

TRADE PRACTICES ACT 1974

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

BY

LIVING MOMENTUM PTY LTD

(A.C.N. 113 379 196)

PERSONS GIVING THIS UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Living Momentum Pty Ltd (A.C.N. 113 379 196) (**Living Momentum**) of Unit 3, 278 Scarborough Beach Road, Osborne Park in the State of Western Australia under section 87B of the *Trade Practices Act 1974* (TPA).

BACKGROUND

2. Living Momentum is incorporated in the State of Western Australia and is an importer and retailer of bedroom furniture including bunk beds which it retails from its store in Osborne Park, Western Australia.
3. Between June 2007 and April 2008, Living Momentum imported and supplied bunk beds to consumers under the model names Euro Bunk Bed, Ashford Bunk Bed and Cronin Bunk Bed (**Bunk Beds**). An image of each of these products is shown at **Annexure A** to this Undertaking. The Euro Bunk Bed and the Ashford Bunk Beds were advertised in *The Sunday Times*, a Western Australian newspaper on 6 April 2008.
4. *Consumer Protection Notice No. 1 of 2003 – Consumer Product Safety Standard: Bunk Beds* made pursuant to section 65E of the TPA requires bunk beds supplied in Australia to comply with requirements specified in the Australian/New Zealand Bunk Bed Standard *AS/NZS 4220:1994 (Standard)*. These requirements relate to the design, construction, safety, performance and marking of bunk beds.
5. Section 65C of the TPA prohibits a corporation from supplying goods where there is a prescribed consumer product safety standard and the goods do not conform to that standard.
6. In April 2008, the ACCC purchased a Euro Bunk Bed from Living Momentum. The ACCC then had that bed tested against the requirements specified in the Standard. The tests demonstrated that the Euro Bunk Bed did not meet a number of requirements of the Standard. In particular, the Euro bunk bed had:
 - 6.1. corner posts that protruded more than allowed by the Standard;
 - 6.2. gaps with a reducing configuration that may cause entrapment;

- 6.3. no mandatory markings about maximum mattress height; and
 - 6.4. no mandatory labels indicating the manufacturer's or importer's contact details.
7. The ACCC advised Living Momentum that the Euro Bunk Bed did not comply with the Standard, and that the ACCC was also concerned that other bunk beds supplied by Living Momentum to consumers were unlikely to comply with the Standard.
8. In response, Living Momentum:
- 8.1. immediately stopped supplying the Bunk Beds to consumers;
 - 8.2. published a product safety recall notice in *The Sunday Times* newspaper on 4 May 2008 about the recall of the Bunk Beds in the terms of **Annexure B** to this Undertaking;
 - 8.3. commenced a process of contacting all customers that had purchased any of the Bunk Beds from Living Momentum to offer refunds or repair of the Bunk Beds; and
 - 8.4. informed its overseas suppliers of the effect of the mandatory product safety standard in Australia for bunk beds.
9. Living Momentum acknowledges that by supplying bunks beds to consumers that did not comply with the Standard it has contravened section 65C of the TPA.
10. Living Momentum has offered the following Undertaking to the ACCC for the purposes of section 87B of the TPA.

COMMENCEMENT OF UNDERTAKING

11. This Undertaking comes into effect when:
- 11.1. the Undertaking is executed by Living Momentum; and
 - 11.2. the ACCC accepts the Undertaking so executed.
12. Upon commencement of this Undertaking, Living Momentum undertakes to assume the obligations set out in Paragraph 13.

UNDERTAKINGS

13. Living Momentum undertakes to the ACCC, for the purposes of section 87B of the TPA, that it will:

- 13.1. for a period of 3 years from the commencement of this Undertaking, ensure that goods offered for sale by Living Momentum that are subject to a prescribed safety and/or information standard under the TPA comply with the relevant standard;
- 13.2. at its own expense, cause to publish an information notice on its website at <http://www.livingmomentum.com.au> within 7 days of the commencement of this Undertaking, for a continuous period of 30 days, in the form and terms of **Annexure C** to this Undertaking. The notice will:
 - 13.2.1. be of a size that consists of at least 40% of the images on screen;
 - 13.2.2. be viewable immediately on screen after the web page is accessed; and
 - 13.2.3. not require a further selection of hyperlinks or scrolling on the screen to be seen;
- 13.3. use its best endeavours to ensure that within 7 days of the commencement of this Undertaking, it displays an information notice at the point of sale in its Osborne Park store of at least A4 size (21cm wide by 29.7cm long) in the form and terms of **Annexure C** to this Undertaking for a period of no less than 3 months;
- 13.4. within 3 months of the commencement of this Undertaking, use its best endeavours to contact all customers to which it supplied any of the Bunk Beds to offer them the option to repair and modify the Bunk Bed at no cost, or be refunded the sale price of the Bunk Bed;
- 13.5. within 4 months of the commencement of this Undertaking, provide a report to the ACCC about the completion of the obligations referred to in paragraph 13.4 above, including details of the numbers of customers who have sought repair or refund of the Bunk Bed's sale price respectively;
- 13.6. establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in **Annexure D** to this Undertaking, being a program designed to minimise Living Momentum's risk of future breaches of section 65C of the TPA and to ensure Living Momentum's awareness of the responsibilities and

obligations in relation to the requirements of section 65C of the TPA;

- 13.7. maintain and continue to implement the Trade Practices Compliance Program set out in **Annexure D** to this Undertaking for a period of 3 years from the date of the commencement of this Undertaking; and
- 13.8. provide, at its own expense, any documents requested by the ACCC in accordance with the Trade Practices Compliance Program set out in **Annexure D** to this Undertaking.

