

TRADE PRACTICES ACT 1974

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

BY

ASIA SOURCE AUSTRALIA PTY LTD
(ACN 099 221 931)

PERSON GIVING THIS UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission ('ACCC') by Asia Source Australia Pty Ltd (ACN 099 221 931) ('Asia Source Australia') of 47 Banksia Road, Welshpool, Western Australia, under section 87B of the *Trade Practices Act 1974* ('the Act').

BACKGROUND

2. Asia Source Australia is an importer and wholesaler of consumer products. Between September 2004 and April 2006, Asia Source Australia imported into Australia from China elastic luggage straps that were distributed to retailers between December 2004 and August 2006. The elastic luggage straps distributed included 10,800 items that were branded 'Porta Hardware occy strap 6 piece' and 586 items that were branded 'Bilst occy straps', both identifiable by the Item Number: 002216 ('the elastic luggage straps').
3. The prescribed consumer product safety standard for elastic luggage straps requires that from 1 December 2004 elastic luggage straps must be labelled in accordance with the requirements specified in Regulation 11C of the *Trade Practices (Consumer Product Safety Standards) Regulations 1979* ('the mandatory standard'). The mandatory standard states, *inter alia*, that elastic luggage straps must have a label that is permanently attached to the strap, clearly displayed and bearing the following warning in black writing of a specified size and on a yellow background:

WARNING. Avoid eye injury. DO NOT overstretch.
ALWAYS keep face and body out of recoil path. DO NOT use
when strap has visible signs of wear or damage.
4. Section 65C of the Act prohibits a corporation, in trade or commerce, supplying consumer goods of a kind in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard.
5. During one of the ACCC's national product safety surveys, staff from the ACCC attended retail outlets in the Australian Capital Territory that sell elastic luggage straps to assess their compliance with the mandatory standard.

6. On 24 July 2006, the ACCC acquired from a retail outlet in the Australian Capital Territory two packets of 'Porta Hardware occy strap 6 piece' elastic luggage straps described in paragraph 2 above.
7. The ACCC formed the view that the 'Porta Hardware occy strap 6 piece' elastic luggage straps purchased on 24 July 2006 did not comply with the mandatory standard because:
 - (a) The warning label was not permanently attached to the strap. To use the strap it is necessary for users to pull the end hook piece over the label causing the warning label to be detached from the strap;
 - (b) The writing on the warning label was in red;
 - (c) The word 'always' was in lower case lettering; and
 - (d) In the last line of the warning, the word 'or' was missing from between the words 'wear' ... 'damage'.
8. On 26 July 2006, the ACCC raised its concerns with Asia Source Australia, and sought Asia Source Australia's commitment to the immediate removal from retail sale nationally of the 'Porta Hardware occy strap 6 piece' elastic luggage straps with labels that did not comply with the mandatory standard.
9. On 1 August 2006, Asia Source Australia undertook to arrange for the voluntary recall of the 'Porta Hardware occy strap 6 piece' elastic luggage straps from retail sale.
10. On 4 August 2006, the ACCC requested further information from Asia Source Australia, *inter alia*, regarding compliance with the mandatory standard of other brands of elastic luggage straps Asia Source Australia has supplied for retail sale within Australia.
11. On 9 August 2006, Asia Source Australia notified the ACCC that it also supplies the 'Bilst occy straps' brand of elastic luggage straps and that these did not comply with the mandatory standard. Asia Source Australia undertook to voluntarily recall from retail sale all of the elastic luggage straps described in paragraph 2 above.
12. On 8, 10 and 17 August 2006, the ACCC acquired from retail outlets in Victoria and New South Wales respectively, some of the elastic luggage straps that did not comply with the mandatory standard.
13. Asia Source Australia acknowledges that by supplying the elastic luggage straps to retailers throughout Australia, it has supplied consumer goods of a kind in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard, in breach of section 65C of the Act.

COMMENCEMENT

14. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Asia Source Australia; and
 - (b) the ACCC accepts the Undertaking so executed.

