

**UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION
GIVEN FOR THE PURPOSE OF SECTION 87B OF THE TRADE PRACTICES ACT 1974**

BY

**MITRE 10 AUSTRALIA LIMITED
(ACN 009 713 704)**

PERSON GIVING THE UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Mitre 10 Australia Ltd ACN 009 713 704 of 12 Dansu Court Hallam in the State of Victoria (Mitre 10) under section 87B of the *Trade Practices Act* (1974) (**the Act**).

BACKGROUND

2. Mitre 10 is incorporated under the *Corporations Act* and its registered office is in the State of Victoria. Mitre 10 wholesales hardware, outdoor and homeware products, including elastic luggage straps.
3. Between June 2007 and August 2008 Mitre 10 imported and distributed elastic luggage straps under its private label brand "Warrior". The Warrior Bungee Cords (**Straps**) did not comply with sub-regulation 11C of the *Trade Practices (Consumer Product Safety Standards) Regulations 1979 (Regulations)* in that the warning label attached was not yellow nor permanently attached and did not contain the wording required by the Regulations. Some Straps were supplied without any label.
4. The ACCC was concerned that supplying the Straps may have been in breach of section 65C of the Act. The ACCC alerted Mitre 10 of its concerns.
5. Being committed to consumer safety, Mitre 10 immediately withdrew the Straps from sale and co-operated with the ACCC at all times, including undertaking a full Product Safety Recall at its own expense and advertising the Recall in the major newspapers of each capital city where the Straps were sold.
6. Furthermore, Mitre 10 has offered this Undertaking to the ACCC.

COMMENCEMENT OF UNDERTAKING

7. This Undertaking comes into effect when:
 - a. the Undertaking is executed by Mitre 10; and
 - b. the ACCC accepts the Undertaking so executed.

UNDERTAKING

8. Mitre 10 undertakes for the purposes of section 87B of the Act that it will:
 - a. not offer to supply, supply or enter into an agreement to supply elastic luggage straps which do not comply with the Regulations;
 - b. establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in the attached 'Annexure A' for the employees or other persons involved in Mitre 10 Australia Ltd's business, being a program designed to minimise its risk of future breaches of section 65C of the Act and to ensure their awareness of the responsibilities and obligations in relation to the requirements of section 65C of the Act, within 3 months of the date of this Undertaking coming into effect;
 - c. maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years from the date of this Undertaking coming into effect; and
 - d. provide, at its own expense, a copy of any documents requested by the Commission in accordance with Annexure A.

ACKNOWLEDGEMENT

9. Mitre 10 acknowledges that:

- a. the ACCC will make this Undertaking available for public inspection;
- b. the ACCC may issue a media release in relation to this Undertaking and may from time to time publicly refer to this Undertaking;
- c. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
- d. a summary of the ACCC Compliance Program Review reports referred to in Annexure A of this Undertaking may be held with this Undertaking on the public register.

EXECUTED BY:

The common seal of Mitre 10 Australia Ltd)
(ACN 009 713 704) was hereunto affixed)
in accordance with its constitution in the)
presence of:)



A handwritten signature in black ink, appearing to be "LH Collins".

.....
Signature of Director

Lance H Collins

A handwritten signature in black ink, appearing to be "CL Lloyd".

.....
Signature of ~~Director~~/Company Secretary

Chris Lloyd

.....
Name of Director

.....
Name of ~~Director~~/Company Secretary

This 23rd day of January 2009

**ACCEPTED by the AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT (1974)**

A handwritten signature in black ink, appearing to be "GJS".

.....
Graeme Julian Samuel
Chairperson

This 17th day of February 2009

ANNEXURE A

TRADE PRACTICES COMPLIANCE PROGRAM

Mitre 10 Australia Ltd will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within one month of the date of this Undertaking coming into effect Mitre 10 Australia Ltd will appoint a Senior Manager with suitable qualifications or experience in corporate compliance as **Compliance Officer** with responsibility for ensuring the Compliance Program is effectively designed, implemented and maintained.
2. Within 3 months of the date of this Undertaking coming into effect Mitre 10 Australia Ltd shall appoint a qualified, external, compliance professional with expertise in trade practices issues (**the Compliance Advisor**). Mitre 10 Australia Ltd shall instruct the Compliance Advisor to conduct a Trade Practices Act risk assessment (**Risk Assessment**) in accordance with 2.1 – 2.4 below:
 - 2.1. identify the areas where Mitre 10 Australia Ltd is at risk of breaching section 65C of the Trade Practices Act 1974;
 - 2.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Mitre 10 Australia Ltd should they occur;
 - 2.3. identify where there may be gaps in Mitre 10 Australia Ltd's existing procedures for managing these risks; and
 - 2.4. provide recommendations for action having regard to the assessment.

