

**TRADE PRACTICES ACT 1974**

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

**BY**

**BRILLIANT SIGNS PTY LTD (ACN 004 978 741)**

**PERSON GIVING UNDERTAKING**

1. This Undertaking is given to the Australian Competition and Consumer Commission (**Commission**) by Brilliant Signs Pty Ltd (ACN 004 978 741) (**Brilliant Signs**) of 3 Leslie Grove Brighton in the State of Victoria pursuant to Section 87B of the *Trade Practices Act 1974 (TPA)*.

**BACKGROUND**

2. The Commission is responsible for ensuring compliance with prescribed consumer product safety standards under the TPA. The Trade Practices (Consumer Product Safety Standards) Regulations 1979 (**the Regulations**) includes regulation 11C Elastic luggage straps – consumer product safety standard from 1 December 2004 (Act s 65C (2)) (**the prescribed standard**).
3. An elastic luggage strap is defined at sub-regulation 11C(1) of the Regulations as meaning in relevant part:
  - (a) *an elastic strap or cord, or two or more elastic straps or cords, permanently joined and:*
    - (i) *having a hook, buckle or other fastening device at each extremity; and*
    - (ii) *designed to be used for the purpose of securing luggage or other objects.*
4. Sub-regulation 11C(3) of the prescribed standard requires elastic luggage straps to have permanently attached to them a label bearing the following warning (**the Warning Label**):

*WARNING. Avoid eye injury. DO NOT overstretch. ALWAYS keep face and body out of recoil path. DO NOT use when strap has visible signs of wear or damage.*
5. Brilliant Signs carries on business as a hardware wholesaler which includes the wholesale supply of elastic luggage straps.
6. On 31 August 2007 Brilliant Signs supplied the following elastic luggage straps to Service Station Supplies (Aust) Pty Ltd for retail sale to consumers (**the Octopus Straps**).

<b>Brand Name</b>	<b>Product description</b>	<b>Part No.</b>
SSA	Octopus Strap 24"/600mm	T24
SSA	Octopus Strap 36"/900mm	T36

7. In July 2008 staff of the Commission purchased samples of the Octopus Straps from various retail service station operators. An examination of the Warning Label attached to the Octopus Straps revealed it was made of paper and easily tore away from the Octopus Straps and would readily perish through use and exposure to the elements. The Commission was of the view the Warning Labels were not permanently attached to the elastic luggage straps as required by the Regulations and did not therefore comply with the requirements of the prescribed standard.
8. Section 65C(1)(a) of the TPA prohibits a corporation, in trade or commerce, from supplying goods that are intended to be used or are of a kind likely to be used by a consumer if the goods are of a kind in respect of which there is a prescribed consumer product safety standard and the goods do not comply with that standard.
9. Upon becoming fully aware of the Commission's concerns Brilliant Signs advised the Commission that it had supplied the Octopus Straps on one occasion only in August 2007 and undertook to implement a trade practices compliance program.
10. Brilliant Signs acknowledges that by engaging in the conduct set out above it has contravened section 65C of the TPA.
11. Brilliant Signs and the Commission have agreed to resolve this matter by the giving and accepting of an undertaking on the terms and conditions as follows.

#### **COMMENCEMENT**

12. This Undertaking comes into effect on the date being the later of the following:
  - 12.1 the date on which Brilliant Signs executes the Undertaking; and
  - 12.2 the date on which the Commission accepts the Undertaking so executed.

#### **UNDERTAKINGS**

13. Brilliant Signs undertakes for the purposes of section 87B of the TPA that it will, for a period of 3 years, ensure that goods supplied by it that are subject to a prescribed consumer product safety standard under the TPA comply with the relevant standard.

#### **TRADE PRACTICES COMPLIANCE PROGRAM**

14. Brilliant Signs undertakes:
  - 14.1 to within 4 months of this Undertaking coming into effect, establish and implement a Trade Practices Compliance Program (**the Compliance Program**) in accordance with the requirements set out in 'Annexure A' for its employees or other persons involved in Brilliant Signs' business, being a program designed to minimise its risk of breaching section 65C of the TPA and to ensure their awareness of the responsibilities and obligations in relation to the requirements of section 65C of the TPA; and
  - 14.2 to maintain and continue to implement the Compliance Program for a period of 3 years from the date of this Undertaking coming into effect.



**ACKNOWLEDGMENTS**

15. Brilliant Signs acknowledges that:

15.1 the Commission will make this Undertaking available for public inspection;

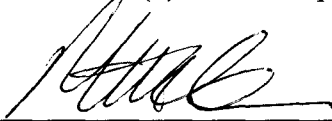
15.2 the Commission will from time to time, publicly refer to this Undertaking; and

15.3 this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

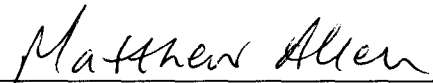
**EXECUTED by BRILLIANT SIGNS PTY LTD**

(ACN 004 978 741) by its authorised officers pursuant )

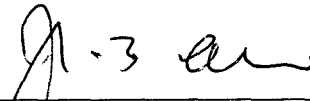
to section 127(1) of the Corporations Act 2001 )



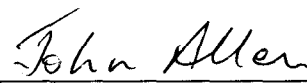
Signature of Director



Name of Director




Signature of Director/Secretary



Name of Director/Secretary

This 19<sup>th</sup> day of January 2009

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



Graeme Julian Samuel

Chairperson

This 17<sup>th</sup> day of February 2009

## ANNEXURE A

### TRADE PRACTICES COMPLIANCE PROGRAM

Brilliant Signs Pty Ltd (ACN 004 978 741) (**Brilliant Signs**) will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

#### 1. Training

- 1.1. Within 3 months of the Undertaking coming into effect, and thereafter at least once a year for the period of the Undertaking, Matthew David Allen, a director of Brilliant Signs will attend practical trade practices training focusing on section 65C of the *Trade Practices Act 1974* (**the TPA**).
- 1.2. Brilliant Signs 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.
- 1.3. Brilliant Signs will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 1.1 above to the Commission within 14 days of completion of the training verifying that such training has occurred.

#### 2. Complaints handling

2.1. Brilliant Signs will:

- 2.1.1. develop procedures for recording, storing and responding to trade practices complaints within 4 months of the Undertaking coming into effect; and
- 2.1.2. provide the Commission with an outline of the complaint handling system developed within 4 months of the Undertaking coming into effect.

3. If requested by the Commission, Brilliant Signs will provide, at its own expense, copies of any other documents or information in respect of matters which are the subject of the Compliance Program.

#### 4. Product safety

- 4.1. Brilliant Signs will maintain up-to-date copies, at its business premises, of all prescribed consumer product safety standards that relate to products Brilliant Signs supplies.
- 4.2. Brilliant Signs will ensure that products supplied by Brilliant Signs that are subject to a prescribed consumer product safety standard under the TPA, comply with the relevant standard.
- 4.3. Brilliant Signs will maintain recall procedures that enable products supplied by Brilliant Signs that do not comply with a prescribed consumer product safety standard under the TPA to be efficiently and effectively withdrawn from the market and returned to Brilliant Signs.

