



TRADE PRACTICES ACT 1974

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

BY

R.J.N. AUSTRALIA PTY LTD
(ACN 005 967 706)

PERSON GIVING THE UNDERTAKING

This Undertaking is given to the Australian Competition and Consumer Competition ("the ACCC") by R.J.N. Australia Pty Ltd ACN 005 967 706 of 14-28 Montague Street, South Melbourne in Victoria under section 87B of the *Trade Practices Act 1974* ("the Act").

SCOPE OF THIS UNDERTAKING

This Undertaking incorporates the Background, the Commencement of the Undertaking, the Undertaking and the Acknowledgements and Annexure A.

BACKGROUND

1. R.J.N. Australia Pty Ltd is a company incorporated in the State of Victoria. It operates as a garment importer and distributor, supplying retailers throughout Australia.
2. In May 2005, staff of the ACCC visited Harris Scarfe Australia Pty Ltd's retail outlet in Rundle Mall, Adelaide, South Australia and noted a number of children's terry towelling dressing gowns offered for sale. The garments were labelled:

"Strictly Sleep by RJN"
Style B42021

3. The garments also had a "Low Fire Risk" label sewn onto the collar. ACCC staff were concerned that the garments, which were made from 100% cotton and of a free-flowing design, may be incorrectly labelled with "Low Fire Risk". ACCC staff were concerned that the garments did not comply with requirements of the prescribed consumer product safety standard for children's nightwear and limited daywear and that therefore the suppliers may have contravened section 65C of the Act.

4. Under section 65C of the Act, a corporation is prohibited from supplying goods that do not comply with the requirements of a prescribed consumer product safety standard.
5. The prescribed consumer product safety standard is based on AS/NZS 1249:1999 Children's nightwear and limited daywear having reduced fire hazard ("the Standard"). The Standard covers all children's nightclothes and certain items of daywear including pyjamas, jumpsuits, nightdresses, dressing gowns, infant sleepbags, all-in-ones and loose-fitting boxer shorts. The Standard requires the clothes to meet one of four categories of safety. Where garments fail to meet one of those categories they cannot be legally sold.
6. The Standard further requires all clothing subject to the Standard to be clearly and permanently marked with the name or trademark of the manufacturer or supplier, the garment size in accordance with AS1182 and that a clearly visible fire hazard warning label be attached to the garment in accordance with the specifications of the Standard.
7. ACCC staff purchased samples of the garments and requested an independent testing authority to test the garments to the Standard. The garments were tested and failed to comply with the Standard. Specifically, any garment with a cellulosic content of more than 50%, such as "100% cotton", must pass Category 1 testing and conform to maximum length requirements. The garment failed the Category 1 test and exceeded the maximum length requirement.
8. The supplier may have further misled consumers by supplying garments with a representation that they are "Low Fire Risk" when in fact they fail to comply with the Standard. Sections 52 of the Act prohibits misleading or deceptive conduct and section 53(c) of the Act prohibits a corporation making false representations in relation to performance characteristics of the goods.
9. Upon being notified, the retailer, Harris Scarfe Australia Pty Ltd:
 - withdrew the garments from sale;
 - conducted a voluntary recall of the garments;
 - placed recall notices in The Advertiser (SA), The Herald Sun (VIC), The Illawarra Mercury (NSW), The Mercury (TAS);
 - placed notices on the Harris Scarfe website, and at appropriate points of sale in all stores;
 - informed the relevant authorities throughout Australia of its recall action;
 - advised that the supplier was R.J.N. Australia Pty Ltd.

10. Upon being notified, the supplier, R.J.N. Australia Pty Ltd:

- confirmed that it had imported 1,940 of the garments;
- had supplied Harris Scarfe Australia Pty Ltd exclusively with these garments;
- withdrew the garments from sale.

COMMENCEMENT OF UNDERTAKING

11. This Undertaking comes into effect when:

- (a) the Undertaking is executed by R.J.N. Australia Pty Ltd; and
- (b) the ACCC accepts the Undertaking so executed.

UNDERTAKING

12. R.J.N. Australia Pty Ltd undertakes for a period of 3 years for the purposes of section 87B of the Act that it will:

- (a) not in trade or commerce sell or offer for sale children's nightwear and limited daywear products that do not fully comply with the prescribed consumer product safety standard;
- (b) not supply, either future or current stock, without first being in possession of evidence, such as a certificate, of testing either conducted by a supplier or by R.J.N Australia Pty Ltd's own arrangement, in relation to each design or model of children's nightwear or limited daywear;
- (c) ensure that children's nightwear and limited daywear garments sold in Australia are batch tested once per year to ensure compliance with the Standard;
- (d) on written request of the ACCC, and within 48 hours of the request, R.J.N. Australia Pty Ltd will provide test reports for the children's nightwear and limited daywear garments it supplies: these reports being not more than 12 months old;
- (e) establish and implement within 3 months of the date of this Undertaking coming into effect a Trade Practices Compliance Program in accordance with the requirements set out in "Annexure A". This program is designed to minimise the risk of future breaches of section 65C and other relevant provisions of Part V of the Act by the company and to ensure particular

