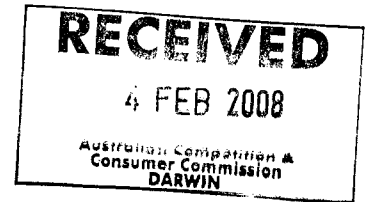


TRADE PRACTICES ACT 1974
UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN FOR
THE PURPOSES OF SECTION 87B

BY
SLUMBERTREK AUSTRALIA PTY LTD
(ACN 053 425 782)



Persons giving this Undertaking

- (1) This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by SlumberTrek Australia Pty Ltd (ACN 053 425 782) (**SlumberTrek**) of Suite 1, 670 Canterbury Road, Surrey Hills in the state of Victoria under section 87B of the *Trade Practices Act 1974* (**the Act**).

Background

- (2) SlumberTrek was registered in 1991 and imports, wholesales and distributes a wide range of products outdoor and indoor camping and leisure goods, including bean bags.
- (3) As part of its product range SlumberTrek imported and distributed the Sesame Street Elmo bean bag cover (**the Elmo bag**).
- (4) Bean bags and bean bag covers supplied in Australia must meet the safety standards as prescribed in the *Trade Practices (Consumer Product Safety Standard) Regulations 1979* (**Prescribed Consumer Product Safety Standard**). The Prescribed Consumer Product Safety Standard requires bean bags and bean bag covers to be fitted with a child resistant fastener and have a warning label or notice conspicuously attached stating: "**WARNING: Small Lightweight Beads Present a Severe Danger to Children if Swallowed or Inhaled**".
- (5) The prescribed consumer product safety standard for bean bags and bean bag covers was introduced following several deaths of infants and toddlers from the inhalation of small polystyrene beads used to fill bean bags.
- (6) The ACCC is responsible for monitoring and enforcing compliance with prescribed consumer product safety standards and regularly conducts surveys of both online and physical retail outlets to ensure compliance.
- (7) In October 2007 the ACCC undertook a product safety survey of bean bag covers and located the Elmo bag at the Kmart store in Darwin. The Elmo bag did not contain the warning label or notice required by the Prescribed Consumer Product Safety Standard (although the fastener on the Elmo bag was child resistant). Additional Elmo bags were subsequently located at Kmart stores in all States which did not contain the warning label or notice required by the Prescribed Consumer Product Safety Standard.
- (8) On 17 October 2007 the ACCC wrote to SlumberTrek advising it of the Elmo bag's non compliance with the Prescribed Consumer Product Safety Standard. SlumberTrek immediately undertook to re-label the product and following further discussion with the ACCC also conducted a national voluntary recall of the Elmo bag. Details of this recall can be found at the www.recalls.gov.au website.

- (9) SlumberTrek admits supplying the Elmo bag without the required warning label and acknowledges the ACCC's concerns that the Elmo bag did not comply with the relevant consumer product safety standard, namely the Prescribed Consumer Product Safety Standard, in breach of section 65C of the Act.
- (10) SlumberTrek has advised the ACCC that the missing label was due to a Quality Check oversight.
- (11) SlumberTrek and the ACCC have agreed to resolve this matter by the giving and accepting of undertakings in the terms and conditions as follows:

Commencement

- (12) This undertaking comes into effect when:
 - (i) The undertaking is executed by SlumberTrek; and
 - (ii) The ACCC accepts the Undertaking so executed
- (13) Upon the commencement of this Undertaking, SlumberTrek undertakes to assume the obligations set out in paragraph 14.

