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TRADE PRACTICES ACT 1974

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

BY

ETERNAL DESIGN PTY LTD
(ACN 090 374 824)

PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (“the ACCC”) by Eternal Design Pty Ltd (ACN 090 374 824) (“**Eternal Design**”) of 66 Adderley Street West, Auburn in the State of New South Wales under section 87B of the *Trade Practices Act 1974* (“the Act”).

BACKGROUND

2. Eternal Design is incorporated in New South Wales and carries on business in Australia as a furniture importer and wholesale supplier to retailers. As part of its range of children’s beds, Eternal Design imports and sells children’s bunk beds.
3. As a part of its range of bunk beds Eternal Design supplied a “Fantasy Bus” designed in the form of a two tier bus (the Bunk Bed). It has a green foliage design along the bottom section with painted black wheels and a yellow mid section with two large open windows. There is a black steering wheel and headlights located at the front of the bunk bed. It has a top deck with five open windows. On the front of the bunk bed is a sign with the words “Fantasy Bus” in a variety of colors. At the rear of the Bunk Bed is a silver ladder and painted rear tail lights. A photograph of the Bunk Bed is at Annexure A.

4. During the period February 2006 to 25 August 2006 Eternal Design supplied a total of 94 Bunk Beds to retailers nationally.
5. All bunk beds sold in Australia are required to comply with the mandatory consumer product safety standard that is applicable to bunk beds, based on or derived from the Australian/New Zealand Bunk Bed Standard AS/NZ 4220:1994 as varied by Consumer Protection Notice No. 1 of 2003 (the Standard).
6. Section 65C of the Act prohibits a corporation from supplying goods that do not comply with mandatory consumer product safety standards, including the Standard.
7. On 16 August 2006 ACCC staff inspected a Bunk Bed on display in a retail store in Victoria. ACCC staff found one of the dimensions of the top deck open windows did not comply with Clause 7.1 (b) of the Standard. This clause requires that any gap 600 mm or more above the floor not have dimensions of greater than 95mm or less than 230 mm.
8. The measurements taken by ACCC staff of the five open windows of the top deck of the Bunk Bed revealed each had dimensions of approximately 235 mm in width and 170 mm in depth (i.e. exceeded the prescribed dimensions under the Standard).
9. The ACCC was concerned that Eternal Design, by supplying the Bunk Beds that did not comply with the Standard, may have contravened section 65C of the Act. The ACCC was also concerned that the failure of the Bunk Bed to comply with Clause 7.1 (b) of the Standard posed a serious safety risk to children in terms of a potential body entrapment hazard in the event a child slipped through one of the top deck open windows.

10. On 17 August 2006 the ACCC raised its concerns regarding the Bunk Bed with Eternal Design and confirmed these concerns in writing on 25 August 2006. In response to the ACCC's concerns Eternal Design advised it had:

- (a) Ceased supplying the Bunk Bed,
- (b) Commenced retailer and consumer recall action,
- (c) Commissioned testing of the Bunk Bed to the Standard, and

11. On 22 September 2006 the ACCC advised Eternal Design in writing it had been provided with a copy of a test report on the Bunk Bed by Furntech which identified additional aspects of non compliance with the Standard. The Furntech report indicated the Bunk Bed failed to comply with the following clauses of the Standard:

- (a) Clause 6.4.2(e) - where an opening in the guardrail is provided for easier access to the bed, the opening shall have a minimum width of 300mm and a maximum of 400mm up to the minimum height of the guardrail as specified in Item (c) above (Clause 6.4.2 (c) states the minimum vertical distance between the upper surface of the guardrail and the upper surface of the mattress base shall be 260mm); and
- (b) Clause 6.4.2(d) – the vertical distance between the upper surface of the guardrail and the mark indicating the maximum height of the mattress shall be at least 160mm.

12. The Furntech test report provided to the ACCC identified that the opening in the Bunk Bed's guardrail was 750mm wide and the Maximum Mattress Height Mark was absent. A test report commissioned by Eternal Design from Furntech also confirmed these same areas of non-compliance.

