

TRADE PRACTICES ACT 1974

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

BY

FANTASTIC FURNITURE PTY LTD
ACN 003 688 855

PERSONS GIVING THIS UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Fantastic Furniture Pty Ltd (ACN 003 688 855) (Fantastic Furniture) of Level 6, 1 Chifley Square, Sydney NSW 2000 under section 87B of the *Trade Practices Act 1974* (TPA).

BACKGROUND

2. Fantastic Furniture is incorporated in the State of New South Wales and is an importer and retailer of bedroom furniture which it retails from its stores around Australia.
3. As part of its product range, Fantastic Furniture imported beds including a bed known as the 'Mikki high sleeper' (Mikki) bed and supplied them to consumers from its stores between November 2006 and July 2008. An image of this product is shown at **Annexure A** to this Undertaking.
4. *Consumer Protection Notice No. 1 of 2003* (the Notice), which came into effect on 11 March 2003, prescribes certain tests that are to be carried out to determine the safety of beds that fall within the definition of a bunk bed in *Australian/New Zealand Standard AS/NZS 4220:1994 – Bunk Beds* (the Standard). The tests must be conducted in accordance with the testing procedures and interpretation of results specified in the Standard. Primarily the Notice focuses on, but is not limited to, the heights of guardrails, gaps in the bunk beds' frames, protrusions and required markings on the bunk beds.
5. Section 65C of the TPA prohibits a corporation from supplying goods that do not conform to the prescribed mandatory consumer product safety standard.
6. In June 2008, ACCC staff purchased the Mikki high sleeper bed and had it tested to the Standard. The tests confirmed that the Mikki bed was a bunk bed falling within the requirements of the Standard as its height to the mattress base was in excess of 800mm. The tests also confirmed that the Mikki bunk bed failed requirements of the Standard primarily involving: access openings in the guardrail which may cause fall-through hazards, gaps in the guardrail and mattress base exceeding the

maximum allowable widths that could cause an entrapment hazard, and the mandatory warning and supplier labels not being present on the bunk bed.

7. In August 2008, the ACCC advised Fantastic Furniture that the Mikki bunk bed did not meet the requirements of the Notice. The ACCC acknowledges that Fantastic Furniture was not aware that the Mikki high sleeper bed fell within the requirements of the Standard.
8. In response, Fantastic Furniture:
 - a) ceased supplying all Bunk Beds to consumers;
 - b) advised its stores to cease the sale of these products and to destroy the products in stock;
 - c) informed its overseas suppliers of the effect of the mandatory product safety standard in Australia; and
 - d) commenced a process to contact all customers that had purchased any of the Mikki bunk beds from Fantastic Furniture to offer repair of the bunks or refund of monies, including compensation for transport costs.
9. Fantastic Furniture acknowledges that by engaging in the conduct set out above, it has contravened section 65C of the TPA.
10. Fantastic Furniture 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:
 - a) the Undertaking is executed by Fantastic Furniture; and
 - b) the ACCC accepts the Undertaking so executed.
12. Upon commencement of this Undertaking, Fantastic Furniture undertakes to assume the obligations set out in Paragraph 13.

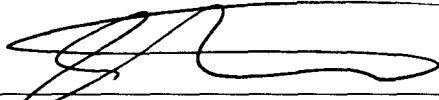
UNDERTAKINGS

13. Fantastic Furniture undertakes to the ACCC, for the purposes of section 87B of the TPA, that it will:
- a) for a period of 3 years from the commencement of this Undertaking, ensure that goods supplied by Fantastic Furniture that are subject to a prescribed safety and/or information standard under the TPA comply with the relevant standard;
 - b) at its own expense, cause to publish an information notice on its website at <http://www.fantasticfurniture.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 B** to this Undertaking. The notice will:
 - i. be of a size that consists of at least 40% of the images on screen;
 - ii. be viewable immediately after the web page is accessed; and
 - iii. not require a further selection of hyperlinks or scrolling on the screen to be seen;
 - c) 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 all of its Australian stores of at least A4 size (21cm wide by 29.7cm long) in the form and terms of **Annexure B** to this Undertaking for a period of no less than 3 months;
 - d) use its best endeavours to contact every customer whom it supplied any of the Mikki bunk beds to offer them a full refund for each bunk purchased;
 - e) within 4 months of the commencement of this Undertaking, provide a report to ACCC about the completion of its obligations in paragraph d) above;
 - f) establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in **Annexure C**, being a program designed to minimise Fantastic Furniture's risk of future breaches of section 65C of the TPA and to ensure Fantastic Furniture's awareness of the responsibilities and obligations in relation to the requirements of section 65C of the TPA;
 - g) maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years from the date of the commencement of this Undertaking; and
 - h) provide, at its own expense, any documents requested by the ACCC in accordance with the Trade Practices Compliance Program.

