

## **TRADE PRACTICES ACT 1974**

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

**BY**

**PURAX FEATHER HOLDINGS PTY LTD  
ACN 005 540 250**

#### **PARTY GIVING UNDERTAKING**

1. This undertaking is given to the Australian Competition and Consumer Commission (“the ACCC”) by Purax Feather Holdings Pty Ltd ACN 005 540 250 (“Purax”) of 104-108 Henty Street, Reservoir in the State of Victoria, under section 87B of the Trade Practices Act 1974 (“the TPA”).

#### **BACKGROUND**

2. Purax supplies “Puradown”, “White Eider” and other own-brand down and feather quilts and pillows in the Australian indoor bedding market.
3. Purax promoted its own-brand quilts and pillows through representations including “100% goose down” and “100% duck down”.
4. To test the accuracy of the 100% down content claims made by Purax, the ACCC arranged professional testing of a Purax “White Eider” bed quilt in accordance with recognised testing procedures for down products. The quilt tested by the ACCC was calculated to contain 84.3% goose down, significantly less than the represented 100% goose down.
5. Following its investigation, the ACCC considered that Purax’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 Purax’s 100% down content claims complied with the labelling percentage tolerances allowed in Australian Standard (AS) 2479-1987 and that it had not intended to mislead or deceive consumers. The ACCC has also acknowledged that once the ACCC had raised the 100% down content issue with Purax on 6 February 2006, Purax took swift and appropriate remedial measures to re-label its own-brand down products to reflect the actual minimum down content of the products.
7. Purax acknowledges the ACCC’s concerns that its 100% down content claims were false and liable to mislead consumers and may contravene sections 52, 53(a) and 55 of the TPA.

## UNDERTAKING

8. In consequence of the matters referred to above, Purax has agreed to give the following undertaking to the ACCC pursuant to section 87B of the TPA:
- 8.1 Purax undertakes to the ACCC, that for a period of 3 years, it will not:
- (a) promote that any of its “Puradown”, “White Eider” or other own-brand quilts and pillows 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 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 quilts and pillows that it cannot substantiate by way of testing of a representative sample of finished down products derived from each shipment of down, or finished down products, purchased by Purax (‘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, or to AS-2479 (or other equivalent or superceding Australian Standard), for down and feather products.
- 8.2 Purax will use its best endeavours to ensure that as at the commencement date of this undertaking all “Puradown”, “White Eider” and other Purax own-brand product labelling and promotional material in the possession of Australian retail outlets supplied by Purax do not display any false or misleading representations as to down percentage content and/or specie.
- 8.3 Purax 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.
- 8.4 Purax 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 Purax own-brand goose 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 Purax own-brand goose 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.

- 8.5 Purax 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**

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

### **COMMENCEMENT OF UNDERTAKING**

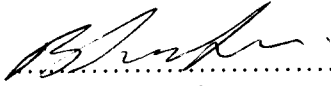
9. This undertaking comes into effect on the date on which:
- (a) the undertaking is executed by Purax; and
  - (b) the ACCC accepts the undertaking so executed.

### **ACKNOWLEDGEMENTS**

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

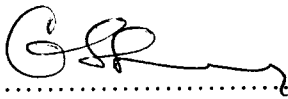
**EXECUTION PAGE**

**EXECUTED** by **PURAX FEATHER HOLDINGS PTY LTD (ACN 005 540 250)** in accordance with section 127(1) of the *Corporations Act 2001* by authority of its director:

  
.....  
Signature of director

BILL KATSIOS  
.....  
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: 26 October 2006

**Annexure A**

**PURAX FEATHER 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 Purax Feather Holdings Pty Ltd (Purax) that sample testing of our *Purax White Eider* brand quilt showed that it contained approximately 85% goose down, significantly less than the 100% goose down that we claimed.

Accordingly, the ACCC has advised Purax 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.

Purax 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 Purax in compliance with court enforceable undertakings given by Purax 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 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.



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 PURAX FEATHER HOLDINGS PTY LTD**

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