

TRADE PRACTICES ACT 1974

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

BY

**AUSTRALIAN FEATHER MILLS PTY LTD TRADING AS AFM DOWNIA
ACN 000 038 228**

PARTY GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (“the ACCC”) by Australian Feather Mills Pty Ltd ACN 000 038 228 trading as AFM Downia of 35 Newton Road, Wetherill Park, in the State of New South Wales, under section 87B of the Trade Practices Act 1974 (“the TPA”).

BACKGROUND

2. AFM Downia supplies “Downia” and “Artic Down” brand down quilts and pillows in the Australian indoor bedding market.
3. AFM Downia promoted its “Downia” and “Artic Down” brand down quilts and pillows through representations on the product packaging and promotional material including “100% white goose down” and “100% duck down”.
4. To test the accuracy of the 100% down content claims made by AFM Downia, the ACCC purchased a sample of two “Downia” quilts labelled as containing 100% goose down and 100% duck down, and arranged professional testing of the quilts in accordance with recognised testing procedures for down products.
5. The results of the testing on the “Downia” quilts showed that the two quilts contained less down than the represented 100%. The “Downia” quilts tested by the ACCC were calculated to contain in the range of 80% - 90% down.
6. For the purposes of the testing on the Downia quilts, ‘down’ was taken to refer to ‘down cluster’ as defined by the International Down and Feather Bureau (IDFB).
7. Following its investigation into AFM Downia’s 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.
8. AFM Downia has advised the ACCC that its 100% down content claims were made in reliance on labelling composition limits specified in Australian Standard (AS) 2479-1987, and that AFM Downia had not intended to mislead or deceive consumers nor contravene sections 52, 53(a) and 55 of the TPA.
9. AFM Downia acknowledges the ACCC’s concerns that its various 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

10. In consequence of the matters referred to above, AFM Downia gives the following undertaking to the ACCC pursuant to section 87B of the TPA:
 - 10.1 AFM Downia undertakes to the ACCC, that for a period of 3 years, it will not:
 - (a) promote that any of its own-brand quilts or pillows (such as “Downia” and “Artic Down”) contain 100% down;
 - (b) in relation to its supply of new stock own-brand quilts or pillows (such as “Downia” and Artic Down”), make any other representations as to down content percentage which are based upon any down content percentage limit allowance (‘new stock’ refers to own-brand quilts and pillows supplied by AFM Downia to Australian retailers on and from 1 September 2006); and
 - (c) make any representations as to down percentage content that it cannot substantiate by way of testing of finished down products derived from each shipment of down, or finished down products, purchased by AFM Downia (‘finished down products’ refers to down products where the manufacturing process has been completed). Such testing is to conform IDFB approved testing methods for down and feather products.
 - 10.2 AFM Downia will use its best endeavours to ensure that as at the commencement date of this undertaking all “Downia” and “Artic Down” quilt packaging and promotional material in the possession of Australian retail outlets supplied by AFM Downia do not display any false or misleading representations as to 100% down percentage content.
 - 10.3 AFM Downia 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* to this undertaking.
 - 10.4 AFM Downia will, within 21 days of the commencement of this undertaking, place 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 AFM Downia own-brand (ie. “Downia” and “Artic Down”) quilts and “David Jones” brand quilts supplied by AFM Downia 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.
 - 10.5 AFM Downia will provide the ACCC, within 7 days after the publication date of each corrective newspaper advertisement, with a copy of the corrective newspaper advertisement.
 - 10.6 For the purpose of this undertaking, ‘down’ is taken to refer to ‘down cluster’ as defined by the IDFB as at the commencement date of this undertaking.

Trade Practices Compliance Program undertaking

- 10.7 AFM Downia 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 B* for the officers, employees and other persons involved in AFM Downia's business who have contact with Australian resellers or consumers of AFM Downia products, or who are involved in the marketing or promotion of AFM Downia products. The Compliance Program is designed to ensure awareness of AFM Downia's responsibilities in relation to the requirements of sections 52, 53(a) and 55 of the TPA, and to minimise AFM Downia's risk of future breaches of sections 52, 53(a) and 55 of the TPA.
- 10.8 AFM Downia 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.
- 10.9 AFM Downia will provide, at its own expense, a copy of any documents required by the ACCC in accordance with *Annexure B*.

COMMENCEMENT OF UNDERTAKING


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

ACKNOWLEDGEMENTS

12. AFM Downia 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.
13. AFM Downia acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from AFM Downia's conduct.

EXECUTION PAGE

EXECUTED by **AUSTRALIAN FEATHER MILLS PTY LTD (ACN 000 038 228)** in accordance with section 127(1) of the *Corporations Act 2001* by authority of its directors:


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Signature of director


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Signature of director

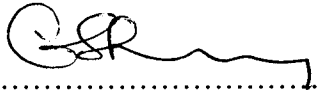
ANNE CHI QUANG
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Name of director (block letters)

CAM QUANG
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
Name of director (block letters)

ACCEPTED by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** pursuant to section 87B of the *Trade Practices Act 1974*


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(Graeme Julian Samuel)
Chairman
Australian Competition and Consumer Commission

Date: 31st January

2008 

Annexure A

**AUSTRALIAN FEATHER MILLS PTY LTD – CORRECTIVE
ADVERTISEMENT**

AFM logo to be inserted

IMPORTANT NOTICE
DOWN CONTENT LABELLING OF QUILTS

Australian Feather Mills Pty Ltd (AFM Downia) supplies a range of down quilts to retailers in Australia including the *Downia* and *David Jones* brands.

The Australian Competition and Consumer Commission (ACCC) has brought to our attention that sample testing by the ACCC of our quilts showed that they contained less than the 100% down that we have claimed. Accordingly, the ACCC's view is that our 100% down content claims are likely to be in contravention of the *Trade Practices Act* which requires that any claims made be accurate and not misleading to consumers.

The ACCC found that our *Downia* brand 100% goose down and 100% duck down quilts contained 80%-90% down, and the *David Jones* brand 100% white goose down quilts that we supplied to David Jones Limited contained 88% goose down.

In making 100% down content claims, we relied on down content composition limits allowed in Australian Standard 2479-1987 and did not intend to mislead or deceive consumers.

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 placed by Australian Feather Mills Pty Limited in compliance with court enforceable undertakings given to the ACCC.

Annexure B

TRADE PRACTICES COMPLIANCE PROGRAM TO BE IMPLEMENTED BY AUSTRALIAN FEATHER MILLS PTY LTD TRADING AS AFM DOWNIA

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