

TRADE PRACTICES ACT 1974**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B****BY****PILLOW TALK PTY LTD
ACN 010 861 711****PARTY GIVING UNDERTAKING**

1. This undertaking is given to the Australian Competition and Consumer Commission ("the ACCC") by Pillow Talk Pty Ltd ACN 010 861 711 ("Pillow Talk") of 1 Northolt Street, Darra in the State of Queensland, under section 87B of the Trade Practices Act 1974 ("the TPA").

BACKGROUND

2. Pillow Talk supplies "Pillow Talk Naturals" brand down quilts in the Australian indoor bedding market.
3. Pillow Talk promotes its "Pillow Talk Naturals" brand quilts through representations including "100% white goose down".
4. To test the accuracy of the 100% goose down content claims made by Pillow Talk, the ACCC purchased a sample of "Pillow Talk Naturals" 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 "Pillow Talk Naturals" quilts showed that the quilts contained in the range of 71% - 76% goose down, (exclusive of 3% - 5% down fibre) significantly less goose down than the represented 100%.
6. Following its investigation into Pillow Talk's 100% goose 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. Pillow Talk has advised the ACCC that its 100% goose 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. Pillow Talk acknowledges the ACCC's concerns that its 100% goose 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, Pillow Talk gives the following undertaking to the ACCC pursuant to section 87B of the TPA:

9.1 Pillow Talk undertakes to the ACCC, that it will not:

- (a) represent that its “Pillow Talk Naturals” 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 “Pillow Talk Naturals” 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 “Pillow Talk Naturals” or other own-brand products 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 Pillow Talk (‘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 Pillow Talk confirms that as at and from the commencement date of this undertaking no Pillow Talk labelling or promotional material relating to its “Pillow Talk Naturals” or other own-brand down products in any Pillow Talk retail outlet, or other retail outlet supplied by Pillow Talk, displays or will display any representation of 100% down content.

9.3 Pillow Talk 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 Pillow Talk 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 “Pillow Talk Naturals” quilts represented to contain 100% goose down 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 Pillow Talk to provide full refunds to any consumers who consider that they were misled by the 100% goose down content claims made by Pillow Talk for its “Pillow Talk Naturals” quilts;

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 “Pillow Talk Naturals” quilts represented to contain 100% goose down 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. The corrective advertisement will include an offer by Pillow Talk to provide full refunds to any consumers who consider that they were misled by the 100% goose down content claims made by Pillow Talk for its “Pillow Talk Naturals” quilts.
- 9.5 Pillow Talk will provide a full refund to each consumer who returns a “Pillow Talk Naturals” 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 Pillow Talk 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 “Pillow Talk Naturals” quilt.
- 9.6 To assist consumers who wish to contact Pillow Talk for information about obtaining a refund for their “Pillow Talk Naturals” quilt represented to contain 100% goose down, Pillow Talk 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 Pillow Talk 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 Pillow Talk 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 “Pillow Talk Naturals” quilt represented to contain 100% goose down, seeking a full refund from Pillow Talk;
- (ii) the number of consumers who received a full refund from Pillow Talk in relation to returning a “Pillow Talk Naturals” quilt represented to contain 100% goose down;
- (iii) the number of “Pillow Talk Naturals” quilts represented to contain 100% goose down returned by consumers in relation to seeking a full refund from Pillow Talk;

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

Trade Practices Compliance Program undertaking

- 9.9 Pillow Talk 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 Pillow Talk’s business who have contact with Australian consumers of Pillow Talk own-brand down products, or who are involved in the marketing or promotion of Pillow Talk own-brand down products. The Compliance Program is to ensure awareness of Pillow Talk’s responsibilities in relation to the requirements of sections 52, 53(a) and 55 of the TPA, and to minimise Pillow Talk’s risk of future breaches of sections 52, 53(a) and 55 of the TPA.
- 9.10 Pillow Talk 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 Pillow Talk 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 Pillow Talk; and
 - (b) the ACCC accepts the undertaking so executed.

ACKNOWLEDGEMENTS

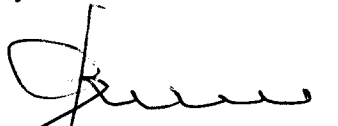
- 11. Pillow Talk acknowledges the ACCC’s right to make this undertaking available for public inspection and notes that the ACCC will, at its discretion, from time to time, publish and publicly refer to this undertaking.
- 12. Pillow Talk acknowledges and accepts that this undertaking in no way derogates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

EXECUTION PAGE

EXECUTED by **PILLOW TALK PTY LTD (ACN 010 861 711)** in accordance with section 127(1) of the *Corporations Act 2001* by authority of its Directors:



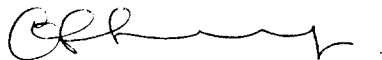
.....
Signature of Director
(Owen Heath Goddard)



.....
Signature of Company Secretary
(Neil Geoffrey Dellaca)

Date: 20th December, 2006

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: 14th January 2007^{or}

Annexure A

PILLOW TALK 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 Pillow Talk Pty Ltd (Pillow Talk) that sample testing of our *Pillow Talk Naturals* down quilts by the ACCC showed that they contained significantly less than the 100% goose down that we claimed. The *Pillow Talk Naturals* quilts were calculated to contain in the range of 71% - 76% goose down.

Accordingly, the ACCC has advised Pillow Talk 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 *Pillow Talk Naturals* 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 Pillow Talk store and obtain a **full refund** of the purchase price. Further information on obtaining a full refund is available by telephoning Pillow Talk on our freecall number: [insert telephone number]

Pillow Talk 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 products.



This corrective advertisement has been placed by Pillow Talk in compliance with court enforceable undertakings given by Pillow Talk 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 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% goose 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 PILLOW TALK PTY LTD

1. Pillow Talk Pty Ltd (“Pillow Talk”) 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 Pillow Talk 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. Pillow Talk 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. Pillow Talk will ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
 - 3.3. Pillow Talk 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. Pillow Talk will ensure that all officers, employees and other persons involved in Pillow Talk’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. Pillow Talk will ensure the staff training is conducted by a suitably qualified trade practices compliance professional or legal practitioner with expertise in trade practices law.
 - 4.3. Pillow Talk will, within 14 days of completion of the staff training, provide the ACCC with a written statement from the trade practices 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 Pillow Talk will develop procedures for recording, storing and responding to trade practice complaints within 2 months of the Undertaking coming into effect.

5.2 Pillow Talk 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, Pillow Talk shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.