

FILE NO C2006/87

DOC D06/48001

TRADE PRACTICES ACT 1974

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

BY

**LINEN HOUSE PTY LTD
ACN 058 668 796**

PARTY GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission ("the ACCC") by Linen House Pty Ltd ACN 058 668 796 ("Linen House") of 60 Corporate Drive, Moorabbin, in the State of Victoria, under section 87B of the Trade Practices Act 1974 ("the TPA").

BACKGROUND

2. Linen House supplies "Linen House" brand down quilts in the Australian indoor bedding market.
3. Linen House promotes its "Linen House" down quilts through representations including "100% white goose down".
4. To test the accuracy of the 100% goose down content claim made by Linen House, the ACCC purchased a sample of "Linen House" down quilts labelled as containing 100% white goose down, and arranged professional testing of the quilts in accordance with recognised testing procedures for down products.
5. The result of independent testing on "Linen House" quilts showed that the quilts contained in the range of 50% - 55% goose down, substantially less goose down than the represented 100%.
6. Following its investigation into Linen House's 100% goose down content representations, the ACCC considered 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 TPA.
7. Linen House has advised the ACCC that its 100% down content claims were made in reliance on incorrect test reports provided by its overseas supplier and on labelling percentage tolerances allowed in Australian Standard (AS) 2479-1987, and that it had not intended to mislead or deceive consumers.

8. Linen House acknowledges the ACCC's concerns that its 100% goose down content claims are false and liable to mislead consumers in likely contravention of sections 52, 53(a) and 55 of the TPA.

UNDERTAKING

9. In consequence of the matters referred to above, Linen House gives the following undertaking to the ACCC pursuant to section 87B of the TPA:
 - 9.1 Linen House undertakes to the ACCC, that for a period of 3 years, it will not:
 - (a) promote that any of its own-brand (ie. "Linen House") quilts or other products 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 Linen House ('finished down products' refers to down products where the manufacturing process has been completed). Such testing is to conform to International Down and Feather Bureau (IDFB) approved testing methods for down and feather products.
 - 9.2 Linen House will use its best endeavours to ensure that as at the commencement date of this undertaking all "Linen House" down or down/feather product labelling and promotional material in the possession of Australian retail outlets supplied by Linen House do not display any false or misleading representations as to down percentage content and/or specie.
 - 9.3 Linen House will place on its internet web-site for 90 days following the commencement date of this undertaking a corrective notice as set out in *Annexure A* or *Annexure B* to this undertaking.
 - 9.4 Linen House will, within 21 days of the commencement of this undertaking, place:
 - (a) a corrective advertisement in the form set out in *Annexure A* to this undertaking in a Saturday and a Sunday edition of the largest circulation daily capital city newspaper in each State and Territory in Australia in which Linen House own-brand (ie. "Linen House") down quilts 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 15cm x 12cm (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. The corrective advertisement will include

an offer by Linen House to provide full refunds to any consumers who consider that they were misled by the 100% goose down content representations made by Linen House. or;

- (b) in conjunction with certain other indoor down products companies, a corrective advertisement in the form set out in *Annexure B* to this undertaking in a Saturday and a Sunday edition of the largest circulation daily capital city newspaper in each State and Territory in Australia in which Linen House own-brand (ie. "Linen House") down quilts 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 22cm x 13cm (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 Linen House will provide a full refund to each consumer who returns a "Linen House" brand quilt represented to contain 100% goose down, regardless of whether a consumer is able to furnish a receipt of purchase of the quilt. The refund paid by Linen House to a consumer will be commensurate with the price (or estimated price if the actual price is not known) originally paid by the consumer for the "Linen House" brand quilt. Consumers will be able to return the "Linen House" quilts either to the place of purchase or directly to Linen House to facilitate the obtaining of a full refund from Linen House.
- 9.6 To assist consumers who wish to contact Linen House directly about obtaining a refund for their "Linen House" brand quilt represented to contain 100% goose down, Linen House will establish a freecall telephone service from the commencement date of this undertaking. The freecall telephone service will operate from 9.00am to 5.00pm on each working day for 90 days from the commencement date of this undertaking.
- 9.7 Linen House will provide the ACCC, within 7 days after the publication date of each corrective newspaper advertisement, with a copy of the corrective newspaper advertisement.

