

TRADE PRACTICES ACT 1974

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B OF THE
TRADE PRACTICES ACT 1974.**

BY

**AUSIA AUSTRALIA PTY LTD
(ACN 116 801 793)
of Unit 13, 1082 – 1086 Whitehorse Road, Box Hill VIC 3128**

AND

**KANG CHAN
of Unit 13, 1082-1086 Whitehorse Road, Box Hill, VIC 3128**

AND

**HO PANG SIE
of Unit 13, 1082-1086 Whitehorse Road, Box Hill, VIC 3128**

PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (the **Commission**) by Ausia Australia Pty Ltd (**Ausia**), Kang Chan (**Chan**) and Ho Pang Sie (**Sie**) each of Unit 13, 1082 – 1086 Whitehorse Road, Box Hill in the State of Victoria, pursuant to section 87B of the *Trade Practices Act 1974*.

BACKGROUND

2. Ausia was incorporated pursuant to the *Corporations Act 2001* on 21 October 2005.
3. Chan and Sie reside in Australia and have been the joint directors of Ausia since 21 October 2005.
4. The account known as ‘Oz-Auction’ was opened on eBay Australia’s website www.ebay.com.au (the **Oz-Auction Account**) in or about October 2005 and operated by persons other than Ausia, Chan or Sie until January 2006 at which time the Oz-Auction Account was transferred to Ausia.
5. Chan and Sie are executive directors of Ausia and have been involved in the day to day operation of the Oz-Auction Account since January 2006.

CONDUCT

6. From the period commencing January 2006 to 5 December 2006, Ausia imported and sold through its eBay Oz-Auction Account:
 - (a) 57 x New Adjustable Wooden Baby Cot and Bed/ w Trundle (KC 312) (**Baby Cots**); and

- (b) 190 x New 2-in-1 Baby Walker/ Rocker W/Toys & Music (880 and 882) (**Baby Walkers**);

which Ausia, Chan and Sie acknowledge are unlikely to have satisfied the Australian Safety Standards described in:

- (a) ***The Baby Cot Standard – Cots for household use – Safety requirements AS/NZS 2172:2003*** prescribed mandatory by way of Consumer Protection Notice No. 6 of 2005 which is registered on the Federal Register of Legislative Instruments F2005L03885 (**the Baby Cot Standard**); and
- (b) ***The Baby Walker Standard - Standard Consumer Safety Specification for Infant Walkers F 977 – 00*** prescribed mandatory by way of the *Trade Practices (Consumer Product Safety Standard) (Baby Walkers) Regulation 2002* (**the Baby Walker Standard**).

A photograph of the Baby Cot and Baby Walker 880 is at **Annexure A**.

- 7. By letter dated 29 November 2006, staff of the Commission wrote to Ausia noting that they had become aware of the sale of the Baby Cots and Baby Walkers to consumers through the Oz-Auction Account and noting concerns that the Baby Cots and Baby Walkers may not comply with the Baby Cot Standard and the Baby Walker Standard, respectively.
- 8. On 3 December 2006, staff of the Commission attended the business premises of Ausia and examined an example of one of the Baby Cots. After an examination of the Baby Cot and an examination of photographs of a sample of the Baby Walker 880 sold by Ausia, staff noted their concerns that the Baby Cots and Baby Walkers sold by Ausia were unlikely to have complied with the Baby Cot Standard and the Baby Walker Standard, including:
 - (a) the Baby Cot appeared to pose the potential for head and bodily injury arising from protrusions and incorrect height requirements with respect to the base and side rails as well as the absence of informative/warning labelling associated with the proper use of a cot all of which are required by the Baby Cot Standard; and
 - (b) the Baby Walker 880 appeared not to have a braking mechanism to prevent the Baby Walker from being ridden over a step nor have the prescribed warning labels advising of the potential stair hazard, the hazard of leaving a child unattended and other informative warnings which are all required by the Baby Walker Standard.
- 9. In response to concerns expressed by staff of the Commission, Ausia, Chan and Sie commenced a voluntary recall of the Baby Walkers and Baby Cots sold through the Oz-Auction Account, including the Baby Cots and Baby Walkers sold prior to Ausia operating the Oz-Auction Account together with a recall of other models of baby cots and baby walkers sold by Ausia which Chan and Sie considered may be at risk of **contravening the Baby Cot Standard and the Baby Walker Standard**, including:
 - (a) baby cot model KC311; and

