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# Undertaking

*to the Australian Competition and Consumer  
Commission given for the purposes of Section 87B*

*by*

*Furniture Galore Pty Limited (ACN 104 350 558)*

**MOORES LEGAL**  
9 Prospect Street  
BOX HILL VIC 3128

TEL: 9898 0000  
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REF: RAS 06/2311

THIS UNDERTAKING is given on the 28<sup>th</sup> day of DECEMBER 2006.

## PARTY GIVING UNDERTAKING

- 1 This Undertaking is given to the Australian Competition and Consumer Commission ("the ACCC") by Furniture Galore Pty Limited (ACN 104 350 558), trading as "Furniture Galore" of 360 Cooper Street Epping, 3076 in the State of Victoria, under Section 87B of the *Trade Practices Act 1974* ("the Act")

## BACKGROUND

- A. Furniture Galore is incorporated in Victoria and carries on business in Australia as an importer and retailer of home furnishings. As part of its product range, Furniture Galore retails a variety of children's bunk beds.
- B. In May 2006 Furniture Galore imported 20 bunk beds designed in the form of a two tier bus that has a green foliage design along the bottom section with painted black wheels and a yellow mid section with two large open windows. There is a black steering wheel and headlights located at the front of the bunk bed. It has a top deck with five open windows. On the front of the bunk bed is a sign with the words "Fantasy Bus" in a variety of colours. At the rear of the bunk bed there is a silver ladder and painted rear tail lights (the Bunk Bed). A photograph of the Bunk Bed is at Annexure A.
- C. During the period from June 2006 to August 2006 Furniture Galore sold a total of 13 Bunk Beds to consumers.
- D. All bunk beds sold in Australia where the goods are intended to be used, or are likely to be used, by a consumer, are required to comply with the mandatory consumer product safety standard that is applicable to bunk beds, namely, the *Australian/New Zealand Bunk Bed Standard AS/NZ 4220:1994* ("the Standard").
- E. Section 65C the Act prohibits a corporation from supplying consumer goods that do not comply with mandatory consumer product safety standards, including the Standard.
- F. On 10 August 2006, ACCC staff inspected a Bunk Bed on display at Furniture Galore's store at the Highpoint Homemaker Centre in Rosamond Road, Maribyrnong in the State of Victoria. ACCC staff found one of the dimensions of the top deck open windows did not comply with Clause 7.1 (b) of the Standard. This clause requires that any gap 600 mm or more above the floor not have dimensions of greater than 95mm or less than 230 mm.

The measurements taken by ACCC staff of the five open windows on the top deck of the Bunk Bed revealed each had dimensions of approximately 235 mm in width and 170 mm in depth (i.e. exceeded the dimensions under the Standard).

The ACCC was concerned that Furniture Galore, by supplying the Bunk Beds that did not comply with the Standard, may have contravened section 65C of the Act. The ACCC was also concerned that the failure of the Bunk Bed to comply with Clause 7.1(b) of the Standard posed a serious safety risk to children in terms of a

potential body entrapment hazard in the event a child slipped through one of the top deck open windows.

- G. On 15 August 2006, the ACCC raised its concerns with Furniture Galore in writing. In its response to the ACCC concerns Furniture Galore advised it had:
- (a) Removed the Bunk Bed from display and suspended the sale of the Bunk Beds;
  - (b) Telephoned all customers informing them of the Bunk Beds' non-compliance with the Standard and engaged Furntech, a not for profit technical institute which provides standards testing, to assess the Bunk Beds' compliance with the Standard;
  - (c) Wrote to the consumers who purchased the 13 Bunk Beds informing them of the ACCC's concerns, the features of the Bunk Bed that did not comply with the Standard and Furniture Galore's willingness to modify the Bunk Beds to achieve compliance with the Standard;
  - (d) Visited all affected customers and rectified the problem identified by the ACCC by the insertion of a perspex strip behind the five top deck open windows for all customers so visited. A \$150.00 credit note was also provided to customers for their inconvenience.
- H. On 29 August 2006 the Furntech Report was received which identified additional aspects of non-compliance with the Standard. The Furntech Report indicated the Bunk Bed failed to comply with the following clauses of the Standard:
- (a) Clause 6.4.2(e) - where an opening in the guardrail is provided for easier access to the bed, the opening shall have a minimum width of 300mm and a maximum of 400mm up to the minimum height of the guardrail as specified in Item (c) above (Clause 6.4.2 (c) states the minimum vertical distance between the upper surface of the guardrail and the upper surface of the mattress base shall be 260mm); and
  - (b) Clause 6.4.2(d) – the vertical distance between the upper surface of the guardrail and the mark indicating the maximum height of the mattress shall be at least 160mm.
- I. The Furntech test report provided to the ACCC identified that the opening in the Bunk Bed's guardrail was 750mm wide and the Maximum Mattress Height Mark was absent.
- J. The ACCC was concerned that these additional breaches of the Standard raised further potential safety issues in that they posed a risk of a child rolling off the top deck of the Bunk Bed.
- K. In response to the additional breaches of the Standard, Furniture Galore commenced a recall of all Bunk Beds sold. The recall was notified to the Parliamentary Secretary to the Treasurer on 6 September 2006. Customers were offered the option to have the Bunk Bed modified to comply with the Standard, receive a replacement or accept a full refund. Replacement supplies, which comply with the Standard, were requested from the Malaysian manufacturer.

- L. All Bunk Beds supplied by Furniture Galore have now been returned by consumers and destroyed, with the exception of one, which was sold to an unidentified customer who paid by cash. A notice in the form of Annexure B has been displayed, and is intended to remain so displayed until 28 February 2007, in three separate locations at the Epping store (including the main entrance and the main purchase desk) from which that Bunk Bed was purchased.
- M. In response to the ACCC's concerns, Furniture Galore has offered to give this Undertaking in the terms set out below to the Commission for the purposes of section 87B of the Act. The Commission has agreed to accept this Undertaking under section 87B of the Act.