13. The ACCC was concerned that these additional breaches of the Standard raised further potential safety issues in that they posed a risk of a child rolling off the top deck of the Bunk Bed.
14. Upon the ACCC initially raising these additional breaches of the Standard and potential safety concerns on 12 September 2006, Eternal Design advised it had contacted all retailers advising of the additional breaches revealed by the Furntech test report on the Bunk Bed. It further advised it is liaising with retailers to facilitate the return of the Bunk Beds by those consumers who have elected to have a refund and to arrange for the modification of the Bunk Bed to the Standard for those consumers who have elected to retain their Bunk Bed.
15. On 20 September 2006 Eternal Design notified the Parliamentary Secretary to the Treasurer of its consumer recall of the Bunk Beds.
16. In response to the ACCC's concerns, Eternal Design has offered to give this Undertaking in the terms set out below to the Commission for the purposes of section 87B of the Act. The Commission has agreed to accept this Undertaking under section 87B of the Act.

COMMENCEMENT OF UNDERTAKINGS

17. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Eternal Design; and
 - (b) the Commission accepts this Undertaking so executed by Eternal Design.

UNDERTAKINGS

18. Eternal Design undertakes that it will, for a period of 3 years from the date of this Undertaking coming into effect, whether by itself, its directors, servants or agents

or otherwise howsoever, refrain from supplying, or offering to supply, bunk beds to which:

- (a) the Standard relates;
- (a) the Standard, as subsequently varied or amended, relates; or
- (c) any subsequent prescribed consumer product safety standard relating to bunk beds that replaces the Standard for the purposes of section 65C of the Act during the period of 3 years from the date of this Undertaking coming into effect,

in circumstances where the bunk beds do not comply with the prescribed consumer product safety standard in force at the relevant time.

19. Eternal Design further undertakes that it will, by 31 January 2007, complete the recall or modification, as the case may be, of the Bunk Bed and confirm the completion of these actions to the Commission within 14 days of their completion.

20. Eternal Design will, at its own expense, within 7 days of this Undertaking coming into effect, send or cause to be sent, to each consumer who purchased the Bunk Bed during the period from February 2005 to 25 August 2006 inclusive, a letter in the form and terms of Annexure B to this Undertaking.

21. Within 14 days of this Undertaking coming into effect, Eternal Design will provide the ACCC with a list of the persons to whom a letter has been sent pursuant to paragraph 19 above.

Trade Practices Compliance Program

22. Eternal Design further undertakes that it will:

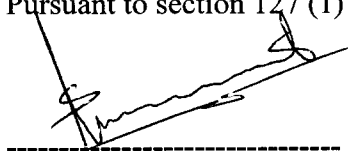
- (a) implement a corporate trade practices compliance program as at Annexure C to this Undertaking, within 4 months of the date of this Undertaking coming into effect, which:
- (i) is designed to ensure that Eternal Design's officers, employees, representatives and agents are aware of the application of Part V of the Act, including section 65C, to its business as well as the content of the Standard;
 - (ii) provides for the directors of Eternal Design and all employees of Eternal Design whose duties could result in them being concerned with conduct that may contravene the Part V, Division 1A, Product Safety and Product Information, of the Act, will attend practical trade practices training with a focus on the mandated product safety requirements of the Act;
 - (iii) is designed to create a culture of compliance throughout Eternal Design; and
 - (iv) has the purpose of ensuring, so far as is reasonably possible, that Eternal Design does not engage in conduct in contravention of section 65C of the Act of the kind referred to in paragraph 7 and 10 (a) and (b) above, or similar related conduct, during the period referred to in subparagraph 22(c) below;
- (b) within 2 weeks from the end of the 3 month period starting from the date of this Undertaking coming into effect, provide the Commission with a report in writing setting out details of the compliance program as developed pursuant to subparagraph 22 (a) above and attaching key documents of the compliance program; and

- (c) maintain and continue to implement the said program for a period of 3 years from the date of this Undertaking coming into effect.

ACKNOWLEDGEMENTS

- 23. Eternal Design acknowledges the ACCC will make this Undertaking available for public inspection.
- 24. Eternal Design further acknowledges that the ACCC will, at its absolute discretion, from time to time publish and publicly refer to this Undertaking.
- 25. Eternal Design acknowledges and accepts that this Undertaking in no way derogates from the rights and remedies that may be available to any other person arising from the conduct of Eternal Design referred to in paragraphs 7 and 11 above.
- 26. Eternal Design further acknowledges that a summary of the ACCC Compliance Program Review reports referred to in Annexure C of the Undertaking may be held with this undertaking on the public register.