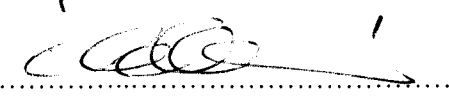
UNDERTAKINGS

15. Asia Source Australia undertakes for the purposes of section 87B of the Act:
- (a) not to supply elastic luggage straps that do not comply with the mandatory standard.
 - (b) to, at its own expense, in accordance with **Annexure A** to this Undertaking:
 - (i) cause to be established, conducted and completed a process for the recall of all of the elastic luggage straps that do not comply with the mandatory standard from the retailers to whom Asia Source Australia supplied the elastic luggage straps;
 - (ii) request in writing, that the retailers to whom Asia Source Australia supplied the elastic luggage straps display the consumer product safety notice; and
 - (iii) provide a full refund of the purchase price and the cost of postage to any person that returns the elastic luggage straps to Asia Source Australia within a reasonable period of time pursuant to the consumer product safety notice.
 - (c) to design, implement and maintain a trade practices compliance program in accordance with **Annexure B** to this Undertaking.

ACKNOWLEDGEMENTS

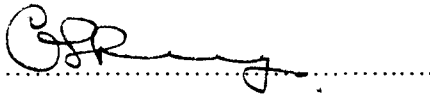
16. Asia Source Australia acknowledges that the ACCC will make this Undertaking available for public inspection.
17. Asia Source Australia acknowledges that the ACCC will, from time to time, publicly refer to this Undertaking.
18. Asia Source Australia acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

EXECUTED BY Asia Source)
Australia Pty Ltd (ACN 099 221 931))
pursuant to SECTION 127(1))
OF THE CORPORATIONS ACT 2001)


.....
Christopher Clinckers
Sole Director

This 6th day of October 2006

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


.....
Graeme Julian Samuel
Chairman

This 13 day of October 2006

Annexure A

Paragraph 15(b) of the Undertaking

Process for Recall of non-compliant elastic luggage straps

Asia Source Australia will:

- (a) within 10 days of the date this Undertaking comes into effect, cause to be notified in writing, all retailers it supplied with elastic luggage straps, that the elastic luggage straps do not comply with the mandatory standard and that they must be immediately removed from sale.
- (b) ensure that the written notice referred to in paragraph (a) above is not less than A4 in size, using Times New Roman, 12 point font black lettering on a white background, and is in the following form:

VOLUNTARY PRODUCT SAFETY RECALL

Elastic Luggage Straps

Asia Source Australia Pty Ltd

(insert Asia Source Australia logo here)

**[INSERT RETAILER NAME
FACSIMILE and/or
CONTACT DETAILS]**

Asia Source Australia Pty Ltd (Asia Source Australia) advises retailers that the following products do not comply with Regulation 11C of the *Trade Practices (Consumer Product Safety Standards) Regulations 1979* (**‘the mandatory standard’**):

PORTA HARDWARE OCCY STRAP 6 PIECE (ITEM NUMBER: 002216)

BILST OCCY STRAPS (ITEM NUMBER: 002216)

THESE ELASTIC LUGGAGE STRAPS

MUST BE IMMEDIATELY REMOVED FROM SALE

An Asia Source Australia representative will be visiting you within the next 14 days to collect all remaining stock. Asia Source Australia will be providing you with a full credit within 28 days for the straps that are collected.

The above products were not labelled in accordance with the mandatory standard. This was brought to the attention of Asia Source Australia by the Australian Competition and Consumer Commission (**‘ACCC’**).

The *Trade Practices Act 1974* prohibits a corporation in trade or commerce from supplying consumer goods of a kind in respect of which there is a prescribed consumer product safety standard and which do not comply with that standard. This includes retailers.

Asia Source Australia has given the ACCC a court enforceable undertaking to cease the sale of the above products and complete a voluntary recall of the straps from retailers.

**Asia Source Australia asks that you prominently display on your premises the Attached
‘CONSUMER PRODUCT SAFETY NOTICE’ for no less than 14 days from receipt of this letter**

For further information contact Mr Christopher Clinckers at Asia Source Australia:

Asia Source Australia Pty Ltd
PO Box 595
Welshpool WA 6986
Tel: (08) 9334 5888



Australian
Competition &
Consumer
Commission

This notice and the voluntary recall of the non-compliant elastic luggage straps have been undertaken at the cost of Asia Source Australia pursuant to an Undertaking given to the ACCC.

- (c) cause to be distributed with the written notice referred to in paragraph (a) above, a consumer product safety notice that is not less than A4 in size, using Times New Roman, 12 point font black lettering on a white background, and is in the following form:

CONSUMER PRODUCT SAFETY NOTICE

Asia Source Australia Pty Ltd

Elastic Luggage Straps

(insert Asia Source Australia logo here)

Asia Source Australia Pty Ltd has supplied two products that were incorrectly labelled:

PORTA HARDWARE OCCY STRAP 6 PIECE

BILST OCCY STRAPS

(ITEM NUMBER: 002216)

Any consumers who have purchased these products are advised that elastic luggage straps must have a warning label that is permanently attached to the strap and bearing the following warning in black writing on a yellow background:

**WARNING. Avoid eye injury. DO NOT overstretch.
ALWAYS keep face and body out of recoil path. DO NOT use
when strap has visible signs of wear or damage.**

This matter was brought to the attention of Asia Source Australia by the Australian Competition and Consumer Commission ('ACCC'). Asia Source Australia has undertaken to the ACCC to cease selling elastic luggage straps with non-complaint labels.

