

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

BY

**MARK CAMERON HAWKINS AND MERIN SUSANNE HAWKINS AND
MEDALIST (VICTORIA) PTY LTD (ACN 114 597 778)**

PERSONS GIVING UNDERTAKING

This Undertaking is given to the Australian Competition and Consumer Commission (**the Commission**) by Mark Cameron Hawkins (**Mark Hawkins**) and Merin Susanne Hawkins (**Merin Hawkins**) both of 26 Volunteer Road Kenthurst in the state of New South Wales and Medalist (Victoria) Pty Ltd (ACN 114 597 778) (**Medalist (Victoria)**) of Unit 3, 360 Vardys Road Kings Park in the State of New South Wales pursuant to Section 87B of the *Trade Practices Act 1974* (**the Act**).

BACKGROUND

1. Mark Hawkins, Merin Hawkins and Medalist (Victoria) carry on business in partnership as a wholesale supplier of hand tools to the retail hardware and nursery industries in Victoria, New South Wales, South Australia and Tasmania (**the Medalist partnership**). The Medalist partnership's business activities are carried on under the registered business name 'Medalist'. The hand tools supplied by the Medalist partnership include elastic luggage straps packaged under the brand name 'Medalist' and described as 'Bungee Straps'.
2. The Commission is responsible for ensuring compliance with prescribed consumer product safety standards under the Act. 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. Sub-regulation 11C(1) of the prescribed standard defines an elastic luggage strap as including an elastic strap or cord having a hook, buckle or other fastening device at each extremity that is 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. (**the Warning**).
5. The purpose of the Warning Label being permanently attached to the straps is to warn users of the risk of serious injury, including injury to the eyes, from recoil associated with elastic luggage straps. This is a very important safety warning.

6. Between 18 July 2007 and 22 August 2008 the Medalist partnership supplied to its customers Medalist branded elastic luggage straps identified by the item numbers 91812, 91820, 91821, 91822, 91823 and 91826 (**the Medalist Straps**).
7. In August 2008 in the course of the conduct of a product safety survey, staff of the Commission purchased a sample of the Medalist Straps from a hardware retailer. Examination of the warning label attached to the Medalist Straps revealed it was made of an adhesive paper that easily tore away and would readily perish through use and exposure to the elements. Having regard to the material composition of the Warning Label attached to the Medalist Straps the Commission was of the view the Warning Label was not permanently attached to the Medalist Straps as required by the prescribed standard.
8. Section 65C(1)(a) of the Act 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. Section 6(2) of the Act extends the operation of Part V of the Act (which includes section 65C) to natural persons whose conduct occurs in interstate trade or commerce.
10. Upon becoming fully aware of the Commission's concerns the Medalist partnership advised it:
 - ceased supplying the Medalist Straps;
 - reviewed the Warning Label attached to each elastic luggage strap variant it supplied to its customers to ensure it complied with the prescribed standard and identified and informed the Commission of the Medalist Straps non-compliance with the prescribed standard;
 - issued a letter to each customer who purchased the Medalist Straps asking them to remove them from sale and contacted each customer by telephone to ensure the Medalist Straps were removed from sale;
 - posted on its website detail of the Commission's concern and of its voluntary trade recall of the Medalist Straps;
 - supplied laminated signs to its customers to display in their stores to inform consumers of the Commission's concern; and
 - took action to replace the Warning Label on the Medalist Straps with new labels made of a non-perishable, durable material.
11. Mark Hawkins, Merin Hawkins and Medalist (Victoria) acknowledge that by engaging in the conduct set out above they have contravened section 65C of the Act.
12. Mark Hawkins, Merin Hawkins and Medalist (Victoria) and the Commission have agreed to resolve this matter by the giving and accepting of an undertaking in the terms and conditions as follows.

COMMENCEMENT

13. This Undertaking comes into effect on the date being the later of the following:
 - 13.1 the date on which Mark Hawkins, Merin Hawkins and Medalist (Victoria) execute the Undertaking; and
 - 13.2 the date on which the Commission accepts the Undertaking so executed.