EXECUTED by **Eternal Design Pty Ltd**
(ACN 090 374 824) by its authorized officers
Pursuant to section 127 (1) of the Corporations Act 2001



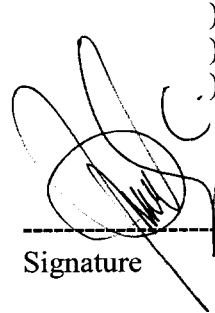
Signature

Michael Law

Print name

Director

Office held



Signature

Yuliana Kartolo


Print name

Director

Office held

This 12th day of December, 2006

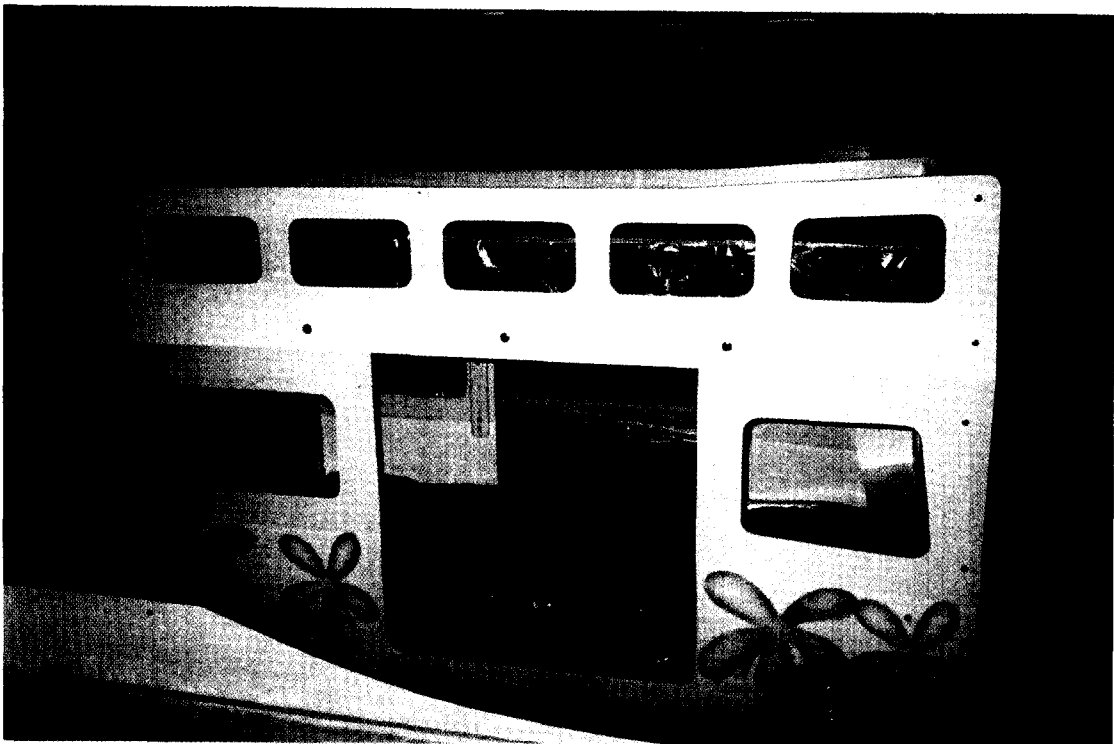
**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES
ACT 1974.**



Graeme Julian Samuel
Chairman ACCC

This 14th day of January, 2007

ANNEXURE A



ANNEXURE B

TEXT OF LETTER TO CONSUMERS WHO PURCHASED THE FANTASY BUS BUNK BEDS

Dear [insert name of consumer]

Important information about Fantasy bunk beds

I refer to a previous letter sent to you by the retailer from which you purchased a Fantasy Bus Bunk Bed (the Bunk Bed) concerning the design of the Bunk Bed and potential safety hazards.

Assessment of the Bunk Bed by the Australian Competition and Consumer Commission and subsequent testing of the Bunk Bed has revealed it does not comply with the mandatory consumer product safety standard for bunk beds. This standard is provided in the Australian/New Zealand Bunk Bed Standard AS/NZ 4220:1994. By virtue of section 65C of the *Trade Practices Act 1974*, all bunk beds sold must comply with the Australian/New Zealand Bunk Bed Standard (the Standard).

The Bunk Bed does not comply with the Standard for the following reasons:

- (a) The dimensions of the five open windows on the top of the Bunk Bed are 235mm in width and 170mm in depth which is too large (there must be no entrapment gaps between 95mm and 230mm in size) – the purpose of the prescribed gap size is to prevent a child from slipping between any gaps and becoming trapped;
- (b) The opening in the guardrail to allow ease of access is too wide by 350mm (it must have minimum width of 300mm and a maximum of 400mm) – the purpose of the prescribed width is to prevent a child from rolling or falling out of a bunk bed; and
- (c) There is no heightmark for the maximum mattress height on the top bunk guard rail – the purpose of heightmark is to prevent the likelihood of a child potentially rolling out of the top of a bunk bed.

