

**TRADE PRACTICES ACT 1974****UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B****BY****ARTHUR ELLIS LIMITED****PERSON GIVING UNDERTAKING**

1. This undertaking is given to the Australian Competition and Consumer Commission ("the ACCC") by Arthur Ellis Limited AEL Co # 149809 ("Arthur Ellis") of 648 Halswell Junction Road, Hornby, in Christchurch, New Zealand, under section 87B of the Trade Practices Act 1974 ("the Act").

BACKGROUND

2. Arthur Ellis supplies a range of "Fairydown" brand down sleeping bags and "Zone" brand down clothing items in the Australian outdoor adventure product market.
3. Arthur Ellis promotes its down sleeping bags and clothing items through representations including "100% goosedown", "100% white goosedown", "90/10 goosedown", and "90/10 duckdown".
4. To test the accuracy of the 100% down content claims made by Arthur Ellis, the ACCC purchased an Arthur Ellis "Fairydown" sleeping bag described in Arthur Ellis promotional material and product labelling as containing 100% goosedown, and arranged professional testing of the sleeping bag in accordance with recognised testing procedures for down products.
5. The results of the testing on the Arthur Ellis "Fairydown" sleeping bag showed that it contained 89.9% goosedown, less goosedown than the represented 100%.
6. Arthur Ellis has advised the ACCC that its various 100% down content claims were made in reliance on its interpretation of labelling percentage 'tolerances' contained in Australian Standard (AS) 2479-1987 and that it had not intended to mislead or deceive consumers.
7. Following its investigation into the 100% down content representations made by Arthur Ellis, the ACCC considers that these representations are false and misleading to consumers and accordingly, likely constitute conduct in contravention of sections 52, 53(a) and 55 of the Act.
8. Arthur Ellis acknowledges the ACCC's concerns that its various 100% down content claims are false and liable to mislead consumers, and may contravene sections 52, 53(a) and 55 of the Act.

UNDERTAKING

9. In consequence of the matters referred to above, Arthur Ellis gives the following undertaking to the ACCC pursuant to section 87B of the Act:
- 9.1 Arthur Ellis undertakes to the ACCC, that for a period of 3 years, it will not:
- a) promote that any of its down sleeping bags or clothing items contain 100% down, given that normal commercial manufacturing processes are very unlikely to achieve this percentage of down content;
 - (b) make any other representations as to down content percentage which include any down content percentage tolerance or allowance; and
 - (c) make any representations as to down percentage content and/or specie that it cannot substantiate by way of testing of finished down products derived from each shipment of down, or finished down products, purchased by Arthur Ellis ('finished down products' refers to down products where the manufacturing process has been completed). Such testing is to be conducted by an International Down & Feather Bureau (IDFB) accredited testing organisation.
- 9.2 Arthur Ellis will use its best endeavours to ensure that all Arthur Ellis down product labelling and promotional material in the possession of Australian retail outlets supplied by Arthur Ellis does not display any false or misleading representations as to down percentage content and/or specie.
- 9.3 Arthur Ellis will place on its internet web-site for 3 months following the commencement of this undertaking a corrective notice as set out in *Annexure A* to this undertaking.
- 9.4 Arthur Ellis will, within 20 days of the commencement of this undertaking, in conjunction with certain other outdoor down products companies, place a corrective advertisement in the form set out in *Annexure A* to this undertaking in a Saturday or Sunday edition of the largest circulation daily capital city newspaper in each State and Territory in Australia in which Arthur Ellis' sleeping bags have been sold. The corrective advertisement will be placed within the first ten pages of each newspaper, and will be of a size of at least 20cm x 11cm (or equivalent area), with minimum 9 point font size. The heading of the corrective newspaper advertisement will be at least 2 point font size larger than the other text.
- 9.5 Arthur Ellis will provide the ACCC, within 7 days after the publication date of each corrective newspaper advertisement, with a copy of the corrective newspaper advertisement.

Trade Practices Compliance Program undertaking

- 9.6 Arthur Ellis will, within 3 months of this undertaking being accepted, establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in *Annexure B* for the officers, employees and other

persons involved in Arthur Ellis' business who have contact with Australian resellers or consumers of Arthur Ellis products, or who are involved in the marketing or promotion of Arthur Ellis products supplied into the Australian market. The Compliance Program is designed to ensure awareness of Arthur Ellis' responsibilities in relation to the requirements of sections 52, 53(a) and 55 of the Act, and to minimise Arthur Ellis' risk of future breaches of sections 52, 53(a) and 55 of the Act.

- 9.7 Arthur Ellis will 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.
- 9.8 Arthur Ellis will provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure B.

COMMENCEMENT OF UNDERTAKING

10. This undertaking comes into effect on the date on which:
 - (a) the undertaking is executed by Arthur Ellis; and
 - (b) the ACCC accepts the undertaking so executed.


ACKNOWLEDGEMENTS

11. Arthur Ellis acknowledges the ACCC's right to make this undertaking available for public inspection and notes that the ACCC will, at its discretion, from time to time, publish and publicly refer to this undertaking.
12. Arthur Ellis acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Arthur Ellis.