- (b) baby walker models KXY398, KXY 180J, KXY302-1, 882P and 688PS.
10. In response to the ACCC's concerns regarding the conduct, Ausia, Chan and Sie have offered this Undertaking to the ACCC.

COMMENCEMENT OF UNDERTAKING

11. This Undertaking comes into effect when:
- (a) The Undertaking is executed by Ausia, Chan and Sie; and
 - (b) The Commission accepts this Undertaking so executed.
- 11B. This Undertaking may be executed by way of counterparts.

UNDERTAKINGS

12. Ausia, Chan and Sie hereby undertake to the Commission, for the purposes of section 87B of the Act that:

Public Disclosure

- (a) within 1 month of this Undertaking coming into effect, to take all necessary steps to publish at its own expense, the words 'Public Disclosure Notice – Product Safety Concerns' (in 20 point font in black lettering on a white background) on the front page of its Oz-Auction eBay store website located through www.ebay.com.au (in the space marked in green on **Annexure B**) and link those words to a public disclosure notice in the form of **Annexure C** and maintain that link and that notice continuously for a period of 6 months;
- (b) within 1 month of this Undertaking coming into effect, to take all necessary steps to publish for a period of 1 month and at its own expense in the next available edition, a public disclosure notice in the form of **Annexure D** in:
 - (i) full page size in My Business (monthly) magazine published by Hallmark Editions; and
 - (ii) a double page spread, in NetGuide magazine published by Australian Consolidated Press.
- (c) within 5 days of this Undertaking coming into effect, to take all necessary steps to publish at its own expense, a public disclosure notice (in full page size) in the form of **Annexure E** in:
 - (i) the May/June 2007 issue of Pregnancy & Birth (Bi Monthly) magazine published by eMap Australia and maintain for 1 edition;
 - (ii) the 2007 issue of The Pregnancy Book (Annual edition) published by eMap Australia for 1 edition; and

- (iii) the April/May 2007 issue of Mother & Baby (Bi Monthly) magazine published by eMap Australia and maintain for 1 edition.

Voluntary Recall

- (d) continue and complete a voluntary recall, in accordance with the recall guidelines specified at www.recalls.gov.au, of all:
 - (i) Baby Cots and Baby Walkers sold through the Oz-Auction eBay website (including all Baby Walkers and Cots sold during the period prior to Ausia operating the Oz-Auction eBay site); and
 - (ii) baby cot and baby walkers referred to in paragraph 9(a) and (b) hereto;and to offer and provide refunds to consumers for the purchase price and postage costs of each product where those consumers return the product to Ausia.

Trade Practices Compliance Program

- (e) within 3 months of this Undertaking coming into effect, implement a Trade Practices Compliance Program in accordance with the requirements set out in **Annexure F**;
- (f) to maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years and 3 months from the date of this Undertaking coming into effect; and
- (g) to provide, at its own expense, a copy of any documents requested by the Commission in accordance with **Annexure F**.

