

## TRADE PRACTICES ACT 1974

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

BY

LOUISE DALGLISH SMITH

#### PERSONS GIVING THIS UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Louise Dalglish Smith trading as Cinnamon Bear Distributors ACT BN F00124616 of 28 Mayne Street, Chifley in the Australian Capital Territory under section 87B of the *Trade Practices Act 1974 (TPA)*.

#### BACKGROUND

2. Louise Dalglish Smith carries on a business registered in the Australian Capital Territory known as Cinnamon Bear Distributors (**Cinnamon Bear**) which operates as a garment importer and distributor, supplying retailers throughout Australia.
3. Cinnamon Bear recently imported into Australia a number of Babylicious branded baby sleeping bags (**Sleeping Bags**), which were distributed to retailers for sale. The fire hazard warning label stated:

AS/NZ 1249-2003  
FIRE DANGER –  
KEEP AWAY  
FROM FIRE

The label on the Sleeping Bags measured 25mm wide by 30mm long.

4. Section 65C of the TPA prohibits a company, and individuals carrying on trade between a State and Territory, from supplying consumer goods that do not comply with mandatory product safety standards.
5. The prescribed mandatory product safety standard for Children's nightwear is based on AS/NZS 1249:2003, "*Children's nightwear and limited daywear having reduced fire hazard*" (**the Standard**). The Standard covers all children's nightclothes and certain items of daywear including infant sleeping bags, all-in-ones and loose-fitting boxer shorts. The Standard requires the clothes to meet one of four categories of safety, and be labelled accordingly.
6. Following checks of a number of baby garment retailers by the ACCC during June 2007, the ACCC became concerned that Cinnamon Bear had supplied a number of imported Sleeping Bags to retailers

throughout Australia for sale that did not meet the requirements of the Standard. The Sleeping Bags appeared to be labelled with the incorrect fire hazard warning labels.

7. The ACCC also became concerned that Cinnamon Bear may have breached section 53(a) of the TPA by making representations on the labelling of the Sleeping Bags that the Sleeping Bags have met the Standard, when this may have not been the case.
8. Upon being notified of the ACCC's concerns, Cinnamon Bear:
  - contacted retailers it had supplied to request the Sleeping Bags be immediately withdrawn from sale;
  - conducted a voluntary recall of all non-compliant Sleeping Bags from retailers it has supplied;
  - took steps to have the Sleeping Bags tested for compliance with the Standard;
  - took steps to relabel all Sleeping Bags correctly before supplying them to retailers; and
  - offered to publish a corrective notice and apology.

## **COMMENCEMENT OF UNDERTAKINGS**

9. This Undertaking comes into effect when:
  - a. The Undertaking is executed by Louise Dalglish Smith; and
  - b. The ACCC accepts the Undertaking so executed.

## **UNDERTAKINGS**

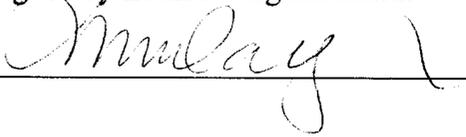
10. Louise Dalglish Smith undertakes for a period of three years for the purposes of section 87B of the TPA that she:
  - (a) will not in future supply or offer for supply any children's nightwear that does not fully comply with the prescribed consumer product safety standard;
  - (b) will, no later than the commencement of the Undertakings, ensure that fire hazard warning labels with the correct warning labels as per the Standard are printed and attached to any non-compliant Sleeping Bags in the possession of Cinnamon Bear. Further, she will provide such labels to any retailer to whom Cinnamon Bear has provided the Sleeping Bags; and
  - (c) will ensure that it will make the appropriate fire hazard warning labels available to any consumers who wish to have their Sleeping Bags relabelled.

11. Louise Dalglish Smith undertakes that, within three months of this Undertaking coming into effect, she will, at her own expense, cause to be published in the magazine “Practical Parenting” (the Magazine), an advertisement in the in the size and form set out in Annexure A to this Undertaking and shall use her best endeavours to ensure that such advertisement is:
  - (a) Of a size that occupies not less than one quarter of the page of the Magazine;
  - (b) In text which is in a type size no less than 10 point;
  - (c) Use her best endeavours to ensure the advertisement is placed within the first 10 pages of the Magazine; and
  - (d) Published once in the Magazine.
12. Louise Dalglish Smith, at her own expense, will establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in Annexure B within 3 months of the date of this Undertaking coming into effect. The Program is designed to minimise future breaches of section 65C and other relevant provisions within the TPA that refer to misleading and deceptive conduct.
13. Louise Dalglish Smith will maintain and continue to implement the Trade Practices Compliance Program set out in Annexure B for a period of 3 years from the date of this Undertaking coming into effect.

