

**TRADE PRACTICES ACT 1974****UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B****BY****DESIGNER DIRECT (SA) PTY LTD  
ACN 076 432 669****PARTY GIVING UNDERTAKING**

1. This Undertaking is given to the Australian Competition and Consumer Commission ("the ACCC") by Designer Direct (SA) Pty Ltd ACN 076 432 669 ("Designer Direct") of Suite 4, 191 Melbourne Street, North Adelaide in the State of South Australia, under section 87B of the *Trade Practices Act 1974* ("the TPA").

**BACKGROUND**

2. Designer Direct supplies its own-brand down and down/feather quilts in the Australian indoor bedding market. Designer Direct promoted its "Mahogany Summer" and Mahogany Winter" brand quilts as containing "50% duck down".
3. To assess the accuracy of the 50% down content claims made by Designer Direct, independent testing was undertaken on a sample of "Mahogany Summer" and "Mahogany Winter" quilts. The result of the testing on the quilts showed that they contained significantly less down than the represented 50%. The "Mahogany Summer" quilts tested contained, respectively, 18.5% down and 34.3% down, while a "Mahogany Winter" quilt tested was found to contain 35.8% down.
4. On the basis of the above testing, the ACCC considered that Designer Direct's 50% 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.
5. Designer Direct has advised the ACCC that its 50% down content claims were made in reliance on the down content specifications that Designer Direct had provided to its supplier, and that it had not intended to mislead or deceive consumers.
6. Designer Direct acknowledges the ACCC's concerns that its 50% down content claims are false and liable to mislead consumers, and likely contravene sections 52, 53(a) and 55 of the TPA.

## UNDERTAKING

7. In consequence of the matters referred to above, Designer Direct gives the following Undertaking to the ACCC pursuant to section 87B of the TPA:
  - 7.1 Designer Direct undertakes to the ACCC, that for a period of 3 years from the date of acceptance of this Undertaking, it will not make any representations as to the down percentage content of its own-brand down or down/feather products that it cannot substantiate by way of independent testing of samples of finished products purchased by Designer Direct ('finished products' refers to down or down/feather products where the manufacturing process has been completed). The testing is to conform to International Down and Feather Bureau (IDFB) approved testing methods for down and feather products such as the Australian Standard 4823-2006.
  - 7.2 Designer Direct will use its best endeavours to ensure that as at the commencement date of this Undertaking all Designer Direct labelling and promotional material relating to its "Mahogany Summer", "Mahogany Winter" and its other own-brand products in all Designer Direct retail outlets does not display any false or misleading representations as to down content.
  - 7.3 Designer Direct will place on its internet web-site [www.designerdirect.com.au](http://www.designerdirect.com.au) for 90 days following the commencement date of this Undertaking a corrective notice as set out in *Annexure A* to this Undertaking.
  - 7.4 Designer Direct will, within 21 days of the commencement of this Undertaking, place a corrective notice in the form set out in *Annexure A* to this Undertaking in a Saturday edition of the Adelaide *Advertiser* newspaper. The corrective notice will be placed within the first ten pages of the Adelaide *Advertiser* 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 notice will be at least 2 point font size larger than the other text. The corrective notice will include an offer by Designer Direct to provide a full refund to any consumer who considers that he or she was misled by the 50% down content representations made by Designer Direct for its "Mahogany Summer" or "Mahogany Winter" brand quilts.
  - 7.5 Designer Direct will provide a full refund to each consumer who returns a "Mahogany Summer" or "Mahogany Winter" brand quilt represented to contain 50% down, regardless of whether a consumer is able to furnish a receipt of purchase of the quilt. The refund paid by Designer Direct 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 "Mahogany Summer" or "Mahogany Winter" brand quilt represented to contain 50% down.
  - 7.6 Designer Direct will provide the ACCC, within 7 days after the publication date of the corrective newspaper notice, with a copy of the corrective newspaper notice.