Reporting undertaking

- 9.8 Linen House will provide the following report to the ACCC within 120 days of the commencement date of this undertaking:

A report which outlines:

- (i) the number of consumers who returned a "Linen House" brand quilt - represented to contain 100% goose down, seeking a full refund from Linen House;
- (ii) the number of consumers who received a full refund from Linen House in relation to returning a "Linen House" brand quilt represented to contain 100% goose down;

- (iii) the number of “Linen House” brand quilts represented to contain 100% goose down returned by consumers in relation to seeking a full refund from Linen House;
- (iv) the total amount of refunds provided by Linen House to consumers who returned a “Linen House” brand quilt represented to contain 100% goose down; and
- (v) if a full refund was not provided by Linen House to a consumer who returned a “Linen House” brand quilt represented to contain 100% goose down, the reason/s a full refund was not provided by Linen House to that consumer.

Trade Practices Compliance Program undertaking

- 9.9 Linen House will, within 90 days of the date of this undertaking being accepted, establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in *Annexure C* for the officers, employees and other persons involved in Linen House’s business who have contact with Australian resellers or consumers of Linen House own-brand products, or who are involved in the marketing or promotion of Linen House own-brand products. The Compliance Program is designed to ensure awareness of Linen House’s responsibilities in relation to the requirements of sections 52, 53(a) and 55 of the TPA, and to minimise Linen House’s risk of future breaches of sections 52, 53(a) and 55 of the TPA.
- 9.10 Linen House 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.
- 9.11 Linen House will provide, at its own expense, a copy of any documents required by the ACCC in accordance with *Annexure C*.

COMMENCEMENT OF UNDERTAKING

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


ACKNOWLEDGEMENTS

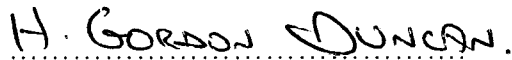
11. Linen House acknowledges the ACCC’s right to make this undertaking available for public inspection and notes that the ACCC will, at its discretion, from time to time, publish and publicly refer to this undertaking.
12. Linen House acknowledges and accepts that this undertaking in no way derogates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


EXECUTION PAGE

EXECUTED by **LINEN HOUSE PTY LTD (ACN 058 668 796)** in accordance with section 127(1) of the *Corporations Act 2001* by authority of its directors:

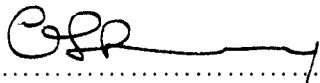

.....
Signature of director


.....
Signature of director


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


.....
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: 25 July 2006

Annexure A

LINEN HOUSE PTY LTD – CORRECTIVE ADVERTISEMENT

Company logo to be inserted

IMPORTANT NOTICE DOWN CONTENT LABELLING OF QUILTS

The Australian Competition and Consumer Commission (ACCC) has brought to the attention of Linen House Pty Ltd (Linen House) that sample testing of our *Linen House* brand quilts showed that they contained substantially less than the 100% goose down that we claimed. Independent testing of *Linen House* quilts found that they contained only 50% - 55% goose down.

Accordingly, the ACCC has advised Linen House that the 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.

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 which were based upon incorrect test reports from our overseas supplier and on labelling percentage tolerances allowed in Australian Standard 2479-1987.

If you purchased a *Linen House* brand quilt that is labelled as containing 100% goose down, and you consider that you were misled by the down content claim, you can return the item to the place of purchase or directly to Linen House and obtain a **full refund** of the purchase price. Further information on obtaining a full refund is available by telephoning Linen House on our freecall number: 1800 662 990.

Linen House has undertaken to the ACCC that where in future we specify a percentage (or percentage range) of down this will accurately reflect the minimum amount of down present in our quilts.



This corrective advertisement has been placed by Linen House in compliance with court enforceable undertakings given by Linen House to the ACCC.