Concerned consumers can contact Mr Christopher Clinckers at Asia Source Australia on telephone (08) 9334 5888.

Asia Source Australia will provide a full refund of the purchase price and the cost of postage for returning either product to:

Asia Source Australia Pty Ltd
PO Box 595
WELSHPOOL WA 6986



Australian
Competition &
Consumer
Commission

This notice has been circulated at the cost of Asia Source Australia pursuant to an Undertaking given to the ACCC.

- (d) arrange for the collection of the elastic luggage straps from each retailer to which a written notice was distributed pursuant to paragraph (a) above within 14 days of the notice being provided to each retailer.
- (e) arrange for the provision of a credit to each retailer for the elastic luggage straps collected pursuant to paragraph (d) above within 28 days of the straps being collected from each retailer.
- (f) cause the elastic luggage straps collected pursuant to paragraph (d) above to be either:
 - (i) destroyed; or
 - (ii) if they are to be resupplied, first relabelled in compliance with the mandatory standard.
- (g) prepare and provide to the ACCC a report, within 60 days of this Undertaking coming into effect, specifying:
 - (i) the number of retailers to which a written notice was distributed pursuant to paragraph (a) above;
 - (ii) the number of retailers to which a consumer product safety notice was distributed pursuant to paragraph (c) above;
 - (iii) the total number of elastic luggage straps collected pursuant to paragraph (d) above;
 - (iv) the name, contact details and number of elastic luggage straps collected from each retailer pursuant to paragraphs (a) and (d) above; and
 - (v) the number of consumers that contacted Asia Source Australia in response to the consumer product safety notice at paragraph (c) above.

Annexure B

Paragraph 15(c) of the Undertaking

Asia Source Australia Pty Ltd Trade practices compliance program

Asia Source Australia will design, implement and maintain a trade practices compliance program covering sections 65C and 65D of the *Trade Practices Act 1974* ('the Act') and all prescribed consumer product safety standards and prescribed consumer information standards that relate to goods that Asia Source Australia supplies within Australia, in accordance with the requirements set out below and will maintain and continue to implement the trade practices compliance program for a period of 2 years from the date this Undertaking comes into effect.

1. Training

1.1 Within 90 days of the date this Undertaking comes into effect, Asia Source Australia will cause Mr Christopher Clinckers and all other directors and staff of Asia Source Australia to attend practical trade practices training focusing on sections 65C and 65D of the Act and all prescribed consumer product safety standards and prescribed consumer information standards that relate to goods that Asia Source Australia supplies within Australia.

1.2 Asia Source Australia will ensure that the training referred to in paragraph 1.1 above is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.

1.3 Asia Source Australia will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 1.1 above to the ACCC within 14 days of completion of the training verifying that such training has occurred.

2. Complaints handling

2.1 Asia Source Australia will:

2.1.1 develop procedures for recording, storing and responding to trade practices complaints within 90 days of the date this Undertaking comes into effect; and

2.1.2 provide the ACCC with an outline of the complaint handling system developed within 14 days of the procedures outlined in paragraph 2.1.1 above being finalised.

3. Product safety

3.1 Asia Source Australia will maintain up-to-date copies, at its business premises, of all prescribed consumer product safety standards and prescribed consumer information standards that relate to goods that Asia Source Australia supplies within Australia.

3.2 Asia Source Australia will institute procedures that will ensure that the goods it supplies that are subject to a prescribed consumer product safety standard or prescribed consumer information standard under the Act, comply with the relevant standard.

3.3 Asia Source Australia will maintain recall procedures that enable goods supplied by Asia Source Australia that do not comply with a prescribed consumer product safety standard or prescribed consumer information standard under the Act to be efficiently and effectively withdrawn from the market and returned to Asia Source Australia.

4. Further information

4.1 If requested by the ACCC, Asia Source Australia will provide within a reasonable time, at its own expense, copies of any other documents or information in respect of matters which are the subject of the trade practices compliance program.