## **Reporting undertaking**

7.7 Designer Direct will provide the following report to the ACCC within 90 days from the commencement date of this undertaking:

A report which outlines:

- (i) the number of consumers who returned a “Mahogany Summer” or “Mahogany Winter” brand quilt represented to contain 50% down, seeking a full refund from Designer Direct;
- (ii) the number of consumers who received a full refund from Designer Direct in relation to returning a “Mahogany Summer” or “Mahogany Winter” brand quilt represented to contain 50% down;
- (iii) the number of “Mahogany Summer” or “Mahogany Winter” brand quilts represented to contain 50% down returned by consumers in relation to seeking a full refund from Designer Direct;
- (iv) the total amount of refunds provided by Designer Direct to consumers who returned a “Mahogany Summer” or “Mahogany Winter” brand quilt represented to contain 50% down; and
- (v) if a full refund was not provided by Designer Direct to a consumer who returned a “Mahogany Summer” or “Mahogany Winter” brand quilt represented to contain 50% down, the reason a full refund was not provided by Designer Direct to that consumer.

## **Trade Practices Compliance Program undertaking**

7.8 Designer Direct 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 Designer Direct’s business who have contact with consumers of Designer Direct own-brand down or down/feather products, or who are involved in the marketing or promotion of Designer Direct own-brand down or down/feather products. The Compliance Program is to be designed to ensure awareness of Designer Direct’s responsibilities in relation to the requirements of sections 52, 53(a) and 55 of the TPA, and to minimise Designer Direct’s risk of future breaches of sections 52, 53(a) and 55 of the TPA.

7.9 Designer Direct 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.

7.10 Designer Direct will provide, at its own expense, a copy of any documents required by the ACCC in accordance with *Annexure B*.

## **COMMENCEMENT OF UNDERTAKING**

8. This Undertaking comes into effect on the date on which:
- (a) the Undertaking is executed by Designer Direct; and
  - (b) the ACCC accepts the Undertaking so executed.

## **ACKNOWLEDGEMENTS**

9. Designer Direct 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.
10. Designer Direct acknowledges and accepts that this Undertaking in no way derogates the rights and remedies available to any person arising from Designer Direct's conduct.

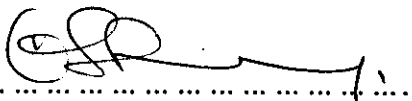
**EXECUTION PAGE**

**EXECUTED** by **DESIGNER DIRECT (SA) PTY LTD**  
(ACN 076 432 669) in accordance with section 127(1) of the *Corporations Act 2001*  
by authority of its director:

.....  
Signature of director

*Peter Souvertjis*  
.....  
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: <sup>5</sup> October  
..... ~~August~~ 2007

## Annexure A

### **DESIGNER DIRECT (SA) PTY LTD – CORRECTIVE NOTICE**

*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 Designer Direct (SA) Pty Ltd (Designer Direct) that sample testing of Designer Direct's *Mahogany Summer* and *Mahogany Winter* brand down and feather quilts showed that they contained significantly less than the 50% down that we claimed. The *Mahogany Summer* and *Mahogany Winter* quilts were calculated to contain in the range of 19% - 36% down.

Accordingly, the ACCC has advised Designer Direct that the down content claims that we have made for our *Mahogany Summer* and *Mahogany Winter* quilts 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 50% down content claims, we relied on our supplier meeting our down content specifications.

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 *Mahogany Summer* or *Mahogany Winter* brand quilt that is labelled as containing 50% down, and you consider that you were misled by the down content claim, you can return the item to a Designer Direct store and obtain a **full refund** of the purchase price. Further information on obtaining a full refund is available by telephoning Designer Direct on 8361 9311.

Designer Direct has undertaken to the ACCC that where in future we specify a percentage of down this will accurately reflect the minimum amount of down present in our products.



This corrective notice has been placed by Designer Direct in compliance with court enforceable undertakings given by Designer Direct to the ACCC.

## Annexure B

### **TRADE PRACTICES COMPLIANCE PROGRAM TO BE IMPLEMENTED BY DESIGNER DIRECT (SA) PTY LTD (“DESIGNER DIRECT”)**

1. Designer Direct will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:
  
2. **Appointment**
  - 2.1 Within 60 days of the date of the Undertaking coming into effect Designer Direct 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 Designer Direct will ensure that within 90 days 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 Designer Direct will ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
  - 3.3 Designer Direct will, within 14 days of the 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 Designer Direct will ensure that all officers, employees and other persons involved in Designer Direct’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 Designer Direct will ensure that the staff training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
  - 4.3 Designer Direct will, within 14 days of the 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 Designer Direct will develop procedures for recording, storing and responding to trade practice complaints within 60 days of the Undertaking coming into effect.
  - 5.2 Designer Direct will provide the ACCC with an outline of the complaint handling system within 60 days of the Undertaking coming into effect.
6. If requested by the ACCC, Designer Direct shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.