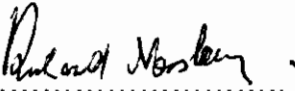
awareness by its employees or other persons involved in its business, of their responsibilities and obligations under these provisions;

- (f) maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years from the date of this Undertaking coming into effect;
- (g) provide, at its own expense, a copy of documents requested by the ACCC, in accordance with this Undertaking, including Annexure A;
- (h) within one week of this undertaking coming into effect, conduct a recall of the garment by placing recall notices drafted in accordance with the recommendations made at www.recalls.gov.au in the following newspapers:
 - The Advertiser (SA)
 - The Herald Sun (VIC)
 - Hobart Mercury (TAS)
 - Illawarra Mercury (NSW)
 - Launceston Examiner (TAS)
 - Burnie Advocate (TAS);
- (i) inform the relevant authorities throughout Australia, including the Commonwealth Minister in accordance with section 65R of the Act, of its corrective action; and
- (j) provide to the ACCC a copy of the draft recall notice prior to having it published.

ACKNOWLEDGEMENTS

- 13. R.J.N. Australia Pty Ltd acknowledges that the ACCC will make this Undertaking available for public inspection.
- 14. R.J.N. Australia Pty Ltd further acknowledges that the Commission will from time to time publicly refer to this Undertaking.
- 15. R.J.N. Australia Pty Ltd further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- 16. R.J.N. Australia Pty Ltd further acknowledges that a summary of the Commission Compliance Program Review reports referred to in Annexure A of the Undertaking may be held with this undertaking on the public register.

IN WITNESS of this Undertaking and its agreement the ~~common seal~~ of R.J.N. Australia Pty Ltd (ACN 005 967 706) was hereto affixed by the authority of the Board of Directors in the presence of:


.....
Director/Secretary

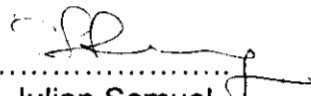

.....
Director

Nossbaum Richard
.....
Name (printed)

ROBERT NOSSBAUM
.....
Name (printed)

The 9th day of SEPT 2005

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


.....
Graeme Julian Samuel
Chairman

This 21st day of September 2005

Annexure A

TRADE PRACTICES COMPLIANCE PROGRAM

R.J.N. Australia Pty Ltd will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

1. Appointments

1. Within one month of the date of the Undertaking coming into effect R.J.N. Australia Pty Ltd will appoint a Director or a Senior Manager or the In-House Counsel of the business to be responsible for the development, implementation and maintenance of the Compliance Program, who reports directly to the company Board or governing body (**the Compliance Officer**).
2. R.J.N. Australia Pty Ltd shall appoint a qualified, internal or external compliance professional with expertise in trade practices issues (**the Compliance Advisor**) within 3 months of the Undertaking coming into effect, for the purposes set out in paragraph 3.
3. R.J.N. Australia Pty Ltd will instruct the Compliance Advisor to conduct a Trade Practices Act risk assessment (**the Risk Assessment**) in accordance with i. to iv. below:-
 - i. Identify areas where R.J.N. Australia Pty Ltd is at risk of breaching Part V of the Act in relation to Section 65C Product Safety provisions;
 - ii. Assess the likelihood of these risks occurring and the consequences of the risks to the business operations of R.J.N. Australia Pty Ltd should they occur;
 - iii. Identify where there may be gaps in R.J.N. Australia Pty Ltd's existing procedures for managing these risks; and
 - iv. Provide recommendations for the action having regard to the assessment.

2. Compliance Policy

R.J.N. Australia Pty Ltd will, issue a policy statement outlining R.J.N. Australia Pty Ltd's commitment to trade practices compliance (**the Compliance Policy**). R.J.N. Australia Pty Ltd 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 R.J.N. Australia Pty Ltd will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the Trade Practices Act and will not indemnify them.

3. Complaints Handling System

R.J.N. Australia Pty Ltd will:

- i. develop procedures for recording, storing and responding to trade practices complaints within 3 months of the Undertaking coming into effect; and
- ii. provide the Commission with details of the complaint handling system within 3 months of the Undertaking coming into effect.

4. Compliance Officer Training

- i R.J.N. Australia Pty Ltd will ensure that, within 3 months of the Undertaking coming into effect, the Compliance Officer together with the managers of each product division, the marketing department and retail sales staff attend practical trade practices training which will include Part V and in particular obligations arising under section 65C of the Act.
- ii R.J.N. Australia Pty Ltd will ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
- iii R.J.N. Australia Pty Ltd, within 28 days of completion of training, will provide the Commission with a written statement from the compliance professional or legal practitioner confirming the completion of the training conducted in accordance with 4.i and 4.ii above.