Acknowledgments

13. Ausia, Chan and Sie acknowledge that the Commission will make this undertaking available for public inspection.
14. Ausia, Chan and Sie further acknowledge that the Commission will from time to time publicly refer to this undertaking.
15. Ausia, Chan and Sie further acknowledge that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

EXECUTED by AUSIA AUSTRALIA PTY LTD (ACN 116 801 793) by its authorised officers pursuant to section 127(1) of the Corporations Act 2001

CUZ

Signature of Director
HO PANG SIE

Witness: Sie Boen Tjiat

[Signature]

Signature of Secretary/Director
KANG CHAN

SIGNED BY KANG CHAN

[Signature]

Signature of Kang Chan

DAVID YIN

Witness: Print Name

SIGNED BY HO PANG SIE

CUZ

Signature of Ho Pang Sie

Sie Boen Tjiat

Witness: Print Name

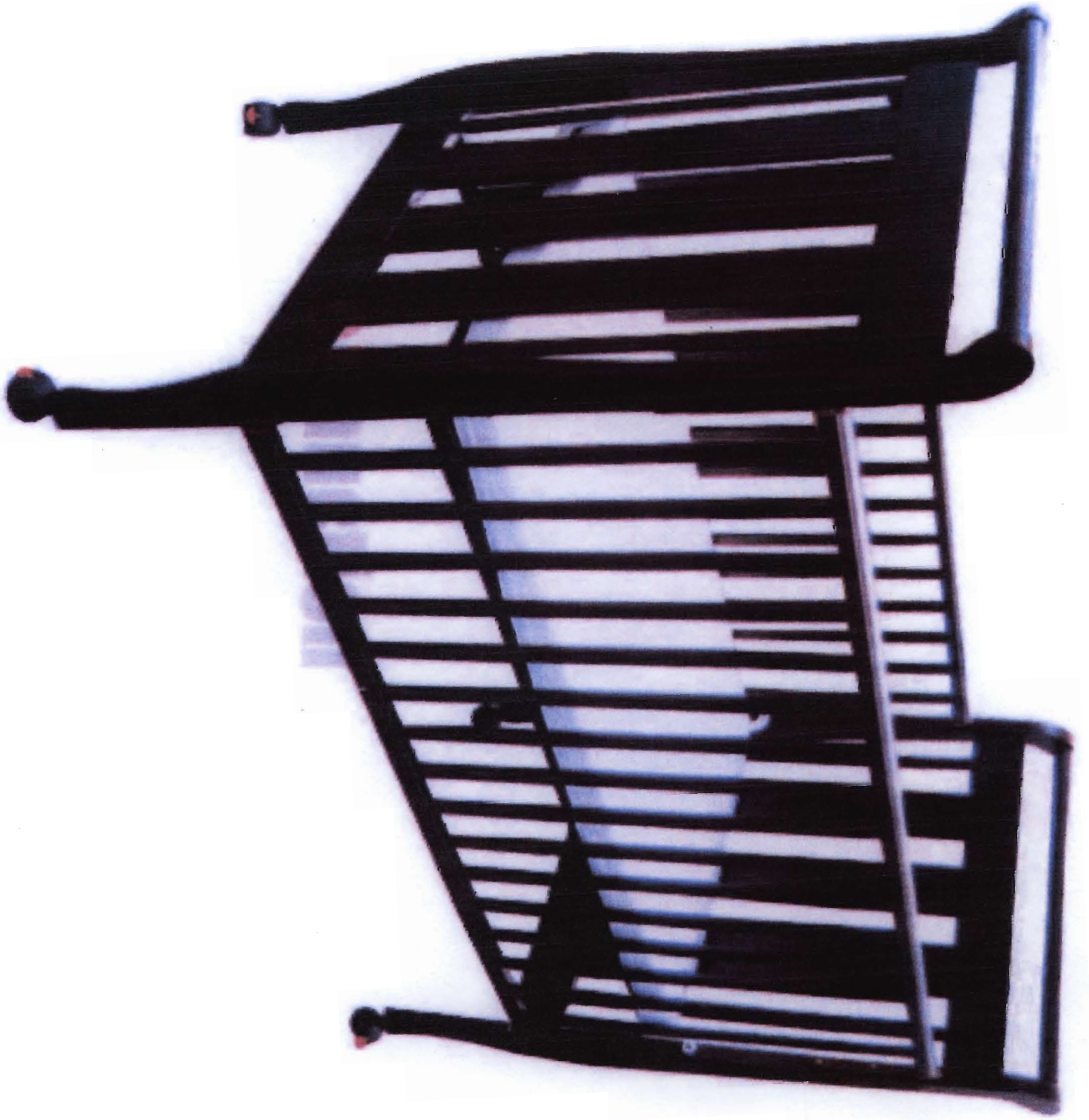
ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974.