Compliance Policy

3. Mitre 10 Australia Ltd will, within 60 days of the Undertaking coming into effect, issue a policy statement outlining Mitre 10 Australia Ltd's commitment to trade practices compliance (**the Compliance Policy**). Mitre 10 Australia Ltd will ensure that the Compliance Policy:
 - 3.1. is written in plain language;
 - 3.2. contains a statement of commitment to compliance with the Trade Practices Act 1974;
 - 3.3. contains a strategic outline of how commitment to trade practices compliance will be realised within Mitre 10 Australia Ltd;
 - 3.4. a requirement for all staff to report any compliance related issues and trade practices compliance concerns to the Compliance Officer;

3.5. a guarantee that whistleblowers will not be prosecuted or disadvantaged in any way and that their reports will be kept confidential and secure; and

3.6. a clear statement that Mitre 10 Australia Ltd will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the Trade Practices Act and will not indemnify them.

Complaints Handling System

4. Mitre 10 Australia Ltd will ensure that the Compliance Program includes a trade practices complaints handling system. Mitre 10 Australia Ltd shall use its best endeavours to ensure this system is consistent with *AS/ISO 10002:2006 Customer Satisfaction – Guidelines for complaints handling in organizations*, though tailored to Mitre 10 Australia Ltd's circumstances. Mitre 10 Australia Ltd will ensure that staff and customers are made aware of the complaints handling system.

5. Mitre 10 Australia Ltd will ensure that the Compliance Program includes whistleblower protection mechanisms to protect those coming forward with product safety trade practices complaints. Mitre 10 Australia Ltd shall use its best endeavours to ensure that these mechanisms are consistent with Australian Standard 8004, though tailored to Mitre 10 Australia Ltd's circumstances.

Reports to Board/Senior Management

6. Mitre 10 Australia Ltd will ensure that the Compliance Officer reports to senior management meetings every 6 months on the continuing effectiveness of the Compliance Program.

Training

7. Mitre 10 Australia Ltd will ensure that the Compliance Program provides for regular (at least once a year) and practical trade practices training for all directors, officers, employees, representatives and agents of Mitre 10 Australia Ltd, whose duties could result in them being concerned with conduct that may contravene section 65C of the Trade Practices Act 1974. Mitre 10 Australia Ltd must ensure that the training is conducted by either a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.

8. Mitre 10 Australia Ltd will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new directors, officers, employees, representatives and agents, whose duties could result in them being concerned with conduct that may contravene section 65C of the Trade Practices Act 1974.

Product Safety

9. Mitre 10 Australia Ltd will:

- 9.1. 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 Mitre 10 Australia Ltd supplies;
- 9.2. ensure that the products supplied that are subject to a prescribed safety and/or information standard under the Trade Practices Act, comply with the relevant standard; and
- 9.3. develop, implement and maintain recall procedures that enable products supplied by Mitre 10 Australia Ltd that do not comply with prescribed safety and/or information standards under the Trade Practices Act to be efficiently and effectively withdrawn from the market and returned to Mitre 10 Australia Ltd.

Supply of Compliance Program Documents to the Commission

- 10. Mitre 10 Australia Ltd shall, at its own expense, within 4 months of the date of this Undertaking coming into effect, cause to be produced and provided to the Commission copies of each of the documents constituting the Compliance Program and implement promptly and with due diligence any recommendations that the Commission may make that are reasonably necessary to ensure that Mitre 10 Australia Ltd maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.

Review

- 11. Mitre 10 Australia Ltd shall, at its own expense, cause annual Reviews of the Compliance Program (**the Reviews**) to be carried out in accordance with each of the following requirements:

- 11.1. **Scope of the Reviews** – the Reviews should be broad and rigorous enough to provide Mitre 10 Australia Ltd and the Commission with a supportable verification that Mitre 10 Australia Ltd has in place a program that complies with each of the requirements detailed in paragraphs 1 – 11 above and to provide the Review reports and opinions detailed at paragraph 12 below;
- 11.2. **Independence of Reviewer** – Mitre 10 Australia Ltd shall ensure that the Reviews are carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
 - 11.2.1. did not design the Compliance Program;

