

TRADE PRACTICES ACT 1974

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

BY

**LEGEND AUSTRALIA HOLDINGS PTY LTD
ACN 057 110 586**

PARTY GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (“the ACCC”) by Legend Australia Holdings Pty Ltd ACN 057 110 586 (“Legend”) of 33 Cross Street, Brookvale in the State of New South Wales, under section 87B of the Trade Practices Act 1974 (“the TPA”).

BACKGROUND

2. Legend supplies “Ultima” brand down quilts and pillows in the Australian indoor bedding market.
3. Legend promoted its “Ultima” brand quilts as containing “100% white goose down” and promoted its “Ultima” brand pillows as containing “100% down”.
4. To test the accuracy of the 100% down content claims made by Legend, the ACCC arranged professional testing of a “Ultima” brand quilt in accordance with recognised testing procedures for down products. The “Ultima” quilt tested by the ACCC was calculated to contain 83.9% goose down (with no additional duck down), significantly less than the represented 100% goose down.
5. Following its investigation, the ACCC considered that Legend’s 100% down content representations were false and misleading to consumers and accordingly, likely constituted conduct in contravention of sections 52, 53(a) and 55 of the TPA.
6. The ACCC has acknowledged that Legend, in making the 100% down content claims, relied upon and complied with the labelling guidelines allowed in Australian Standard (AS) 2479-1987 and that it had not intended to mislead or deceive consumers.
7. Legend acknowledges the ACCC’s concerns that its 100% down content claims may have misled consumers and may be in contravention of sections 52, 53(a) and 55 of the TPA.

UNDERTAKING

8. In consequence of the matters referred to above, Legend gives the following undertaking to the ACCC pursuant to section 87B of the TPA:
- 8.1 Legend undertakes to the ACCC, that for a period of 3 years, it will not:
- (a) represent that its “Ultima” or other down products that it supplies 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 for its “Ultima” or other down products that it supplies which include any down content percentage tolerance or allowance; and
 - (c) make any representations as to down percentage content and/or specie for the down products that it supplies that it cannot substantiate by way of testing of finished down products derived from each shipment of down, or finished down products, purchased by Legend (“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.
- 8.2 Legend will use its best endeavours to ensure that as at the commencement date of this undertaking all product labelling and promotional material for “Ultima” and other down products supplied by Legend in the possession of Australian retail outlets do not display any false or misleading representations as to down percentage content and/or specie.
- 8.3 Legend will, within 21 days of the commencement date of this undertaking, place:
- (a) a corrective advertisement in the form set out in *Annexure A* to this undertaking in a Saturday edition of the largest circulation daily capital city newspaper in each State and Territory in Australia in which “Ultima” 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;
- 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 edition of the largest circulation daily capital city newspaper in each State and Territory in Australia in which “Ultima” 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.

- 8.4 Legend 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

- 8.5 Legend will, within 3 months 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 Legend's business who have contact with Australian resellers or consumers of down products supplied by Legend, or who are involved in the marketing or promotion of down products supplied by Legend. The Compliance Program is to ensure awareness of Legend's responsibilities in relation to the requirements of sections 52, 53(a) and 55 of the TPA, and to minimise Legend's risk of future breaches of sections 52, 53(a) and 55 of the TPA.
- 8.6 Legend 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.
- 8.7 Legend will provide, at its own expense, a copy of any documents required by the ACCC in accordance with *Annexure C*.

COMMENCEMENT OF UNDERTAKING

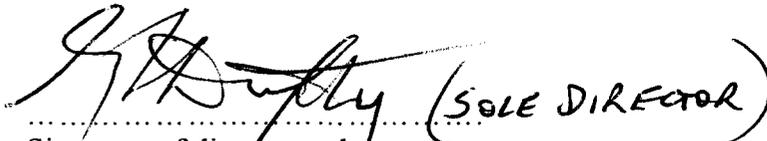
9. This undertaking comes into effect on the date on which:
- (a) the undertaking is executed by Legend; and
 - (b) the ACCC accepts the undertaking so executed.

ACKNOWLEDGEMENTS

10. Legend 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.
11. Legend acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from Legend's conduct.

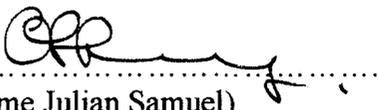
EXECUTION PAGE

EXECUTED by **LEGEND AUSTRALIA HOLDINGS PTY LTD**
(ACN 057 110 586) in accordance with section 127(1) of the *Corporations Act 2001*
by authority of its director and secretary:


.....
Signature of director and secretary

G. L. DUFFLY
.....
Name of director and secretary (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: 5 September 2006

Annexure A

LEGEND AUSTRALIA HOLDINGS 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 Legend Australia Holdings Pty Ltd (Legend) that sample testing of the Legend *Ultima* brand down quilt by the ACCC showed that it contained approximately 85% goose down, significantly less than the 100% goose down that we claimed.

Accordingly, the ACCC has advised Legend 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.

In making 100% down content claims, we relied on down content tolerances allowed in Australian Standard 2479-1987.

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.

Legend 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 and pillows.



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

Annexure B

GROUP CORRECTIVE NEWSPAPER ADVERTISEMENT

Companies logos to be inserted

IMPORTANT NOTICE

DOWN CONTENT LABELLING OF QUILTS

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 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.



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 LEGEND AUSTRALIA HOLDINGS PTY LTD

1. Legend Australia Holdings Pty Ltd (“Legend”) 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 Legend 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 Legend 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 Legend will ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
 - 3.3 Legend 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 Legend will ensure that all officers, employees and other persons involved in Legend’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 Legend will ensure the staff training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
 - 4.3 Legend will, within 14 days of completion of the staff 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 4.1 and 4.2 above.

5. Complaints Handling

- 5.1 Legend will develop procedures for recording, storing and responding to trade practice complaints within 2 months of the Undertaking coming into effect.
 - 5.2 Legend will provide the ACCC with an outline of the complaint handling system within 2 months of the Undertaking coming into effect.
6. If requested by the ACCC, Legend shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.