[Signature]

Graeme Julian Samuel
Chairman

This 6th day of March 2007.

Annexure A – Photographs of Baby Cot and Baby Walker 880





Annexure B – Oz-Auction eBay Store



home | pay | register | sign in | site map
[Buy](#) | [Sell](#) | [My eBay](#) | [Community](#) | [Help](#)

Start new search
 Advanced Search

Home > eBay Stores > OZ-AUCTION > All Categories

Add to My Favourite Stores | Sign up for Store newsletter



OZ-AUCTION

Maintained by: oz-auction (76079)
 Oz-Auction is a professional eBay auction team. We sell latest Poker Chips, Metal Detector, Pool Table, Solar lights, Portable dvd player, Kite, Cello, Violin, Electric guitar, Shaver, Car dvd, Winch, Dirt Bike, ATV, Telescope,....

Store Search

Ending Soon!

in titles & descriptions

Store Categories

NEW ARRIVAL

- NEW KINGWOOD 6'x9" 800 WATTS 5 WAY CAR SPEAKERS A8990S
- NEW 5.5HP/4000RPM PRESSURE WATER PUMP 4 STROKE WP20

[See all items...](#)

Best Price

NEW POWER SPEED FOIL KITE w/Lines, Reel, Bag 2MTR KM-3013
AU \$0.01
 Time Left: 12m

[See all items...](#)

- Store home**
 - Automotive & Tools** (261)
 - Baby Product** (8)
 - Bike/Motor Bike** (237)
 - Collection** (85)
 - Electronics** (230)
 - Entertainment** (154)
 - Fitness Goods** (83)
 - Home, Garden & Lifestyle** (256)
 - Musical Instrument** (114)
 - Sport Goods** (306)
 - Other Items** (31)
- Show all Subcategories

1125 items found in All Categories
[List View](#) | [Picture Gallery](#)

Item Title

View: **All Items** | Auction only | Buy It Now only

Sort by: Time: ending soonest



NEW Max Power 2200W 52cc Chainsaw 20" Bar 7500rpm SL551
AU \$150.01
 Time Left: 12m



NEW BLACK ELECTRIC GUITAR w/7 BONUS E30BK+S+AMP
 Bonus: Amp(30W)+Bag+Stand+Strap+Picks+Tuner+Pick Up Clip
AU \$120.00
 Time Left: 12m

Display

Annexure C – Public Disclosure Notice

PUBLIC DISCLOSURE

An Apology from OZ AUCTION



The Australian Competition and Consumer Commission (**ACCC**) has raised concerns with Ausia Australia Pty Ltd (**Ausia**), the operator of the OZ Auction account on eBay, regarding the supply of a model of baby walker and a model of cot which the ACCC is concerned do not comply with the consumer product safety standards in Australia.

Certain goods supplied in Australia such as baby walkers and cots are required to comply with consumer product safety standards declared mandatory under the *Trade Practices Act 1974 (the Act)*.

A consumer product safety standard requires goods to comply with particular performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging rules such as warning labels.

Ausia advertised and sold through its Oz Auction eBay website the 'New 2-in-1 Baby Walker /Rocker W/ Toys & Music' (**the Baby Walker**) and the 'New Adjustable Wooden Baby Cot and Bed /w Trundle KC 312' (**the Cot**).

The ACCC brought to Ausia's attention concerns that both the Baby Walker and the Cot did not appear to comply with the Australian standard for Baby Walkers and for Household Cots respectively.

The Baby Walker Ausia supplied to consumers did not appear to have an automatic braking mechanism to prevent the baby walker from being ridden over a step and it did not have the required warning labels advising of the potential stair hazard, the hazard of leaving a child unattended and other informative warnings which are all required by the Australian standard for baby walkers.