## **COMMENCEMENT OF UNDERTAKING**

- 1. This Undertaking comes into effect when:
  - (a) The Undertaking is executed by Furniture Galore; and
  - (b) The Commission accepts this Undertaking so executed by Furniture Galore.

## **UNDERTAKING**

- 2. Furniture Galore undertakes that it will, for a period of three (3) years from the date of this Undertaking coming into effect ("the Effective Date"), whether by itself, its directors, servants or agents or otherwise howsoever, refrain from supplying, or offering to supply, bunk beds to which:
  - (a) the Standard relates;
  - (b) the Standard, as subsequently varied or amended, relates; or
  - (c) any subsequent prescribed consumer product safety standard relating to bunk beds that replaces the Standard for the purposes of section 65C of the Act during the period of three (3) years from the Effective Date,

in circumstances where the bunk beds do not comply with the prescribed consumer product safety standard in force at the relevant time.

## **Trade Practices Compliance Program**

- 3. Furniture Galore further undertakes that it will:
  - (a) Implement a corporate trade practices compliance program in the form at Annexure C to this Undertaking, within four (4) months of the Effective Date, which:
    - (i) Is designed to ensure that Furniture Galore officers, employees, representatives and agents are aware of the application of Part V of the Act, including section 65C, to its business, as well as the content of the Standard;
    - (ii) Provides for the directors and all employees of Furniture Galore whose duties could result in them being concerned with conduct that may contravene Part V, Division 1A Product Safety and Product Information of the Act to attend

practical trade practices training focussing on Part V and particularly Part V Division 1A of the Act.

- (iii) Is designed to create a culture of compliance throughout Furniture Galore; and
  - (iv) Has the purpose of ensuring, so far as is reasonably possible, that Furniture Galore does not engage in contravention of section 65C of the Act of the kind referred to in paragraphs F and H above, or similar or related conduct, during the period referred to in subparagraph (c) below;
- (b) Within two (2) weeks from the end of the four (4) month period starting from the Effective Date, provide the Commission with a report in writing setting out details of the compliance program as developed pursuant to subparagraph (a) above and attaching key documents of the compliance program; and
  - (c) Maintain and continue to implement the said program for three (3) years from the Effective Date.

#### **ACKNOWLEDGEMENTS**

- 4. Furniture Galore acknowledges that the Commission will make this Undertaking available for public inspection.
- 5. Furniture Galore further acknowledges that the Commission will, at its absolute discretion, from time to time publish and publicly refer to this Undertaking.
- 6. Furniture Galore further acknowledges and accepts that this Undertaking in no way derogates from the rights and remedies that may be available to any other person arising from the conduct of Furniture Galore referred to in paragraphs F and H above.

**EXECUTED AS AN UNDERTAKING:**

**EXECUTED** by **FURNITURE GALORE** )  
**(ACN 104 350 558)** by its authorised )  
officers pursuant to section 127(1) of the )  
*Corporations Act 2001:*

*Brian Durran*  
Signature

Signature

*BRIAN DURRAN*  
Print name

Print name

*Managing Director*  
Office held

Office held

This *28<sup>th</sup>* day of *December* 2006

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

Marie Louise Sylvan  
Acting Chair ACCC

*[Signature]*  
Signature

*MARIE LOUISE SYLVAN*  
Print name

This *10* day of *January* 200*6*<sup>*7<sup>th</sup>*</sup>

ANNEXURE A



## **ANNEXURE B**

### **TEXT OF NOTICE**

“Customers Please Note!

We at Furniture Galore take our safety concerns very seriously

If any Customer recently purchased a “Fantasy Bus Bunk Bed” and has not been contacted by us in regard to a safety matter, would you kindly speak to one of our Sales Staff who will explain the situation and offer a solution to the problem.”



## ANNEXURE C

### COMPLIANCE PROGRAM UNDERTAKINGS

Furniture Galore and Brian Durran undertake, to the Australian Competition and Consumer Commission ("the Commission"), for the purposes of section 87B of the *Trade Practices Act 1974 (the Act)* that he and all employees of Furniture Galore whose duties could result in them being concerned with conduct that may contravene Part V, Division 1A *Product Safety and Product Information* of the Act will be required to attend Trade Practices Training and that Furniture Galore will develop and implement a Product Safety Compliance and Recall Program covering Part V Division 1A of the Act, in accordance with the requirements set out below.

#### 1. Training

- 1.1. Within 3 months of this Undertaking coming into effect, and thereafter at least once a year for the period of the undertaking, Brian Durran will attend, and Furniture Galore will require that all employees of Furniture Galore whose duties could result in them being concerned with conduct that may contravene Part V, Division 1A *Product Safety and Product Information* of the Act attend practical trade practices training focusing on Part V and particularly Part V Division 1A of the Act.
- 1.2. Furniture Galore 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. Furniture Galore 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 Commission within 14 days of completion of the training verifying that such training has occurred.

#### 2. Product safety

- 2.1. Furniture Galore 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 products Furniture Galore supplies.
  - 2.2. Furniture Galore will 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.
  - 2.3. Furniture Galore will maintain recall procedures that enable products supplied by Furniture Galore 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 Furniture Galore.
3. If requested by the Commission, Furniture Galore will provide, at its own expense, copies of any other documents or information in respect of matters which are the subject of the Compliance Program.

#### Acknowledgments

1. Furniture Galore acknowledges that the Commission will make this undertaking available for public inspection.

2. Furniture Galore further acknowledges that the Commission will from time to time publicly refer to this undertaking.
3. Furniture Galore further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.