Undertakings

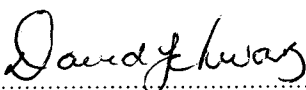
- (14) SlumberTrek hereby undertakes for the purposes of section 87B of the Act:
 - (i) that it will continue to publish a notice in terms set out in Annexure A to this Undertaking for a further 40 days on its internet website located at uniform resource locator www.slumbertrek.com.au and further shall use its best endeavours to ensure that such notice shall:
 - (a) be accessible by a prominent one click to the notice on the home page of the website;
 - (b) be incorporated on the same page of SlumberTrek's internet website as any information for bean bags or bean bag covers appear;
 - (c) not be less than 50% of the size of the computer screen; and
 - (d) have a bold type heading in at least 18 point type and the body of the notice shall be in a type not less than 12 point.
 - (ii) that it will not in trade or commerce supply bean bags or bean bag covers which do not comply with any relevant prescribed consumer product safety standard(s) in force at the time of supply; and
 - (iii) that it will:
 - a) implement a compliance program in accordance with the requirements set out in Annexure B to this undertaking for the directors, employees or other persons involved in SlumberTrek's business, being a program designed to minimise its risk of future breaches of Division 1 and 1A of Part V of the Act and to ensure their awareness of the responsibilities and obligations in relation to the requirements of section 65C within four months of the date of this Undertaking coming into effect (**the Trade Practices Compliance Program**);

- b) maintain and continue to implement the procedures that adhere to the Trade Practices Compliance Program; and
- c) provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure B.

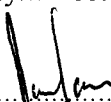
Acknowledgments

- (15) SlumberTrek acknowledges that the ACCC will make this Undertaking available for public inspection.
- (16) SlumberTrek further acknowledges that the ACCC may from time to time publicly refer to this Undertaking.
- (17) SlumberTrek further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- (18) SlumberTrek further acknowledges that a summary of the Review Reports referred to in Annexure B of the Undertaking may be held with this undertaking on the public register.

Executed by SlumberTrek Pty Ltd (ACN 053 425 782) pursuant to section 127(1) of the Corporations Act 2001:


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Secretary/Director


.....

Director

This 15th day of FEBRUARY 2008

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 6th day of February 2008

Choking Hazard in Bean Bag Beads

The polystyrene beads in bean bags present a severe choking hazard to children. Many people are not aware of this risk when they purchase bean bags. The beads are hazardous as they have a magnetic quality causing them to clump together and cling to internal mucous membranes. As beads do not show up on X-rays it is often difficult to diagnose when children have swallowed them.

In 1987, a product safety standard was introduced that requires bean bags and bean bag covers to have child resistant fasteners and a warning label conspicuously displayed stating:

“WARNING: Small Lightweight Beads Present a Severe Danger to Children if Swallowed or Inhaled”

Following concerns raised by the ACCC, SlumberTrek agreed to publish this notice.

Further information: ACCC Infocentre: 1300 302 502

ACCC website: www.accc.gov.au

TRADE PRACTICES COMPLIANCE PROGRAM

SlumberTrek will establish a Trade Practices Compliance Program (**Trade Practices Compliance Program**) that complies with each of the following requirements:

1. Appointments

- 1.1. Within one month of the date of the Undertaking coming into effect SlumberTrek will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the Trade Practices Compliance Program (**the Compliance Officer**).

2. Compliance Officer Training

- 2.1. SlumberTrek will ensure that, within 3 months of the Undertaking coming into effect, the Compliance Officer attends practical trade practices training focusing on Division 1 and 1A of Part V of the *Trade Practices Act 1974* (Cth) (**the Act**).
- 2.2. SlumberTrek shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law;
- 2.3. SlumberTrek, within 14 days of completion of training, will provide the ACCC 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. SlumberTrek will cause all employees of SlumberTrek whose duties could result in them being concerned with conduct that may contravene Division 1 and 1A of Part V of the Act to receive quarterly 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 Division 1 and 1A of the Act

4. Complaints handling

- 4.1. SlumberTrek will:
 - 4.1.1. develop procedures for recording, storing and responding to trade practice complaints within two months of the Undertaking coming into effect; and
 - 4.1.2. provide the ACCC with an outline of the complaint handling system within two months of the Undertaking coming into effect.