ACKNOWLEDGEMENTS

14. Living Momentum acknowledges that the ACCC will make this Undertaking available for public inspection.
15. Living Momentum acknowledges that the ACCC will, at its absolute discretion, from time to time publish and publicly refer to this Undertaking.
16. Living Momentum acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

EXECUTED by Living Momentum Pty Ltd
(A.C.N. 113 379 196) by its authorised officer
pursuant to section 127(1) of the *Corporations Act* 2001:



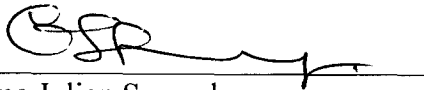
Signature (Director and Secretary)

A. K. CHANDRASEKHAR.

Print name

This ^{21st} day of July. 2008

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



Graeme Julian Samuel

Chairperson

This ~~21~~ day of July 2008

Annexure A

Euro Bunk Bed



Ashford Bunk Bed



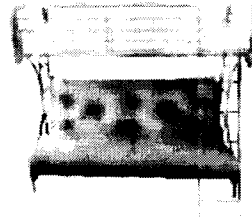
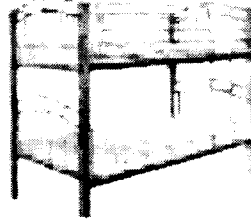
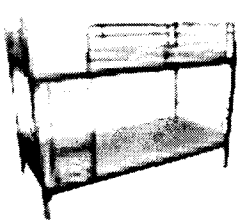
Cronin Bunk Bed



Annexure B

Product Safety Recall **BUNK BEDS**

Non Compliance of bunk beds
Euro, Ashford & Cronin.



Euro Bunk Bed Ashford Timber/Iron Bunk Cronin Sofa Bunk

Cronin: the design of the frame is hazardous and may cause head entrapment for children; **Euro and Ashford:** there are protrusions from the frame of the bunk that may cause children's clothes to be snagged.

Consumer Protection Notice
No 1 of 2003

Product sold between
30 June 2007 and 16 April 2008

**Due to safety issues please
contact store immediately
on 9201 1170**

This recall is at the expense of
Living Momentum
Shop 3, 278 Scarborough
Beach Rd
Osborne Park WA 6017

www.livingmomentum.com.au

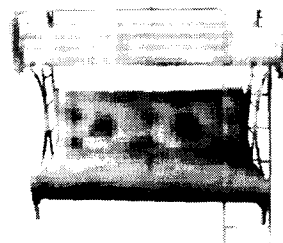
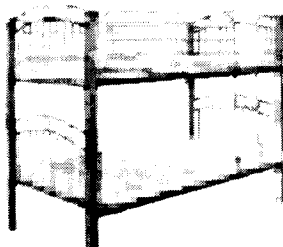
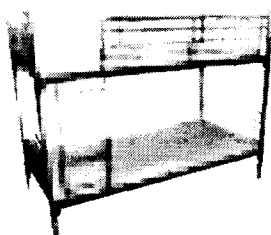
Living Momentum
Where furniture comes to life

See www.recalls.gov.au for
Australian Product Recall Information

Annexure C

Faulty Bunk Beds Recalled

Euro Bunk Bed Ashford Bunk Bed Cronin Bunk Bed



Living Momentum sold bunk beds between 30 June 2007 and 16 April 2008 which did not comply with the mandatory safety standard under the *Trade Practices Act 1974*. The faults were:

Euro / Ashford: protrusions from the frame pose a snagging hazard.

Cronin: the frame design may cause entrapment.

Please return the Bunk Beds to this store for a full refund or repairs to comply with the Standard.

This notice forms part of Living Momentum's court enforceable undertakings accepted by the Australian Competition and Consumer Commission.



Annexure D

TRADE PRACTICES COMPLIANCE PROGRAM

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

1. Training

- 1.1. Within 1 month of the commencement of this Undertaking, and thereafter at least once a year for a period of 3 years, all directors of Living Momentum will attend practical trade practices training focusing on section 65C of the TPA;
- 1.2. Living Momentum 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; and
- 1.3. Living Momentum will use its best endeavours to 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.

2. Complaints handling

- 2.1. Living Momentum will, within 2 months of the commencement of this Undertaking:
 - 2.1.1. develop procedures for recording, storing and responding to trade practices complaints; and
 - 2.1.2. provide the ACCC with a written notification that the complaint handling system has been implemented.

3. Product safety

- 3.1. Within 1 month of the commencement of this Undertaking and for a period of 3 years from the commencement of this Undertaking, Living Momentum will maintain up-to-date copies, at its business premises, of all prescribed consumer product safety standards, banning notices, unsafe goods notices and prescribed consumer information standards that relate to products that Living Momentum supplies.
- 3.2. Within 1 month of the commencement of this Undertaking and for a period of 3 years from the commencement of this Undertaking, Living Momentum will maintain recall procedures that enable products supplied by Living Momentum that do not comply with prescribed safety, banning notices, unsafe goods notices and/or information standards under the TPA to be efficiently and effectively withdrawn from the market and returned to Living Momentum.