

TRADE PRACTICES ACT 1974

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

BY

**HOME EXPRESS NOMINEES PTY LTD
ACN 067 600 533**

PARTY GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (“the ACCC”) by Home Express Nominees Pty Ltd ACN 067 600 533 (“Home Express”) of Level 1, 407 Glen Huntly Road, Elsternwick in the State of Victoria, under section 87B of the Trade Practices Act 1974 (“the TPA”).

BACKGROUND

2. Home Express supplies “Home Express” brand down quilts in the Australian indoor bedding market.
3. Home Express promoted its “Home Express” brand quilts through representations including “100% white goose down”.
4. To test the accuracy of the 100% goose down content claims made by Home Express, the ACCC purchased a sample of “Home Express” brand 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 the “Home Express” quilts showed that the quilts contained in the range of 72% - 85% goose down, significantly less goose down than the represented 100%.
6. Following its investigation into Home Express’ 100% down content representations, the ACCC considered that these representations were false and misleading to consumers and accordingly, likely constituted conduct in contravention of sections 52, 53(a) and 55 of the TPA.
7. Home Express has advised the ACCC that its 100% down content claims were made in reliance on labelling percentage tolerances allowed in Australian Standard (AS) 2479-1987, and on test reports provided by its overseas supplier, and that it had not intended to mislead or deceive consumers.
8. Home Express acknowledges the ACCC’s concerns that its 100% down content claims were 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, Home Express gives the following undertaking to the ACCC pursuant to section 87B of the TPA:
- 9.1 Home Express undertakes to the ACCC, that for a period of 3 years, it will not:
- (a) represent that its “Home Express” or other own-brand down 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 for its “Home Express” or other own-brand products which include any down content percentage tolerance or allowance; and
 - (c) make any representations as to down percentage content and/or specie for its own-brand products that it cannot substantiate by way of testing of finished down products derived from each shipment of down, or finished down products, purchased by Home Express (‘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 Home Express will use its best endeavours to ensure that as at the commencement date of this undertaking all Home Express labelling and promotional material relating to its own-brand down products in all Home Express retail outlets, and all other retail outlets supplied by Home Express, do not display any false or misleading representations as to down percentage content and/or specie.
- 9.3 Home Express will place on its internet web-site for 3 months following the commencement date of this undertaking a corrective notice as set out in *Annexure A* or *Annexure B* to this undertaking.
- 9.4 Home Express 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 edition of the largest circulation daily capital city newspaper in each State and Territory in Australia in which Home Express own-brand 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 Home Express to provide full refunds to any consumers who consider that they were misled by the 100% goose down content representations made by Home Express;

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 Home Express own-brand 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 Home Express will provide a full refund to each consumer who returns a Home Express own-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 Home Express 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 Home Express own-brand quilt.
- 9.6 To assist consumers who wish to contact Home Express for information about obtaining a refund for their Home Express own-brand quilt represented to contain 100% goose down, Home Express 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 a period of 90 days from the commencement date of this undertaking.
- 9.7 Home Express 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 Home Express will provide the following report to the ACCC within 120 days from the commencement date of this undertaking:

A report which outlines:

- (i) the number of consumers who returned a “Home Express” own-brand quilt represented to contain 100% goose down, seeking a full refund from Home Express;
- (ii) the number of consumers who received a full refund from Home Express in relation to returning a “Home Express” own-brand quilt represented to contain 100% goose down;
- (iii) the number of “Home Express” own-brand quilts represented to contain 100% goose down returned by consumers in relation to seeking a full refund from Home Express;

- (iv) the total amount of refunds provided by Home Express to consumers who returned a “Home Express” own-brand quilt represented to contain 100% goose down; and
- (v) if a full refund was not provided by Home Express to a consumer who returned a “Home Express” own-brand quilt represented to contain 100% goose down, the reason/s a full refund was not provided by Home Express to that consumer.

Trade Practices Compliance Program undertaking

- 9.9 Home Express 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 Home Express’ business who have contact with Australian consumers of Home Express own-brand down products, or who are involved in the marketing or promotion of Home Express own-brand down products. The Compliance Program is to ensure awareness of Home Express’s responsibilities in relation to the requirements of sections 52, 53(a) and 55 of the TPA, and to minimise Home Express’ risk of future breaches of sections 52, 53(a) and 55 of the TPA.
- 9.10 Home Express 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 Home Express will provide, at its own expense, a copy of any documents required by the ACCC in accordance with *Annexure C*.

COMMENCEMENT OF UNDERTAKING

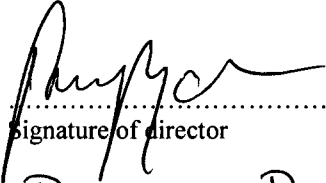
- 10. This undertaking comes into effect on the date on which:
 - (a) the undertaking is executed by Home Express; and
 - (b) the ACCC accepts the undertaking so executed.

ACKNOWLEDGEMENTS


- 11. Home Express 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. Home Express acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from Home Expresses conduct.

EXECUTION PAGE

EXECUTED by **HOME EXPRESS NOMINEES PTY LTD**
(ACN 067 600 533) in accordance with section 127(1) of the *Corporations Act 2001*
by authority of its directors:


.....
Signature of director

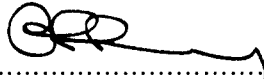
RUSSEN RUOE
.....
Name of director (block letters)


.....
Signature of director

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

**Home
EXPRESS**
The Manchester Specialists
407 Glenhurry Rd,
Elsterwick. 3185
Ph 9 528-3756.

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: 19 September 2006

Annexure A

HOME EXPRESS NOMINEES 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 Home Express Nominees Pty Ltd (Home Express) that sample testing of our *Home Express* brand down quilts by the ACCC showed that they contained significantly less than the 100% goose down that we claimed. The *Home Express* quilts were calculated to contain in the range of 72% - 85% goose down.

Accordingly, the ACCC has advised Home Express 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, and on test reports from our overseas supplier.

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.

If you purchased a *Home Express* 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 a Home Express store and obtain a **full refund** of the purchase price. Further information on obtaining a full refund is available by telephoning Home Express on our freecall number: [insert telephone number]

Home Express 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 Home Express in compliance with court enforceable undertakings given by Home Express 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 [or 100% duck down] that we have claimed. The test results were:

[Trading name in alphabetical order] [Brand of product tested] [Test results range]
[Trading name in alphabetical order] [Brand of product tested] [Test results range]
[Trading name in alphabetical order] [Brand of product tested] [Test results range]
[Trading name in alphabetical order] [Brand of product tested] [Test results range]

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 quilts 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 HOME EXPRESS NOMINEES PTY LTD

1. Home Express Nominees Pty Ltd (“Home Express”) 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 Home Express 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 Home Express 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 Home Express will ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
 - 3.3 Home Express 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 Home Express will ensure that all officers, employees and other persons involved in Home Express’ 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 Home Express will ensure the staff training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
 - 4.3 Home Express 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 Home Express will develop procedures for recording, storing and responding to trade practice complaints within 2 months of the Undertaking coming into effect.
 - 5.2 Home Express 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, Home Express shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.