed, comprehensive electronic trade practices compliance program for all Coventry staff across the entire Coventry group, including IMM staff ("**Coventry Program**"). However, as this comprehensive, group-wide program will require one to three months to be completed and implemented, IMM will implement the IMM Program in order to address promptly the ACCC's concerns regarding the IMM business and ensure that all IMM staff are aware of the relevant product safety requirements under the Regulations as an interim measure.
- 10 This Undertaking is given by Coventry only for IMM. Nothing in this Undertaking binds Coventry in respect of any of its operations other than IMM.

COMPLIANCE PROGRAM

Coventry trading as IMM undertakes for the purposes of section 87B of the *Trade Practices Act 1974* ("**the Act**") that it will:

1. establish and implement a Trade Practices Compliance Program covering the product safety provisions of the Act, in accordance with the requirements set out in '**Annexure A**', for the employees or other persons involved in IMM's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to the requirements of the product safety provisions of the Act within one month of the date of this Undertaking coming into effect;
2. maintain and continue to implement the Trade Practices Compliance Program from the date of this Undertaking coming into effect until this Undertaking ceases to have effect; and
3. provide, at its own expense, a copy of any documents required by the Commission in accordance with **Annexure A**.

COMMENCEMENT OF UNDERTAKING

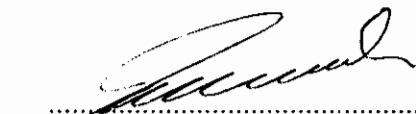
1. This Undertaking comes into effect when it is executed by Coventry and the ACCC accepts the Undertaking so executed, and applies until the Coventry Program is implemented in all IMM stores or the date two years after this Undertaking takes effect, whichever occurs first.

2. Coventry will inform the ACCC when the Coventry Program commences and will provide the ACCC with a copy of those parts of the Coventry Program that relate to Product Safety, the role of the ACCC, enforcement and penalties within 2 weeks of its implementation in all IMM Stores.

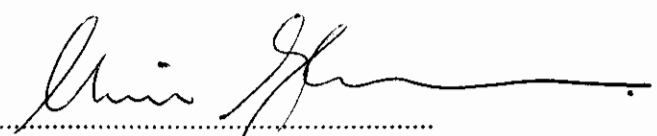
ACKNOWLEDGMENTS

1. The ACCC may make this undertaking available for public inspection.
2. The ACCC may issue a media release in relation to the undertaking and may from time to time publicly refer to the undertaking.
3. This undertaking in no way derogates from the rights of any other person, and any remedies they may have, arising from the stated conduct.

SIGNED by CHRISTOPHER J. GLENN)
 as authorised representative for)
COVENTRY GROUP LIMITED)
ACN 008 670 102 trading as)
INDEPENDENT MOTOR MART)
 in the presence of:)


)
 Signature of witness)

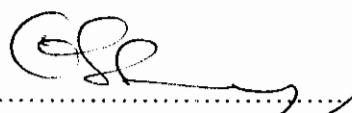
JOHN COLLE
)
 Name of witness (block letters))


)

By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of COVENTRY GROUP LIMITED ACN 008 670 102

ACCEPTED by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**

Dated: 27th June 2005



Chairperson ACCC

Annexure A

TRADE PRACTICES COMPLIANCE PROGRAM

Coventry trading as IMM will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within one month of the undertaking coming into effect, the Manager - IMM will assume the responsibilities of IMM Compliance Officer. The Compliance Officer will be responsible for the development, implementation and maintenance of the Compliance Program. The Compliance Officer will report regularly to Coventry management on any compliance issues.

Compliance Policy

2. IMM will, issue a policy statement outlining IMM's commitment to trade practices compliance (**the Compliance Policy**). IMM will ensure the Compliance Policy:
 - i. is written in plain language;
 - ii. contains a statement of commitment to compliance with the *Trade Practices Act 1974*;
 - iii. contains a requirement for all staff to report any compliance related issues and trade practices compliance concerns to the **Compliance Officer**;
 - iv. contains a clear statement that the IMM will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the Trade Practices Act and may not indemnify them.

Training

3. IMM will ensure that the Compliance Program includes a requirement for practical trade practices training, to be conducted within 3 months of this Undertaking coming into effect, for all employees of IMM whose duties could result in them being concerned with conduct that may contravene the product safety provisions of the Act. The training program will be designed to ensure the employees' awareness of the responsibilities and obligations in relation to the product safety provisions of the Act. IMM must ensure that the training is conducted by a solicitor or a compliance professional with expertise in trade practices law.
4. IMM will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new employees whose duties could result in them being concerned with conduct that may contravene the product safety provisions of the Act.

Product Safety

5. IMM will:
 - i. ensure that IMM employees responsible for the selection, ordering and/or checking of products have ready access at their place of work to all prescribed consumer safety standards that relate to products IMM supplies (whether in electronic or paper form);
 - ii. ensure that the products supplied that are subject to a prescribed safety and/or information standard under the Trade Practices Act, comply with the relevant standard; and
 - iii. develop, implement and maintain recall procedures that enable products supplied by IMM that do not comply with prescribed safety and/or information standards under the Trade Practices Act to be efficiently and effectively withdrawn from sale and any such products already sold to be rectified, replaced or refunded on request by the consumer.