5. Staff Training

- i R.J.N. Australia Pty Ltd will cause all employees (including any retail sales staff) of R.J.N. Australia Pty Ltd whose duties could result in them being concerned with conduct that may contravene section 65C of the Act to receive annual practical training administered by the Compliance Officer (once trained) or a qualified compliance professional or legal practitioner with expertise in trade practices law, that includes Part V and in particular obligations arising under section 65C of the Act.

6. Product Safety

R.J.N. Australia Pty Ltd will:

- i. maintain up-to-date copies, at its business premises, of all prescribed consumer product safety standards and prescribed consumer product information standards that relate to products R.J.N. Australia Pty Ltd supplies.
- ii. ensure that the products supplied that are subject to a prescribed consumer product safety standard or prescribed consumer product information standard under the Trade Practices Act, comply with the relevant standard.
- iii. design, implement and maintain recall procedures that enable products supplied by R.J.N. Australia Pty Ltd that do not comply with prescribed consumer product safety standards and prescribed consumer product information standards under the Trade Practices Act to be efficiently and effectively withdrawn from the market and returned to R.J.N. Australia Pty Ltd.
- iv. ensure that the Compliance Officer reports to the company Board or governing body every 12 months on the continuing effectiveness of the Compliance Program.

7. Review

- a. Scope of Review - R.J.N. Australia Pty Ltd will, at its own expense, conduct a review of the Compliance Program (**the Review**) commencing 12 months after having implemented the Compliance Program. R.J.N. Australia Pty Ltd will ensure that the Review is broad and rigorous enough to verify to the Commission that R.J.N. Australia Pty Ltd has in place a Compliance Program (including a product safety compliance program) that complies with the requirements of the Undertaking and is suitable for the size and structure of R.J.N. Australia Pty Ltd.
- b. Independence of Reviewer – R.J.N. Australia Pty Ltd will ensure that the Review is carried out by a suitably 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. is not a present or past staff member or director of R.J.N. Australia Pty Ltd;
 - ii. has not acted or does not act for R.J.N. Australia Pty Ltd in any capacity other than Compliance Program Reviewer;
 - iii. is not retained by R.J.N. Australia Pty Ltd in any trade practices capacity other than Compliance Program Reviewer, either currently or in the past;
 - iv. has not and does not act for or consult to R.J.N. Australia Pty Ltd or provide other services on trade practices related matters other than Compliance Program reviewing; and
 - v. has no other significant interests in R.J.N. Australia Pty Ltd.

- c Evidence - R.J.N. Australia Pty Ltd will use its best endeavors to ensure that the Reviews are conducted with reference to all relevant sources of information in R.J.N. Australia Pty Ltd's possession or control, including without limitation:
 - i. enquiries of any employees, representatives, agents and stakeholders of R.J.N. Australia Pty Ltd;
 - ii. R.J.N. Australia Pty Ltd's records, including the company's complaints register /reports and any documents relevant to the R.J.N. Australia Pty Ltd training or induction program; and
 - iii. All documents required to assess R.J.N. Australia Pty Ltd's compliance with the relevant product safety/information standards under the Trade Practices Act.
- d R.J.N. Australia Pty Ltd will ensure that the Review is completed and provided to the ACCC within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter.

8. Reporting

R.J.N. Australia Pty Ltd will set out the findings of the Review in a Trade Practices Compliance Program Review Report ("the Review Report"), which will provide specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:

- i. the evidence gathered and examined during the Review;
 - ii. the name and relevant experience of the person appointed as R.J.N. Australia Pty Ltd 's Compliance Officer;
 - iii. the opinion of the Reviewer on the manner and extent to which it has implemented effective compliance, staff training and complaints handling programs that comply with the requirements of the Undertaking;
 - iv. actions recommended by the Reviewer to ensure the continuing effectiveness of R.J.N. Australia Pty Ltd's Compliance Program.
- a R.J.N. Australia Pty Ltd will cause the Trade Practices Compliance Program Review Report to be provided to the Commission within 14 days of its receipt from the Reviewer.
 - b R.J.N. Australia Pty Ltd will implement promptly and with due diligence any recommendations made by the Commission that are reasonably necessary to ensure that R.J.N. Australia Pty Ltd maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.
9. If requested by the Commission R.J.N. Australia Pty Ltd will, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.

10. In the event the Commission has sufficient reason to suspect that the Compliance Program is not being implemented effectively, R.J.N. Australia Pty Ltd will, at its own expense and if requested by the Commission, conduct an additional Review and provide the resulting Review Report to the Commission.