

TRADE PRACTICES ACT 1974

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

BY

CRESWICK WOOLLEN MILLS PTY LTD
ACN 004 266 111

Party giving the Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Creswick Woollen Mills Pty Ltd ACN 004 266 111 (**Creswick**) of 6 Roche Street, Hawthorn in the State of Victoria, under section 87B of the Trade Practices Act 1974 (TPA).

Background

2. Creswick is a company that supplies a range of merino wool, cashmere and cotton products in Australia and overseas, including via the internet. Creswick also manufactures and supplies a range of alpaca products.
3. Creswick has since November 2005 sold and distributed a range of merino wool blankets which are made from fibre woven in China and cut and finished in Australia by Creswick. Creswick also sells and distributes a separate range of merino wool blankets which are entirely made in China.
4. From December 2005 to January 2007, Creswick sold and distributed merino wool blankets, which were made from fibre woven in China and cut and finished in Australia, in packaging which described the product as "Australian Made Blanket" and "Proudly Made In Australia By Creswick Woollen Mills Pty Ltd" and which featured the Australian Made logo - a triangle containing a kangaroo graphic (the **Australian Made logo**).
5. The Australian Made logo is licensed by Australian Made Campaign Limited (AMCL) and licensees are required to comply with the country of origin requirements set out in section 65AB of the TPA when using the Australian Made logo.
6. In January 2007, Creswick began selling and distributing its merino wool blankets, which were made from fibre woven in China, in revised packaging which did not feature the Australian Made logo. The new packaging described the product as "Australian Made Blanket" and "Australian Made Merino Blanket" and contained the statement "Proudly Made By Creswick Woollen Mills Pty Ltd".
7. Creswick has advised the ACCC that at about the same time it endeavoured to correct the packaging of merino wool blankets featuring the Australian Made logo which had already been distributed to retailers and remained unsold. However, Creswick acknowledges that these attempts were not wholly successful and that some Creswick merino wool blankets featuring the Australian Made logo were available in retail stores until at least August 2008.

8. From October 2007, Creswick was not licensed to use the Australian Made logo on its merino wool blankets.
9. In respect of merino wool blankets entirely made in China and merino wool blankets made from fibre woven in China and cut and finished in Australia, Creswick has:
 - (a) since December 2006, used the Creswick Woollen Mills trade marked logo (which contained the words "Australian Made" in the body of the logo) on the packaging and labelling of the blankets;
 - (b) used the words "Creswick Woollen Mills has been proudly producing luxury consumer products at its country Australian Mill since 1947" on its packaging (where the blankets were entirely made in China);
 - (c) used the words "Creswick Woollen Mills has been proudly producing quality woollen blankets at its country Australian Mill since 1947" on its packaging (where the blankets were made from fibre woven in China and cut and finished in Australia);
 - (d) on its website and other business materials, used the Creswick trade marked logo which contained the phrase "Australian Made"; and
 - (e) on its website, indicated that its merino wool blankets were produced at the Creswick mill in country Victoria.
10. Following an investigation, the ACCC considers that the manufacturing steps taken by Creswick in Australia for merino wool blankets made from fibre woven in China do not represent a substantial transformation of the blankets and that Creswick has contravened sections 52, 53(eb) and 55 of the TPA by representing, both directly and impliedly, on the packaging and labelling of its merino wool blankets, that those blankets were made in Australia when they were not.
11. The ACCC also considers that Creswick has contravened section 53(c) of the TPA in the circumstances in which merino wool blankets made from fibre woven in China featuring the Australian Made logo continued to be available in retail stores up until at least August 2008 when Creswick was not licensed to use the logo for those blankets.
12. Creswick acknowledges the ACCC's view that by representing that its merino wool blankets were made in Australia when those blankets were made from fibre woven in China, it has breached the TPA.
13. In consequence of the matters referred to above, Creswick has taken steps, including amending the packaging and labelling of its merino wool blankets, amending its website, and offering an undertaking to the ACCC in the form set out below.

Commencement of Undertaking

14. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Creswick; and
 - (b) Creswick receives written notification from the ACCC that the ACCC accepts the Undertaking so executed.

Undertaking

15. Creswick hereby undertakes for the purposes of section 87B of the TPA, insofar as its merino wool blankets are made from fibre woven overseas:

15.1 It will not, for a period of three years, in trade or commerce represent that its merino wool blankets are made in Australia unless it has first established, by conducting all necessary enquiries and calculations, that the goods meet the test for country of origin claims set out in section 65AB of the TPA, namely that:

- (1) the goods have been substantially transformed in Australia, as defined by section 65AE of the TPA; and
- (2) 50 per cent or more of the costs of manufacturing the goods is attributable to manufacturing processes that occurred in Australia.