Supply of Compliance Program Documents to the Commission

6. IMM shall, at its own expense, within 1 month of the date of this Undertaking coming into effect, cause to be produced and provided to the Commission copies of each of the documents constituting the Compliance Program. IMM will implement promptly and with due diligence any recommendations the Commission may make that are reasonably necessary to ensure that IMM maintains and continues to implement the Compliance Program in accordance with the Undertaking.

Review

7. IMM shall, at its own expense, cause a review of the Compliance Program (**the Review**) to be carried out after a period of 12 months from the date of implementation and in accordance with each of the following requirements:
 - (a) Scope of the Review – the Reviews should be broad and rigorous enough to provide IMM and the ACCC with supportable verification that IMM has in place a program that complies with each of the requirements detailed in paragraphs 1-6 above and to provide the review reports and opinions detailed at point 8 below.
 - (b) Independence of Reviewer - IMM shall ensure that the Review is carried out by a qualified, independent compliance professional with expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
 - i. did not design or implement the Compliance Program;
 - ii. is not a present or past staff member or director of Coventry or IMM;
 - iii. has not acted and does not act for Coventry or IMM in any trade practices related matters;
 - v. has not and does not act for or consult to Coventry or IMM or provide other services on trade practices related matters other than Compliance Program reviewing; and

- vi. has no significant shareholding or other interests in Coventry or IMM.
- (c) Evidence - IMM shall use its best endeavors to ensure that the Review is conducted on the basis that the Reviewer has access to all relevant sources of information in IMM's possession or control, including without limitation:
- i. enquiries of any officers, employees, representatives, agents and stakeholders of Coventry or IMM;
 - ii. IMM's records, including the company's complaints register/reports and any documents relevant to the IMM training or induction program; and
 - iii. documents created by the IMM's consultants and solicitors for use in IMM's Compliance Program.

7A. Where this Undertaking ceases to apply during the 12 month period mentioned in paragraph 7 above, the review shall only cover the period until the Undertaking ceased to apply.

Reporting

8. IMM shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in two separate reports as outlined below:
- (a) Company Compliance Program Review Report (to be provided to IMM)

IMM Trade Practices Review Report will provide particular and specific information regarding the performance of the Trade Practices Compliance Program including:

- i. if, and to what extent, the Compliance Program of IMM includes all the elements detailed in paragraphs 1-6 above;
- ii. if, and to what extent, the trade practices training is effective;

- iii. recommendations for rectifying deficiencies in i. – ii. that the Reviewer thinks are reasonably necessary to ensure that IMM maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

(b) ACCC Compliance Program Review Report (to be provided to the ACCC)

The Review Report to be provided to the ACCC will supply particular and specific information regarding the scope of the Review and the effectiveness of the Trade Practices Compliance Program including:

- i. details of the evidence gathered and examined during the review;
- ii. the name and relevant experience of the person appointed as the company Compliance Officer;
- iii. the Reviewer's opinion on whether IMM has in place an effective Trade Practices Compliance Program that complies with the requirements detailed in paragraph 1 – 6 above;
- iv. the Reviewer's opinion on if, and to what extent, IMM has complied with the Trade Practices Compliance Program component of the Undertaking;
- v. actions recommended by the Reviewer to ensure the continuing effectiveness of IMM's Compliance Program;
- vi. confirmation that any actual and potential inadequacies in IMM Compliance Program have been brought to the attention of the Compliance Officer and the governing body
- vii. if any previous Review Report exists, confirmation that the Reviewer has revisited any actual and potential inadequacies in IMM's Compliance Program identified in the previous Compliance Program

Review Report (to be provided to the IMM), and assessed how they have been addressed by IMM.

- vii. any reservations that the Reviewer might have about the reliability and completeness of the information to which the Reviewer had access in the conduct and reporting of the Review.
 - ix. any comments or qualifications concerning the review process that the Reviewer, in his or her professional opinion, considers necessary.
- (d) IMM will retain the Compliance Program Review Report (IMM) and cause the Compliance Program Review Report (ACCC) to be provided to the Commission within 14 days of its receipt from the Reviewer.

9. Recommendations - IMM shall implement promptly and with due diligence any recommendations the Reviewer makes that are reasonably necessary to ensure that IMM maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
10. IMM shall ensure that the first Review is completed within 12 months of this Undertaking coming into effect and, should the Coventry program not yet be implemented, that each subsequent Review is completed within one year thereafter while this Undertaking remains in force. IMM should instruct the Reviewer to ensure that the Review Reports are to be completed and provided to the Corporation within two months of each Review.
11. IMM shall, at its own expense, if requested by the Commission, provide copies of documents and information in respect of matters which are the subject of the Compliance Program. Nothing in this Undertaking requires the provision of documents that are subject to legal professional privilege.
12. In the event the Commission has sufficient reason to suspect that the Compliance Program is not being implemented effectively, IMM shall, at its own expense and if requested by the Commission, cause an interim or additional Review to be conducted and cause the resulting Review Report to be provided to the Commission.