The Cot Ausia supplied to consumers posed concerns in respect of the potential for head and bodily injury arising from protrusions and incorrect height requirements with respect to the base and side rails as well as an absence of the required informative / warning labelling associated with the proper use of a cot all of which are required by the Australian standard for cots.

Upon an inspection of the Baby Walker and the Cot it is likely that a number of the features of the Baby Walker and the Cot would have failed a test of compliance in **respect of the** Australian standards for baby walkers and cots.

As these likely failures are of serious concern, Ausia voluntary recalled both the Baby Walker and Cot that it sold to consumers through its eBay website Oz-Auction. This action has required Ausia to refund each consumer's purchase cost for the Baby Walkers and Cots returned under the recall.

Accordingly, Ausia expresses its sincere apologies to all of its customers and those associated with Ausia that have been affected by this conduct. To ensure this conduct does not happen again, Ausia has offered a Court enforceable undertaking to the ACCC (which can be viewed at www.accc.gov.au) to implement a trade practices compliance program, including Trade Practices training, which will be undertaken by relevant staff and management.

Ausia has also undertaken to the ACCC to publish public disclosure notices to increase awareness of product safety standards.

The consumer product safety standard which baby walkers supplied in Australia must comply with is - *Standard Consumer Safety Specification for Infant Walkers F 977 – 00* prescribed mandatory under the Act by the *Trade Practices (Consumer Product Safety Standard) (Baby Walkers) Regulation 2002*.

The consumer product safety standard for cots supplied in Australia is '*Cots for household use – Safety requirements AS/NZS 2172:2003*' prescribed mandatory under the Act by the Consumer Protection Notice No. 6 of 2005 registered on the Federal Register of Legislative Instruments F2005L03885.

Further information about these two standards and other Australian standards prescribed mandatory under the Act can be found at the ACCC's website at www.accc.gov.au.



This Public Disclosure has been paid for by Ausia Australia Pty Ltd and circulated pursuant to the terms of the Undertaking given by Ausia Australia Pty Ltd to Australian Competition and Consumer Commission.

Annexure D

Public Disclosure Notice [16 Point]
Risks to Businesses [20 point font]

[text in 12 point font]

Businesses that are engaged in the sale of goods to consumers need to be aware of their product safety obligations under the *Trade Practices Act 1974*.

One area of concern for the Australian Competition and Consumer Commission (ACCC) is the failure of many businesses to comply with their obligations under section 65C of the *Trade Practices Act 1974* which prohibits the sale of goods to consumers that do not comply with the relevant consumer product safety standards. A substantial number of products are recalled each year because of safety concerns. The website www.recalls.gov.au lists recalled products.

On 29 November 2006 staff of the ACCC wrote to Ausia Australia Pty Ltd (**Ausia**) regarding the sale by Ausia of 57 x baby cots and 190 x baby walkers on its eBay account Oz-Auction. Staff of the ACCC expressed concern that the baby cots and baby walkers sold by Ausia on its eBay account Oz-Auction appeared unlikely to satisfy the relevant Australian Safety standards.

Ausia has resolved the concerns raised by the ACCC on the basis set out in an Undertaking to the ACCC. Some of the key features of the Undertaking require Ausia to complete a voluntary recall of the baby cots and baby walkers sold by Ausia on its Oz-Auction eBay account, to implement a trade practices compliance program and to publish a number of public disclosure notices.

To address the concerns raised by the ACCC, Ausia has incurred significant financial expense.

In addition to the cost to businesses, those that contravene the *Trade Practices Act 1974* risk the prospect of civil litigation by the ACCC or even criminal prosecution by the Commonwealth Department of Public Prosecution.

