

## COMPLIANCE PROGRAM UNDERTAKINGS AND ORDERS

### Section 87B Undertaking

By **AUSTWIDE WHOLESALERS PTY LTD ACN 009 438 153**

1. Austwide Wholesalers Pty Ltd (**Austwide**) undertakes for the purposes of section 87B of the *Trade Practices Act 1974 (the Act)* that it will:
  - (a) upgrade its existing Compliance Program in accordance with the requirements set out in "Annexure A" for the employees or other persons involved in Austwide's business, being a program designed to minimise its risk of future breaches of section 65D and to ensure their awareness of the responsibilities and obligations in relation to the requirements of section 65D within three months of the date of this Undertaking coming into effect; and
  - (b) 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; and
  - (c) provide, at its own expense, a copy of any documents required by the Commission in accordance with **Annexure A**.

### BACKGROUND

2. Austwide Pty Ltd is incorporated in the state of Western Australia and its principal activities include the importation of discount merchandise.
3. Cosmetics and toiletries must be labelled in accordance with the Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991.
4. Elastic Luggage straps must be labelled in accordance with Trade Practices (Consumer Product Information Standards) Regulations 1979.
5. Flotation devices must be labelled in accordance with Australian Standard 1900 introduced by Gazette Notice 10 on 11 March 1992.
6. The ACCC is responsible for ensuring compliance with the three mandatory information standards noted above.
7. In May 1996, December 2001 and 2003 the ACCC located goods in the marketplace, namely elastic luggage straps, flotation devices and temporary tattoos which it contends were non compliant.

Austwide were made aware of these products and agreed to withdraw them from sale and ensure that only compliant goods were supplied.

8. On 27 September 2004 staff of the ACCC Darwin regional office attended the premises of Dollars and Sense located at Casuarina Shopping Centre in Darwin for the purposes of carrying out routine product safety surveys. Staff located the following products:

**Product**

BeMe: Crystal Tattoo  
Tattoo Pen  
Angel - Angel Temp tattoo  
Miss Pretty Diamond tattoo  
Cosmetic Lipstick

9. An inspection of the products revealed that four of them did not contain the required list of ingredients and that one of them contained writing which was too small to be legible.
10. The ACCC observes that Austwide gave an undertaking to the NSW Department of Fair Trading in May 2002 and that it has employed a full time product safety officer to coordinate its compliance program.
11. Austwide acknowledges that it has contravened section 65D of the Trade Practices Act 1974 by supplying products which do not comply with the mandatory information standard.
12. Austwide and the ACCC have agreed to resolve this matter by the giving and accepting of undertakings in the terms and conditions as follows:

**COMMENCEMENT OF UNDERTAKING**

13. This Undertaking comes into effect when:
- (a) the Undertaking is executed by Austwide; and
  - (b) the Commission accepts the Undertaking so executed.

**ACKNOWLEDGMENTS**

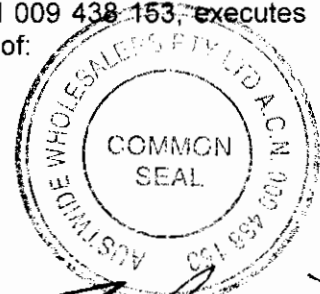
14. Austwide acknowledges that the Commission will make this undertaking available for public inspection.
15. Austwide further acknowledges that the Commission will from time to time publicly refer to this undertaking.
16. Austwide further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
17. Austwide further acknowledges that the reports referred to in the Undertaking and the Trade Practices Compliance Program as in force from time to time will be held with this undertaking on the public register.

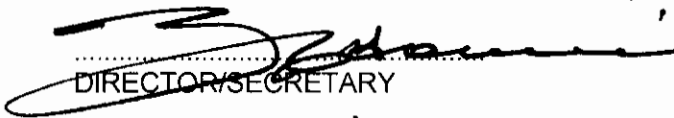
18. Austwide further acknowledges that a summary of the reports referred to in the Undertaking and the Trade Practices Compliance Program as in force from time to time may be held with this undertaking on the public register.