5. Product Safety

- 5.1. SlumberTrek will:
 - 5.1.1. use its best endeavours to 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 SlumberTrek supplies;

- 5.1.2. ensure that the products supplied that are subject to a prescribed safety and/or information standard under the Act, comply with the relevant standard; and
 - 5.1.3. design, implement and maintain recall procedures that enable products supplied by SlumberTrek that do not comply with prescribed safety and/or information standards under the Act to be efficiently and effectively withdrawn from the market and returned to SlumberTrek.
- 5.2. SlumberTrek will ensure that the Compliance Officer reports to its director(s) every month on the continuing effectiveness of the Trade Practices Compliance Program.

6. Report to the ACCC

- 6.1. Within 4 months of the commencement of this Undertaking SlumberTrek will provide to the ACCC a report outlining the steps taken by SlumberTrek to further develop and implement its Trade Practices Compliance Program.

7. Review

- 7.1. After the first 13 months of the Trade Practices Compliance Program's operation, SlumberTrek shall, at its own expense, cause an external review of the Trade Practices Compliance Program (**the Review**) to be carried out by a suitably qualified, compliance professional with expertise in trade practices law (**the Reviewer**) in accordance with each of the following requirements set out in 7.2 below.

- 7.2. SlumberTrek shall ensure that the Review is broad and rigorous enough to:

- 7.2.1. provide SlumberTrek and the ACCC with a supportable verification that SlumberTrek has in place a Trade Practices Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of SlumberTrek;

- 7.2.2. provide SlumberTrek and the ACCC with a supportable verification that SlumberTrek has in place a Trade Practices Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of SlumberTrek.

- 7.3. SlumberTrek shall ensure the first Review is completed within one year and one month of this Undertaking coming into effect.

8. Evidence

- 8.1. SlumberTrek 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 the SlumberTrek's possession or control, including without limitation:

- 8.1.1. enquiries of any employees, representatives, agents and stakeholders of SlumberTrek;

- 8.1.2. documents created by SlumberTrek's consultants, legal practitioners and accountants for use in SlumberTrek's Trade Practices Compliance Program; and
- 8.1.3. all documents required to assess SlumberTrek's compliance with the relevant product safety/information standards under the Act.

9. Reporting

- 9.1. SlumberTrek shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in a report (**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:
 - 9.1.1. details of the evidence gathered and examined during the Review;
 - 9.1.2. the name and relevant experience of the person appointed as SlumberTrek Compliance Officer;
 - 9.1.3. the Reviewer's opinion on whether SlumberTrek has in place effective staff training, complaints handling programs that comply with the requirements of the Undertaking; and
 - 9.1.4. actions recommended by the Reviewer to ensure the continuing effectiveness of SlumberTrek's Trade Practices Compliance Program.
- 9.2. SlumberTrek shall use its best endeavours to ensure that the Review Report is completed and provided to SlumberTrek within one month of completion of the Review.
- 9.3. SlumberTrek will cause the Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
- 9.4. SlumberTrek shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that SlumberTrek maintains and continues to develop the Trade Practices Compliance Program in accordance with the requirements of this Undertaking.
- 9.5. In the event the ACCC has sufficient reason to suspect that the Trade Practices Compliance Program is not being implemented effectively, SlumberTrek shall, at its own expense and if requested by the ACCC, cause an independent Review to be conducted and cause the resulting Review Report to be provided to the ACCC. The Reviewer will qualify as independent on the basis that he or she:
 - 9.5.1. did not design or implement the Compliance Program;
 - 9.5.2. is not a present or past staff member or director of SlumberTrek;
 - 9.5.3. has not acted and does not act for SlumberTrek in any trade practices related matters;

- 9.5.4. has not and does not act for or consult to SlumberTrek or provide other services on trade practices related matters other than Compliance Program reviewing; and
- 9.5.5. has no significant shareholding or other interests in SlumberTrek.