The possible magnitude of penalties that the court may impose is illustrated by a recent prosecution by the Commonwealth Department of Public Prosecution for contravening mandatory safety standards. The Federal Court late last year fined Skippy Australia Pty Ltd an aggregate of \$500,000 on the two offences relating to the supply of baby walkers and a further \$350,000 for the supply of a baby cot that did not comply with mandatory safety standards. The judgement is available to be viewed at www.austlii.edu.au/au/cases/cth/federal_ct/2006/1343.html.

This public disclosure notice is published by Ausia Australia Pty Ltd in accordance with its obligations contained in its Undertaking to the ACCC which may be viewed at www.accc.gov.au.

[Commonwealth Coat of Arms and Commission logo – not less than a total of 2cm high x 5 cm long. No larger than 4 cm high and 6 cm long].

Annexure E – Public Disclosure Notice

Public Disclosure Notice [16 Point]

Risks to Infants [20 point font]

[text in 12 point font]

Providing and maintaining a safe environment for your baby can be challenging for any parent. Children under five years of age are more vulnerable to accidental death or injury than any other age group. However, most accidents are preventable.

To reduce the chance of this happening to your family, it is important that you use safe products for your baby. There are many products on the market for babies and it can be confusing to understand all the safety considerations when making a selection.

If you are buying new furniture or equipment ask the retailer if it has been made according to Australian standards. Compliance with these standards ensures that the product meets minimum safety, design and labelling requirements.

In relation to small children, the following mandatory product safety and information standards exist: babies dummies; baby bath aids, baby walkers, balloon-blowing kits, basketball rings and backboards, bean bags, bicycle helmets, bunk beds, care labelling – clothing and textile products, child restraint for motor vehicles, children's nightwear, cots for household use, floatation toys and swimming aids for children, paper patterns for children's nightwear and toys for children (36 months and under).

The Australian Competition and Consumer Commission (**ACCC**) is responsible for enforcing mandatory consumer product safety and information standards, and bans of unsafe goods declared under the *Trade Practices Act 1974*. Because prevention is better than cure, the ACCC attaches great importance to promoting compliance with the safety provisions as well as to remedial enforcement action. Where parents suspect that goods are being sold that do not comply with mandatory standards or that are likely to be dangerous, parents should raise these concerns with the retailer and/or the ACCC.

On 29 November 2006 staff of the ACCC expressed concern that baby cots and baby walkers sold by Ausia Australia Pty Ltd (**Ausia**) on eBay appeared unlikely to meet the relevant Australian Safety standards. To address these concerns, Ausia and its directors provided an Undertaking to the ACCC whereby Ausia undertook to complete a voluntary recall of the baby cots and baby walkers sold by it, to implement a trade practices compliance program and to publish a number of public disclosure notices. A copy of the Undertaking is available to be viewed at www.accc.gov.au.

Information on product and information safety standards together with a publication called 'Keeping Baby Safe' (which is a guide to nursery furniture) is available from the ACCC Infocentre on 1300 302 302 or at www.accc.gov.au. The website www.recalls.gov.au lists recalled products.

[Commonwealth Coat of Arms and Commission logo – not less than a total of 2cm high x 5 cm long. No larger than 4 cm high and 6 cm long].

Annexure F

TRADE PRACTICES COMPLIANCE PROGRAM

Ausia Australia Pty Ltd (**Ausia**) will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

1. Appointments

- 1.1. Within 1 month of the date of the Undertaking coming into effect Ausia 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**).

2. Compliance Officer Training

- 2.1. Ausia will ensure that, within 3 months of the Undertaking coming into effect, the Compliance Officer attends practical trade practices training focusing on Part V of the *Trade Practices Act 1974*;
- 2.2. Ausia shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law;
- 2.3. Ausia, within 14 days of completion of training, will provide the Australian Competition and Consumer Commission (**Commission**) with a written statement from the compliance professional or legal practitioner confirming the completion of the training conducted in accordance with 2.1 and 2.2 above.

3. Staff Training

- 3.1. Ausia will cause all employees of Ausia whose duties could result in them being concerned with conduct that may contravene Part V to receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or a qualified, compliance professional or legal practitioner with expertise in trade practices law, that focuses on Part V of the *Trade Practices Act 1974*.