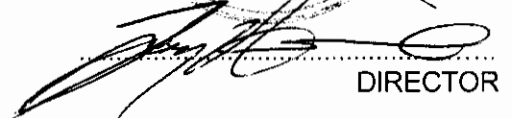
**IN WITNESS** of this undertaking and its agreement, Austwide ACN 009 438 153, executes the agreement by authority of the board of directors in the presence of:

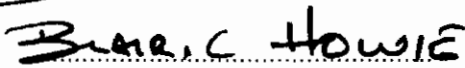
The 16<sup>th</sup> day of NOVEMBER . 2005.

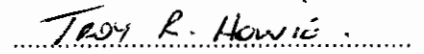
THE COMMON SEAL of )  
Austwide Wholesalers Pty Ltd )  
ACN 009 438 153 )  
was hereunto affixed in )  
accordance with Articles of Association: )



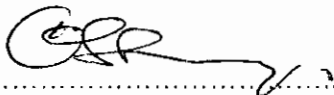
  
.....  
DIRECTOR/SECRETARY

  
.....  
DIRECTOR

  
.....  
NAME (Printed)

  
.....  
NAME (Printed)

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

  
.....  
Graeme Julian Samuel  
Chairman

The 23 day of November, 2005.

Annexure A

**TRADE PRACTICES COMPLIANCE PROGRAM**

Austwide will upgrade its Trade Practices Compliance Program (**the Compliance Program**) to ensure that it complies with each of the following requirements:

**Appointments**

1. Austwide will continue to have and maintain a suitably qualified, internal or external compliance manager with a high level of knowledge of trade practices issues (**the Compliance Manager**) whose responsibilities are to include managing compliance and developing, implementing and maintaining the Compliance Program. The Compliance Manager is to report directly to the company Board or governing body.
2. Austwide will instruct the Compliance Manager to conduct a trade practices risk assessment (the Risk Assessment) within 3 months of the Undertaking coming into effect, in accordance with (i) to (iv) below:
  - (i) Identify the areas where Austwide is at risk of breaching the product safety provisions of the Act;
  - (ii) Assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Austwide should they occur;
  - (iii) Identify where there may be gaps in Austwide's existing compliance program and procedures for managing these risks;
  - (iv) Provide recommendations for action having regard to the assessment
3. Austwide will instruct the Compliance Manager to assist Austwide in upgrading its Trade Practices Compliance Program within 3 months of the Undertaking coming into effect.

**Compliance Policy**

4. Austwide will issue an internal policy statement outlining Austwide's commitment to trade practices compliance (**the Compliance Policy**). Austwide 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 relevant staff, as defined in the Compliance Program, to report any compliance related issues and trade practices compliance concerns to the Compliance Manager;
  - (iv) contains a guarantee that whistleblowers will not be prosecuted or disadvantaged in any way and that their reports will be kept confidential and secure, provided that the whistleblower has not knowingly participated in or encouraged the act in question or acted with malice toward Austwide;
  - (v) contains a clear statement that Austwide will take action internally against any person, where that person has been found, as a result of

either Austwide's internal processes or a court judgement, to be knowingly concerned or recklessly concerned in a contravention of the Trade Practices Act and will not indemnify them.

### **Complaints Handling System**

5. Austwide will ensure the Compliance Program includes a complaints handling system capable of identifying, classifying, storing and where necessary, referring internal and external complaints about actual or potential trade practices compliance failures.

### **Training**

6. Austwide will ensure that the Compliance Program includes a requirement for regular (at least once a year) and practical trade practices training for all employees of Austwide, 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 by a person with the necessary expertise to ensure the employees' awareness of the responsibilities and obligations in relation to the product safety provisions of the Act.
7. Austwide 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.