EXECUTION PAGE

EXECUTED by **ARTHUR ELLIS LIMITED (AEL Co # 149809)** in accordance with section 180(1) of the (New Zealand) *Companies Act 1993* by authority of its directors:

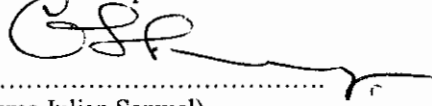

.....
Signature of director


.....
Signature of director

MARY DEVINE.....
Name of director (block letters)

S.D. MACKAY.....
Name of director
(block letters)

ACCEPTED by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** pursuant to section 87B of the *Trade Practices Act 1974*


.....
(Graeme Julian Samuel)
Chairman
Australian Competition and Consumer Commission

Date: 20 October 2005

Annexure A**GROUP CORRECTIVE NEWSPAPER ADVERTISEMENT**

Companies logos to be inserted

IMPORTANT NOTICE**DOWN CONTENT LABELLING OF SLEEPING BAGS**

The Australian Competition and Consumer Commission (ACCC) has brought to our attention that sample testing of our sleeping bags showed that they contained significantly less than the percentage of goosedown or down that we have claimed – such as “100%” or “minimum 90%”.

Accordingly, the ACCC has advised us that the goosedown or down content claims that we have made are likely to be in contravention of the *Trade Practices Act* which requires that any claims made be accurate and not misleading to consumers.

While we believed that the 100% or 90% goosedown or down content claims that we made for our sleeping bags were permitted under the Australian Standard 2479-1987, (*Down and/or feather filling materials and filled products*), we fully acknowledge the ACCC's concerns and apologise to consumers who consider that they may have been misled by the claims that we made.

We have undertaken to the ACCC that where in future we specify a percentage (or percentage range) of goosedown or down this will accurately reflect the minimum amount of goosedown or down present in our sleeping bags. Consumers with any queries about the down content of the sleeping bag they have purchased should contact the relevant company for further information.



This corrective advertisement has been jointly placed by Adventure One Pty Ltd, Arthur Ellis Limited, Kathmandu Pty Ltd, Macpac Wilderness Equipment Limited, Mont Adventure Equipment Pty Ltd, Mountain Designs Pty Ltd, and Paddy Pallin Pty Ltd in compliance with court enforceable undertakings given by each company to the ACCC.

Annexure B**TRADE PRACTICES COMPLIANCE PROGRAM TO BE IMPLEMENTED BY
ARTHUR ELLIS LIMITED**

1. Arthur Ellis Limited ("Arthur Ellis") will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:
2. **Appointment**
 - 2.1. Within 2 months of the date of the Undertaking coming into effect Arthur Ellis will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the compliance program (**the Compliance Officer**).
3. **Compliance Officer Training**
 - 3.1 Arthur Ellis will ensure that within 3 months of the Undertaking coming into effect the Compliance Officer attends practical trade practices training focusing on sections 52, 53(a) and 55 of the Act.
 - 3.2 Arthur Ellis will ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
 - 3.3 Arthur Ellis will, within 14 days of completion of the Compliance Officer training, provide the ACCC with a written statement from the compliance professional or legal practitioner confirming the completion of the training conducted in accordance with 3.1 and 3.2 above.
4. **Staff Training**
 - 4.1 Arthur Ellis will ensure that all officers, employees and other persons involved in Arthur Ellis' business whose duties could result in them being concerned with conduct that may contravene sections 52, 53(a) and 55 of the Act receive, at least once a year, practical trade practices training that focuses on sections 52, 53(a) and 55 of the Act.
 - 4.2 Arthur Ellis will ensure the staff training is conducted by the Compliance Officer or by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
5. **Complaints Handling**
 - 5.1 Arthur Ellis will develop procedures for recording, storing and responding to trade practice complaints within 2 months of the Undertaking coming into effect.

5.2 Arthur Ellis will provide the ACCC with an outline of the complaint handling system within 2 months of the Undertaking coming into effect.

6. **Review**

6.1 Arthur Ellis will, at its own expense, cause an annual review of the Compliance Program elements (**the Review**) to be carried out in accordance with each of the following requirements:

- a) Scope of the Review – Arthur Ellis shall ensure that the Review is broad and rigorous enough to:
 - i. provide the ACCC with a supportable verification that Arthur Ellis has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of Arthur Ellis; and
 - ii. provide the Review Report and opinions detailed at point 7 below.

6.2 Independence of Reviewer – Arthur Ellis shall 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:

- a) is not a present or past staff member or director of Arthur Ellis;
- b) has not acted or does not act for Arthur Ellis in any other capacity other than Compliance Program Reviewer;
- c) is not retained by Arthur Ellis in any trade practices capacity other than Compliance Program Reviewer, either currently or in the past;
- d) has not and does not act for or consult to Arthur Ellis or provide other services on trade practices related matters other than Compliance Program reviewing; and
- e) has no other significant interests in Arthur Ellis.

6.3 Evidence – Arthur Ellis will use its best endeavours to ensure that the Review is able to be conducted on the basis that the Reviewer has access to all relevant sources of information in Arthur Ellis' possession or control, including:

- a) enquiries of any employees, representatives and stakeholders of Arthur Ellis; and
- b) documents created for use in Arthur Ellis' Compliance Program.

- 6.4 Arthur Ellis will ensure that the first Review is completed within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter.
7. **Reporting**
- 7.1 Arthur Ellis shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in a Trade Practices Compliance Program Review Report, which will provide particular and specific information regarding the scope of the Review and the effectiveness of the Trade Practices Compliance Program including:
- a) details of the evidence gathered and examined during the Review;
 - b) the name and relevant experience of the person appointed as Arthur Ellis' Compliance Officer;
 - c) the Reviewer's opinion on whether Arthur Ellis has in place effective staff training and complaints handling programs that comply with the requirements of the Undertaking; and
 - d) actions recommended by the Reviewer to ensure the continuing effectiveness of Arthur Ellis' Compliance Program.
- 7.2 Arthur Ellis shall ensure that each Review Report is completed and provided to the ACCC within one month of completion of the Review.
8. Arthur Ellis shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that Arthur Ellis maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.
9. If requested by the ACCC, Arthur Ellis shall, 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 ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Arthur Ellis shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Review Report to be provided to the ACCC.