4. Complaints handling – Ausia will:

- 4.1. develop procedures for recording, storing and responding to trade practice complaints within 2 months of the Undertaking coming into effect; and
- 4.2. provide the Commission with an outline of the complaint handling system within 2 months of the Undertaking coming into effect.

5. **Product Safety** – Ausia will:
 - 5.1. 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 that Ausia supplies;
 - 5.2. ensure that the products supplied that are subject to a prescribed safety and/or information standard under the *Trade Practices Act 1974*, comply with the relevant standard; and
 - 5.3. design, implement and maintain recall procedures that enable products supplied by Ausia that do not comply with prescribed safety and/or information standards under the *Trade Practices Act 1974* to be efficiently and effectively withdrawn from the market and returned to Ausia.
6. Ausia will ensure that the Compliance Officer reports to Ausia's director(s) or governing body every 3 months on the continuing effectiveness of the Compliance Program.
7. **Review** – Ausia shall, at its own expense, cause an annual review of the Compliance Program elements (**the Review**) to be carried out in accordance with each of the following requirements:
 - 7.1. **Scope of the Review** – Ausia shall ensure that the Review is broad and rigorous enough to:
 - 7.1.1. provide Ausia and the Commission with a supportable verification that Ausia has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of Ausia;
 - 7.1.2. provide the Review Report and opinions detailed at point 8 below; and
 - 7.1.3. provide Ausia and the Commission with a supportable verification that Ausia has in place a product safety compliance program that complies with the requirements of the Undertaking and is suitable for the size and structure of Ausia.
 - 7.2. **Independence of Reviewer** – Ausia shall ensure that the Review is carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
 - 7.2.1. did not design or implement the Compliance Program;
 - 7.2.2. is not a present or past staff member or director of Ausia;
 - 7.2.3. has not acted and does not act for Ausia in any trade practices related matters;

7.2.4. has not and does not act for or consult to Ausia or provide other services on trade practices related matters other than Compliance Program reviewing; and

7.2.5. has no significant shareholding or other interests in Ausia.

7.3. **Evidence** – Ausia shall use its best endeavors to ensure that the Review is able to be conducted on the basis that the Reviewer has access to all relevant sources of information in Ausia's possession or control, including without limitation:

7.3.1. enquiries of any employees, representatives, agents and stakeholders of Ausia;

7.3.2. documents created by Ausia's consultants, legal practitioners and accountants for use in Ausia's Compliance Program;

7.3.3. all documents required to assess Ausia's compliance with the relevant product safety/information standards under the Trade Practices Act.

7.4. Ausia shall ensure that the first Review is completed within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter

8. **Reporting**

8.1. Ausia shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in a Trade Practices Compliance Program Review Report, which will provide particular and specific information regarding the scope of the Review and the effectiveness of the Trade Practices Compliance Program including:

8.1.1. details of the evidence gathered and examined during the Review;

8.1.2. the name and relevant experience of the person appointed as Ausia Compliance Officer;

8.1.3. the Reviewer's opinion on whether Ausia has in place effective staff training, complaints handling programs that comply with the requirements of the Undertaking;

8.1.4. actions recommended by the Reviewer to ensure the continuing effectiveness of Ausia's Compliance Program.

8.2. Ausia shall ensure that each Trade Practices Compliance Program Review Report is completed and provided to Ausia within one month of completion of the Review.

- 8.3. Ausia will cause the Trade Practices Compliance Program Review Report to be provided to the Commission within 14 days of its receipt from the Reviewer.
- 8.4. Ausia shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the Commission that are reasonably necessary to ensure that Ausia maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.
9. If requested by the Commission Ausia shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
10. In the event the Commission has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Ausia shall, at its own expense and if requested by the Commission, cause and interim or additional Review to be conducted and cause the resulting Trade Practices Compliance Program Review Report to be provided to the Commission.