- 11.2.2. is not a present or past staff member or director of Mitre 10 Australia Ltd; and
- 11.2.3. has no significant shareholding or other interests in Mitre 10 Australia Ltd.
- 11.3. **Evidence** – Mitre 10 Australia Ltd shall use its best endeavours to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in Mitre 10 Australia Ltd's possession or control, including without limitation:
 - 11.3.1. enquiries of any officers, employees, representatives, agents and stakeholders of Mitre 10 Australia Ltd;
 - 11.3.2. Mitre 10 Australia Ltd's records, including Mitre 10 Australia Ltd's complaints register/reports and any documents relevant to Mitre 10 Australia Ltd's training or induction program; and
 - 11.3.3. documents created by Mitre 10 Australia Ltd's consultants and legal practitioners for use in Mitre 10 Australia Ltd's Compliance Program.
- 11.4. Mitre 10 Australia Ltd shall ensure that the first Review is completed within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter.

Reporting

- 12. Mitre 10 Australia Ltd shall use its best endeavours to ensure the Reviewer sets out the findings of the Review in two separate reports as set out below:

Company Compliance Program Review Report (to be provided to Mitre 10 Australia Ltd)

- 12.1. Mitre 10 Australia Ltd's Company Compliance Program Review Report will provide particular and specific information regarding the performance of the Trade Practices Compliance Program to the corporation including:
 - 12.1.1. if, and to what extent, the Compliance Program of Mitre 10 Australia Ltd includes all the elements detailed in paragraphs 1 – 11 above;
 - 12.1.2. if, and to what extent, the Trade Practices Compliance Program adequately covers the parties and areas identified in the initial Risk Assessment;
 - 12.1.3. if, and to what extent, the trade practices training is effective;

- 12.1.4. if, and to what extent, Mitre 10 Australia Ltd's complaints handling system is effective;
- 12.1.5. if, and to what extent, Mitre 10 Australia Ltd is able to provide confidentiality and security to whistleblowers, and staff are aware of the whistleblower protection mechanisms; and
- 12.1.6. recommendations for rectifying deficiencies in 12.1.1-12.1.5 above that the Reviewer thinks are reasonably necessary to ensure that Mitre 10 Australia Ltd maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

Commission Compliance Program Review Report (to be provided to Commission)

- 12.2. The Commission Compliance Program Review Report will provide particular and specific information regarding the scope of the Review and the effectiveness of the Trade Practices Compliance Program including:
 - 12.2.1. details of the evidence gathered and examined during the Review;
 - 12.2.2. the name and relevant experience of the person appointed as the company Compliance Officer;
 - 12.2.3. the Reviewer's opinion on whether Mitre 10 Australia Ltd has in place a Trade Practices Compliance Program that complies with the requirements detailed in paragraphs 1-11 above;
 - 12.2.4. actions recommended by the Reviewer to ensure the continuing effectiveness of Mitre 10 Australia Ltd's Compliance Program;
 - 12.2.5. confirmation that any actual and potential inadequacies in Mitre 10 Australia Ltd's Compliance Program have been brought to the attention of the Compliance Officer and the Executive;
 - 12.2.6. confirmation that the Reviewer has revisited any actual and potential inadequacies in Mitre 10 Australia Ltd's Compliance Program identified in any previous Company Compliance Program Review Report, and assessed how they have been addressed by Mitre 10 Australia Ltd;
 - 12.2.7. any reservations that the Reviewer might have about the reliability and completeness of the information to which the

Reviewer had access in the conduct and reporting of the Review; and

- 12.2.8. any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.
 - 12.3. Mitre 10 Australia Ltd will require the Reviewer to ensure that the Review Reports are completed and provided to Mitre 10 Australia Ltd within two months of each Review.
 - 12.4. Mitre 10 Australia Ltd will retain the Company Compliance Program Review Report and cause the Commission Compliance Program Review Report to be provided to the Commission within 14 days of its receipt from the Reviewer.
 - 12.5. Mitre 10 Australia Ltd acknowledges that a brief statement regarding the Commission Compliance Program Review Report may be included in the Commissions 87B public register.
13. **Recommendations** – Mitre 10 Australia Ltd shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the Commission that are reasonably necessary to ensure that Mitre 10 Australia Ltd maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
14. If requested by the Commission Mitre 10 Australia Ltd shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
15. In the event the Commission has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Mitre 10 Australia Ltd shall, at its own expense and if requested by the Commission, cause an interim or additional Review to be conducted and cause the resulting Commission Review Report to be provided to the Commission.