ACKNOWLEDGEMENTS

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

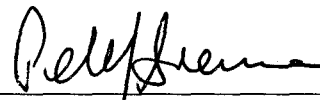
EXECUTED by Fantastic Furniture Pty Ltd
(ACN 003 688 855) by its authorised officers
pursuant to section 127(1) of the *Corporations Act* 2001:



Signature (Director)

JULIAN TERTINI

Print name



Signature (Director/Company Secretary)

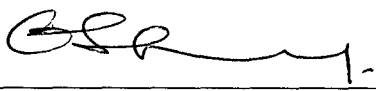
Peter Brown

Print name

This 30th day of October 2008

This 30th day of October 2008

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



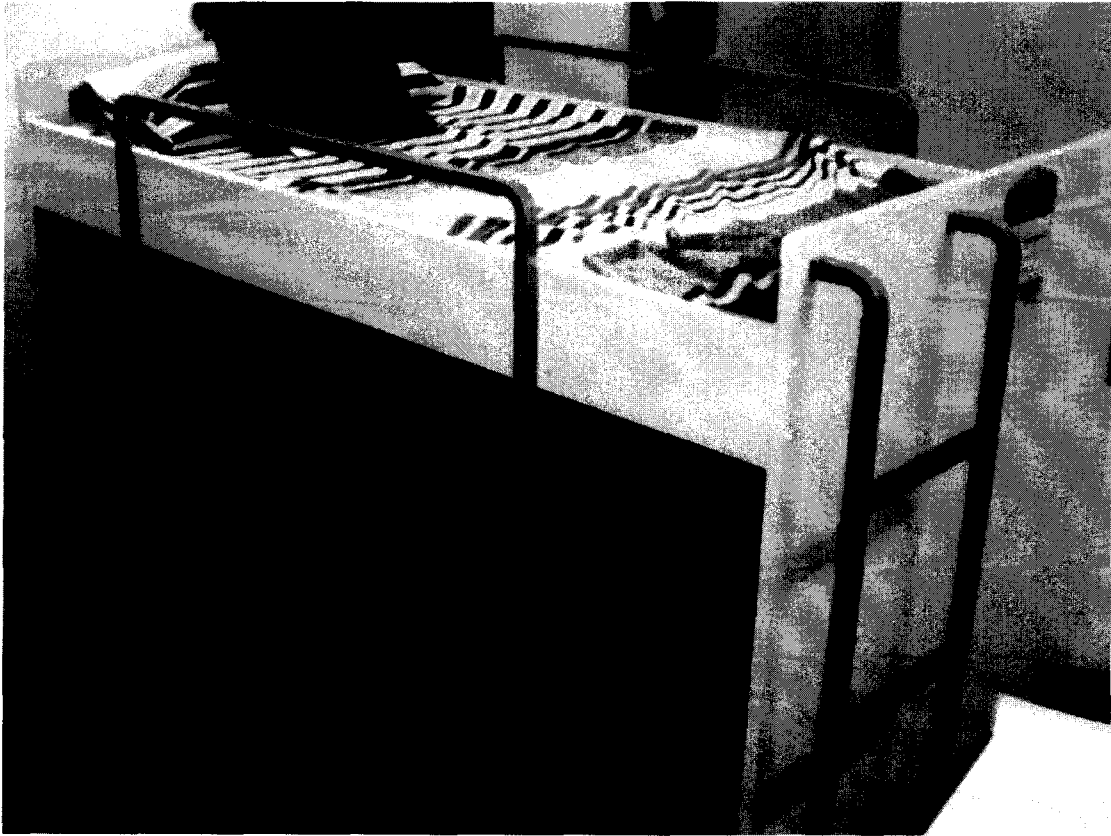
Graeme Julian Samuel

Chairman

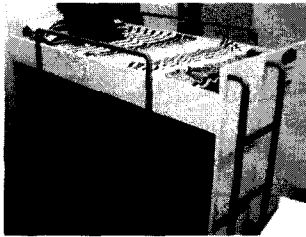
This 12th day of November 2008

Annexure A

Mikki high sleeper bunk bed



Product Safety Recall Notice



Fantastic Furniture stores sold 'Mikki' bunk beds between November 2006 and August 2008 which did not comply with the mandatory safety standard for bunk beds based on *AS/NZS 4220:1994 Bunk Beds*.

The hazards were:

- Gaps in the guardrail which may cause entrapment.
- Large access opening in the guardrail which is a fall-through hazard.
- Height of the guard-rails are below the minimum required by the safety standard, and the bunk bed did not have a required 'MAXIMUM MATTRESS HEIGHT' label, contributing to a fall-out hazard.

If you have purchased this bunk bed, and have not been contacted by the supplier, please cease using the product and contact your nearest Fantastic Furniture store to organise return of the bunk bed for a full refund.



This notice forms part of Fantastic Furniture Pty Ltd's court enforceable undertakings accepted by the Australian Competition & Consumer Commission.

Annexure C

TRADE PRACTICES COMPLIANCE PROGRAM

Fantastic Furniture Pty Ltd ('Fantastic Furniture') will establish a Trade Practices Compliance Program that complies with each of the following requirements:

1. Training

- 1.1. Within 2 months of the commencement of this Undertaking, all managerial staff of Fantastic Furniture who are in charge of product development, purchasing or marketing for Fantastic Furniture will attend practical trade practices training focusing on section 65C of the TPA;
- 1.2. Fantastic Furniture 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. Fantastic Furniture will use its best endeavours to provide a written statement or certificate from the trade practices professional who conducts the training referred to 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. Fantastic Furniture will, within 2 months from 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. Fantastic Furniture 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 Fantastic Furniture supplies.
- 3.2. Fantastic Furniture will maintain recall procedures that enable products supplied by Fantastic Furniture 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 Fantastic Furniture.