Annexure B

GROUP CORRECTIVE NEWSPAPER ADVERTISEMENT

Companies logos to be inserted

IMPORTANT NOTICE

DOWN CONTENT LABELLING OF QUILTS & PILLOWS

The Australian Competition and Consumer Commission (ACCC) has brought to our attention that sample testing of our quilts by the ACCC showed that they contained significantly less than the 100% goose down or 100% duck down that we have claimed. The test results were:

[Trading name in alphabetical order] [Brand of product tested] [Test result/s]
[Trading name in alphabetical order] [Brand of product tested] [Test result/s]
[Trading name in alphabetical order] [Brand of product tested] [Test result/s]
[Trading name in alphabetical order] [Brand of product tested] [Test result/s]

The ACCC's view is that our various 100% down content claims cannot be sustained and are likely to be in contravention of the *Trade Practices Act* which requires that any claims made be accurate and not misleading to consumers. In making 100% down content claims, we relied on down content tolerances allowed in Australian Standard 2479-1987, and on test reports from our overseas suppliers.

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 down this will accurately reflect the minimum amount of down present in our products.

If you purchased any of our products that are labelled as containing 100% down, and you consider that you were misled by the down content claim, you can return the item to the place of purchase and obtain a **full refund** of the purchase price. Further information on obtaining a full refund is available by telephoning the relevant supplier on its freecall number:

[Trading name in alphabetical order] Freecall: [telephone number]
[Trading name in alphabetical order] Freecall: [telephone number]
[Trading name in alphabetical order] Freecall: [telephone number]
[Trading name in alphabetical order] Freecall: [telephone number]



This corrective advertisement has been jointly placed by [... *company names in alphabetical order*] in compliance with court enforceable undertakings given by each company to the ACCC.

Annexure C

TRADE PRACTICES COMPLIANCE PROGRAM TO BE IMPLEMENTED BY LINEN HOUSE PTY LTD

1. Linen House Pty Ltd (“Linen House”) 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 Linen House 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 Linen House 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 TPA.
 - 3.2 Linen House will ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
 - 3.3 Linen House 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 Linen House will ensure that all officers, employees and other persons involved in Linen House’s business whose duties could result in them being concerned with conduct that may contravene sections 52, 53(a) and 55 of the TPA receive, at least once a year, practical trade practices training that focuses on sections 52, 53(a) and 55 of the TPA.
 - 4.2 Linen House 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 Linen House will develop procedures for recording, storing and responding to trade practice complaints within 2 months of the Undertaking coming into effect.
- 5.2 Linen House will provide the ACCC with an outline of the complaint handling system within 2 months of the Undertaking coming into effect.

6. **Reviews**

- 6.1 Linen House will, at its own expense, cause two reviews of the Compliance Program elements (**the Reviews**) to be carried out in accordance with each of the following requirements:
 - a) Scope of the Reviews – Linen House shall ensure that the Reviews are broad and rigorous enough to:
 - i. provide the ACCC with a supportable verification that Linen House has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of Linen House; and
 - ii. provide the Review Report and opinions detailed at point 7 below.
- 6.2 Linen House will ensure that the first review is completed within 13 months of the commencement date of this undertaking coming into effect, and the second review is completed within the final 3 months of the 3 year period of the undertaking.
- 6.3 Independence of Reviewer – Linen House shall ensure that the Reviews are 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 Linen House;
 - b) has not acted or does not act for Linen House in any other capacity other than Compliance Program Reviewer;
 - c) is not retained by Linen House 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 Linen House or provide other services on trade practices related matters other than Compliance Program reviewing; and
 - e) has no other significant interests in Linen House.

- 6.4 Evidence – Linen House will use its best endeavours to ensure that the Reviews are able to be conducted on the basis that the Reviewer has access to all relevant sources of information in Linen House’s possession or control, including:
- a) enquiries of any employees, representatives, agents and stakeholders of Linen House; and
 - b) documents created for use in Linen House’s Compliance Program.
7. **Reporting**
- 7.1 Linen House shall use its best endeavours to ensure that the Reviewer sets out the findings of each 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 Linen House’s Compliance Officer;
 - c) the Reviewer’s opinion on whether Linen House 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 Linen House’s Compliance Program.
- 7.2 Linen House shall ensure that each Review Report is completed and provided to the ACCC within one month of completion of the Review.
8. Linen House 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 Linen House maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.
9. If requested by the ACCC, Linen House 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, Linen House 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.