### **Reports to Senior Management**

8. The implementation and continuing effectiveness of the Compliance Program will be regularly discussed at senior management meetings.

### **Product Safety**

9. Austwide will:
  - (i) 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 Austwide supplies;
  - (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 Austwide that do not comply with prescribed safety and/or information standards under the Trade Practices Act to be efficiently and effectively withdrawn from the market and returned to Austwide.

### **Supply of Compliance Program Documents to the Commission**

10. Austwide shall, at its own expense, within 4 months 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 upgraded Compliance Program.
11. Austwide will implement with due diligence any recommendations which the Commission may make that are reasonably necessary to ensure that Austwide maintains and continues to implement the Compliance Program in accordance with the Undertaking.

The following factors shall be relevant in determining whether the recommendations are reasonable:

- a. whether the Commission has given Austwide reasonable notice of the issue of concern to the Commission which is the subject of the recommendations;
- b. whether Austwide has been given a reasonable opportunity to respond to any issue of concern to the Commission;

## **Review**

12. Austwide shall, at its own expense, cause annual reviews of the Compliance Program (**the Reviews**) to be carried out in accordance with each of the following requirements:

- a. Scope of the Review – the Reviews should be broad enough to provide Austwide and the ACCC with supportable verification that Austwide has in place a program that complies with each of the requirements detailed in paragraphs 1-11 above and to provide the review reports and opinions detailed at paragraph 13 below.
- b. Independence of Reviewer - Austwide shall ensure that the Reviews are carried out by a suitably qualified, independent compliance professional, with relevant 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 Austwide;
  - (iii) has not acted or does not act for Austwide in any other capacity other than as Reviewer;
  - (iv) is not retained by Austwide in any capacity other than as Reviewer, either currently or in the past;
  - (v) has not and does not provide consultancy or other services for Austwide other than as Reviewer; and
  - (vi) has no other interests in Austwide.
- c. Evidence – Austwide shall use its best endeavours to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in Austwide's possession or control, including without limitation:
  - (i) enquiries of any relevant officers, employees, representatives, agents and stakeholders of Austwide;
  - (ii) Austwide's records, including the company's complaints register/reports and any documents relevant to the Austwide training or induction program; and
  - (iii) documents created by Austwide's consultants and solicitors for use in Austwide's Compliance Program.

## REPORTING

13. Austwide shall instruct the Reviewer to set out the findings of the Review in a report (**Compliance Program Review Report**) as outlined below:

- a. The Compliance Program Review Report (to be provided to Austwide and the ACCC) will provide particular and specific information regarding the performance of the 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 Manager;
  - (iii) the Reviewer's opinion on whether Austwide has in place an effective Trade Practices Compliance Program and if, and to what extent, the Compliance Program of Austwide includes all the elements detailed in paragraphs 1-12 above;
  - (iv) if, and to what extent, the trade practices training is effective;
  - (v) copies of any training presentations, trainers speech notes and attendees guidebooks to training;
  - (vi) actions recommended by the Reviewer to ensure the continuing effectiveness of Austwide's Trade Practices Compliance Program;
  - (vii) confirmation that any actual and potential inadequacies in Austwide Compliance Program have been brought to the attention of the Compliance Manager and the governing body; and
  - (viii) confirmation that the Reviewer has revisited any actual and potential inadequacies in Austwide's Compliance Program identified in the previous Compliance Program Review Report and assessed how they have been addressed by Austwide.

Austwide will cause a copy of the Compliance Program Review Report to be provided to the Commission within 14 days of its receipt from the Reviewer.

14. Recommendations – Austwide shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the Commission that are reasonably necessary to ensure that Austwide maintains and continues to implement the Compliance Program in accordance with the requirements of this undertaking
15. Austwide shall 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. Austwide should instruct the Reviewer to ensure that the Review Report is to be completed and provided to Austwide within two months of each Review.
16. Austwide 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 a deficiency reported by the Reviewer in a Compliance Program Review Report.