Accordingly, Eternal Design wishes to advise you that if you have not already done so you should contact the retailer from whom you purchased the Bunk Bed and seek a refund if you so choose. If you choose to have a refund you will need to make arrangements with either the retailer or Eternal Design for the Bunk Bed to be collected from your premises.

Should you wish instead to have your Bunk Bed modified to comply with the Standard, Eternal Design will undertake the necessary rectification work to ensure the Bunk Bed complies with the Standard. To achieve this, Eternal Design will, at your convenience, make arrangements for the necessary work to be carried out. This will be done at no charge or extra cost to you.

Eternal Design will carry out the rectification work during December 2006 and January 2007 and will contact you in December 2006 to arrange a suitable date for attending your residence. In the interim, due to the safety hazards of the bunk bed, Eternal Design strongly advises that **you do not use the bunk bed until the necessary rectification work as described above has been carried out.**

Yours sincerely,

[Insert name and position title]

ANNEXURE C

TRADE PRACTICES COMPLIANCE PROGRAM ETERNAL DESIGN PTY LTD (ACN 090 374 824)

Eternal Design Pty Ltd (Eternal Design) and its director, Michael Law undertake to the Australian Competition and Consumer Commission (the Commission) for the purposes of section 87B of the Trade Practices Act 1974 (the Act) that Michael Law and all employees of Eternal Design whose duties could result in them being concerned with conduct that may contravene Part V, Division 1A Product Safety and Product Information, of the Act will attend Trade Practices training and that Eternal Design will develop and implement a Product Safety Compliance and Recall Program (the Compliance Program) covering Part V Division 1A of the Act in accordance with the requirements set out below:

1. Staff Training

- 1.1. Within 3 months of this Undertaking coming into effect and thereafter at least once a year for the period of Undertaking, Michael Law and all employees of Eternal Design whose duties could result in them being concerned with conduct that may contravene Part V, Division 1A Product Safety and Product Information, of the Act will attend practical trade practices training focusing on Part V particularly Part V Division 1A of the Act.
- 1.2 Eternal Design will ensure that the training referred to in paragraph 1.1 above is administered by a suitably qualified compliance professional or legal practitioner with experience in trade practices law.
- 1.3 Eternal Design will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 1.1 above to the Commission within 14 days of the training verifying that such training has occurred.

2. Product Safety

- 2.1. Eternal Design will maintain up-to-date copies, at its business premises, of all prescribed consumer product safety standards and prescribed consumer information standards that relate to products Eternal Design supplies

- 2.2. Eternal Design will ensure that the products supplied that are subject to a prescribed safety and/or information standard under the Act, comply with the relevant standard.
- 2.3. Eternal Design will maintain recall procedures that enable products supplied by Eternal Design that do not comply with the prescribed safety standard and/or information standards under the Act to be efficiently and effectively withdrawn from the market and returned to Eternal Design.
3. If requested by the Commission, Eternal Design will provide, at its own expense, copies of any other documents or information in respect of matters which are the subject of the compliance program.

4. Acknowledgements

- 4.1 Eternal Design acknowledges that the Commission will make this undertaking available for public inspection.
- 4.2 Eternal Design further acknowledges that the Commission will from time to time publicly refer to this Undertaking.
- 4.3 Eternal Design further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.



NEW SOUTH WALES
Births, Deaths and Marriages Registration Act 1995
CHANGE OF NAME CERTIFICATE

NAME REGISTERED Family Name Christian or Given Name(s) Sex Date of Birth Place of Birth	LAW Michael Male 07 August 1972 North Sumatra, Indonesia
FORMER NAME Family Name Christian or Given Name(s)	KARTOLO Sumitro
REGISTRATION DETAILS Number Registering Authority Date	19511/2006 Greg Curry, Registrar 13 October 2006
ENDORSEMENTS Not Any	

This certificate confirms a lawful change of name only.
If verification of birth details is required, it should be obtained from other documentation.

Before accepting copies, sight unaltered original. The original has a coloured background.



REGISTRY OF BIRTHS
DEATHS AND MARRIAGES

SYDNEY

16 Oct 2006

I hereby certify that this is a true copy of particulars recorded in a
Register in the State of New South Wales, in the Commonwealth of Australia

Greg Curry

Registrar