15.2 Creswick will within two months of the acceptance of this Undertaking:

- (a) use its best efforts to cause to be removed from the packaging of merino wool blankets it currently has in stock any representations that make reference to the goods having been manufactured or made in Australia;
- (b) remove from its website www.creswickwool.com.au any representations that make reference to the Australian origin of merino wool blankets;
- (c) cause to be published on its website www.creswickwool.com.au for three months, a corrective notice in the form attached in *Annexure A* of this Undertaking;
- (d) cause a corrective advertisement in the form set out in *Annexure A* of this Undertaking to be published in a weekend edition of each of the daily capital city newspapers listed in *Annexure B* with the advertisement being:
 - placed in the first 10 pages of each newspaper;
 - of a size not less than 15cm by 12cm (or equivalent area);
 - with a font not less than 9 points; and
 - with a heading not less than 2 points larger than the remaining text.
- (e) conduct a review of the packaging and labelling of its merino wool blankets to ensure that any representations on the packaging and labelling of its merino wool blankets comply with the TPA; and
- (f) conduct a review of its advertising and promotional material for merino wool blankets to ensure that any representations in such material relating to merino wool blankets comply with the TPA.

- 15.3 Creswick will, within three months of the acceptance of this Undertaking, provide a written report to the ACCC detailing the actions carried out (including results) by Creswick in order to achieve the matters listed in 15.2 above.
- 15.4 Creswick will, within one month of the acceptance of this Undertaking, notify its retailers of the existence of this Undertaking and the obligations hereunder, including instructing those retailers to cause to be removed from the packaging of Creswick merino wool blankets they currently have in stock any representations that make reference to the goods having been manufactured or made in Australia.
- 15.5 Creswick will, at its own expense and within three months of the acceptance of this Undertaking:
- (a) cause its full-time sales and marketing staff to undertake trade practices education and training by completing a course designed to ensure that they are aware of their responsibilities and obligations relating to Part V of the TPA, especially in relation to Division 1AA, with such training to be provided by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law; and
 - (b) within one week of the relevant staff's attendance at the course, notify the ACCC in writing of completion of the said course.

Acknowledgements

16. Creswick acknowledges that the ACCC will 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.
17. Creswick further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from Creswick's conduct.

EXECUTION PAGE

EXECUTED by **CRESWICK WOOLLEN MILLS PTY LTD (ACN 004 266 111)** in accordance with section 127(1) of the *Corporations Act 2001* by authority of its director and company secretary:



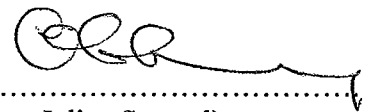
.....
Signature of director & company secretary



.....
Name of director & company secretary (block letters)

Date: 12 December 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)
Chairman
Australian Competition and Consumer Commission

Date: 12 December 2008

Annexure A

CRESWICK WOOLLEN MILLS PTY LTD – FORMAT OF CORRECTIVE WEBSITE NOTICE & CORRECTIVE NEWSPAPER ADVERTISEMENT

CRESWICK Woollen Mills

AUSTRALIAN MADE CLAIMS FOR CRESWICK WOOLLEN MILLS MERINO WOOL BLANKETS

The Australian Competition and Consumer Commission (ACCC) has accepted court enforceable undertakings from Creswick Woollen Mills Pty Ltd (Creswick) in relation to Australian made claims by Creswick for its merino wool blankets where the fibre for the blankets is woven in China, then imported into Australia, and cut and finished at the Creswick mill near Ballarat in Victoria.

Following an investigation by the ACCC, Creswick acknowledges the ACCC's view that its Australian made claims for its merino wool blankets, where the fibre is woven in China, were false and misleading in contravention of the *Trade Practices Act (TPA)*. Creswick's Australian made claims for its merino wool blankets included use of the Australian Made logo, a triangular logo containing a kangaroo graphic.

Under the TPA, goods can only be represented as being of Australian origin if they have been substantially transformed in Australia, and at least 50% of the costs of manufacturing the goods have been incurred in Australia.

Creswick's merino wool blankets have been mainly sold through Bev Marks, DAFA Souvenirs, David Jones, Golders, Goldmart, Palicon House, Supermart and Wynnes Drapery as well as Creswick outlets.

Creswick acknowledges that by falsely describing its merino wool blankets, where the fibre is woven in China, as being Australian made, it may be liable under the TPA to compensate consumers who purchased the blankets. Consumers should direct any enquiries in this regard to Creswick on the contact details below:

6 Roche Street, Hawthorn, Victoria 3122
Tel: (03) 9818 5055 Fax: (03) 9818 5066
Email: info@creswickwool.com.au

Further information on country of origin claims may be found on the ACCC website www.accc.gov.au



This corrective advertisement has been placed by Creswick in compliance with court enforceable undertakings given by Creswick to the ACCC.

Annexure B

CRESWICK WOOLLEN MILLS PTY LTD – CAPITAL CITY NEWSPAPERS IN WHICH A CORRECTIVE NEWSPAPER ADVERTISEMENT IS TO BE PUBLISHED

- *The Sydney Morning Herald* or *The Daily Telegraph* (Sydney)
- *The Herald Sun* or *The Age* (Melbourne)
- *The Canberra Times* (Canberra)
- *The Advertiser* (Adelaide)
- *The Courier Mail* (Brisbane)
- *The West Australian* (Perth)