#### **ACKNOWLEDGEMENTS**

14. Louise Dalglish Smith acknowledges that the ACCC will make this Undertaking available for public inspection.
15. Louise Dalglish Smith further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
16. Louise Dalglish Smith further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
17. Louise Dalglish Smith further acknowledges the reports referred to in this Undertaking and the Trade Practices Compliance Program may be held with this Undertaking on the Public Register.

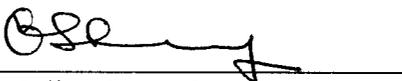
Signed by Louise Dalglish Smith

  
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Louise Dalglish Smith

This 4 day of October 2007

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

Chairperson

This 22 day of October 2007

“Annexure A”

**Public Notice**

**Babylicious baby sleeping bags**

Cinnamon Bear Distributors (“Cinnamon Bear”) would like to advise consumers that it has supplied Babylicious Baby Sleeping Bags (“Sleeping Bags”) after March 1, 2007 that do not comply with AS/NZS 1249:2003, “*Children’s nightwear and limited daywear having reduced fire hazard*” (“the Standard”) in that the sleeping bags did not have a fire hazard warning label consistent with the Standard. Cinnamon Bear would also like to advise consumers that the representation that the Sleeping Bags have met the Standard was incorrect.

The Sleeping Bags were tested and found to require a high fire danger warning label, as such the Standard requires the Sleeping Bags to be labelled:



Section 65C of the *Trade Practices Act 1974* makes it an offence to supply children’s nightwear which do not comply with the Standard.

Cinnamon Bear is offering to re-label all non-compliant Sleeping Bags and advise any consumers who may have purchased the Sleeping Bags after March 1, 2007 to return them to the store where they were purchased with their receipt and the correct labels will be applied. The correct labels will also be available directly from Cinnamon Bear for goods that were purchased after March 1, 2007.

For further information please contact Cinnamon Bear Distributors at:

Cinnamon Bear Distributors  
PO Box 266, Mawson ACT 2607  
Ph: (02) 6282 8667



This corrective advertisement has been placed at the cost of Cinnamon Bear pursuant to undertakings given to the Australian Competition and Consumer Commission.

## “ANNEXURE B”

### **TRADE PRACTICES COMPLIANCE PROGRAM**

Louise Dalglish Smith undertakes, to the Australian Competition and Consumer Commission (ACCC), for the purposes of section 87B of the *Trade Practices Act 1974* (TPA) that she will design and implement a Trade Practices Compliance Program covering section 65C and the relevant provisions of misleading and deceptive conduct in Part V of the TPA in accordance with the requirements set out below, and will maintain and continue to implement the Trade Practices Compliance Program for a period of three years from the date of the Undertaking coming into effect.

#### **1. Training**

- 1.1. Within three months of this Undertaking coming into effect, and thereafter at least once a year for the period of the undertaking Louise Dalglish Smith will, at her own expense, attend practical trade practices training focusing on section 65C of the TPA and the relevant provisions of misleading and deceptive conduct in Part V of the TPA.
- 1.2. Louise Dalglish Smith will ensure that the training referred to in paragraph 1.1 above is administered by a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law.
- 1.3. Louise Dalglish Smith 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 ACCC within 14 days of completion of the training verifying that such training has occurred. The statement or certificate will outline:
  - (i) the title of the seminar;
  - (ii) the name of the person(s) who conducted the seminar; and
  - (iii) the date of attendance at the seminar.
- 1.4 Louise Dalglish Smith will provide to the ACCC a copy of any written materials provided to her at the seminar, within one week of attending the seminar

#### **2. Complaints handling**

- 2.1. Louise Dalglish Smith will:
  - 2.1.1. develop procedures for recording, storing and responding to trade practices complaints within three months of this Undertaking coming into effect; and
  - 2.1.2. provide the ACCC with an outline of the complaint handling system developed within three months of the Undertaking coming into effect.

3. If requested by the ACCC, Louise Dalglish Smith will provide, at her own expense, copies of any other documents or information in respect of matters which are the subject of the Trade Practices Compliance Program.

**4. Product safety**

4.1. Louise Dalglish Smith will maintain up-to-date copies, at her business premises, of all prescribed consumer product safety standards and prescribed consumer information standards that relate to products Louise Dalglish Smith supplies.

4.2. Louise Dalglish Smith will ensure that the products supplied that are subject to a prescribed safety and/or information standard under the TPA, comply with the relevant standard.

4.3. Louise Dalglish Smith will maintain recall procedures that enable products supplied by Louise Dalglish Smith that do not comply with prescribed safety and/or information standards under the TPA to be efficiently and effectively withdrawn from the market and returned to Louise Dalglish Smith.