UNDERTAKINGS

14. Mark Hawkins, Merin Hawkins and Medalist (Victoria) jointly and severally undertake to the Commission for the purposes of section 87B of the Act that they will:
 - 14.1 for a period of 3 years from the date of this Undertaking coming into effect, ensure that all goods supplied by the Medalist partnership that are subject to a prescribed consumer product safety standard under the Act comply with the relevant standard;
 - 14.2 within 3 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 the employees or other persons involved in the Medalist partnership's business activities, being a program designed to minimise Mark Hawkins', Merin Hawkins' and Medalist (Victoria)'s risk of future breaches of section 65C of the Act and to ensure Mark Hawkins', Merin Hawkins' and Medalist (Victoria)'s awareness of their responsibilities and obligations in relation to the requirements of section 65C of the Act;
 - 14.3 maintain and continue to implement the Compliance Program for a period of 3 years from the date of this Undertaking coming into effect; and
 - 14.4 provide, at their own expense, a copy of any documents required by the Commission in accordance with Annexure A.

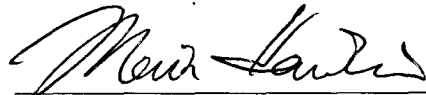
ACKNOWLEDGMENTS

15. Mark Hawkins, Merin Hawkins and Medalist (Victoria) acknowledge:
 - 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;
 - 15.3 this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct;
 - 15.4 a summary of the Commission Compliance Program Review reports referred to in Annexure A of the Undertaking may be held with this Undertaking on the public register; and
 - 15.5 each of Mark Hawkins, Merin Hawkins and Medalist (Victoria) are jointly and severally responsible for fulfilling the obligations of this Undertaking and the requirements of the Compliance Program in accordance with the requirements of the 'Annexure A' to this Undertaking.

EXECUTED by MARK CAMERON HAWKINS and MERIN SUSANNE HAWKINS



Signature of Mark Cameron Hawkins



Signature of Merin Susanne Hawkins

and by MEDALIST (VICTORIA) PTY LTD (ACN 114 597 778)

by its authorised officers pursuant)
to section 127(1) of the Corporations Act 2001)



Signature of Director

Allan Prager
Name of Director




Signature of Director/Secretary

Allan Prager
Name of Director/Secretary

This 29th 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 17th day of February 2009

Annexure A

TRADE PRACTICES COMPLIANCE PROGRAM

Mark Cameron Hawkins, Merin Susanne Hawkins and Medalist (Victoria) Pty Ltd trading as 'Medalist' (**the Medalist partnership**) will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

1. **Appointments**

- 1.1. Within one month of the date of the Undertaking coming into effect Mark Cameron Hawkins (**Mark Hawkins**), Merin Susanne Hawkins (**Merin Hawkins**) and Medalist (Victoria) Pty Ltd (**Medalist (Victoria)**) will appoint a partner of the Medalist partnership [being Mark Hawkins, Merin Hawkins or a director of Medalist (Victoria)] or a Senior Manager of the Medalist partnership to be responsible for the development, implementation and maintenance of the Compliance program (**the Compliance Officer**).

2. **Compliance Officer Training**

- 2.1. Mark Hawkins, Merin Hawkins and Medalist (Victoria) will ensure that, within 3 months of the Undertaking coming into effect, the Compliance Officer attends practical trade practices training focusing on section 65C of the Act.
- 2.2. Mark Hawkins, Merin Hawkins and Medalist (Victoria) shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
- 2.3. Mark Hawkins, Merin Hawkins and Medalist (Victoria), within 14 days of completion of training, will provide the Commission with a written statement from the compliance professional or legal practitioner confirming the completion of the training conducted in accordance with paragraphs 2.1 and 2.2 above.

3. **Staff Training**

- 3.1. Mark Hawkins, Merin Hawkins and Medalist (Victoria) will cause all the employees of the Medalist partnership whose duties could result in them being concerned with conduct that may contravene 65C of the Act to receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or a qualified, compliance professional or legal practitioner with expertise in trade practices law, that focuses on 65C of the Act.

4. **Complaints handling** – Mark Hawkins, Merin Hawkins and Medalist (Victoria) will:
 - 4.1. develop procedures for recording, storing and responding to trade practice complaints within 2 months of the Undertaking coming into effect; and
 - 4.2. provide the Commission with an outline of the complaint handling system within 2 months of the Undertaking coming into effect.
5. **Product Safety** – Mark Hawkins, Merin Hawkins and Medalist (Victoria) will:
 - 5.1. maintain up-to-date copies, at the Medalist partnership's business premises, of all prescribed consumer product safety standards that relate to products the Medalist partnership supplies;
 - 5.2. ensure that the products supplied by the Medalist partnership that are subject to a prescribed consumer product safety standard under the Act, comply with the relevant standard; and
 - 5.3. design, implement and maintain recall procedures that enable products the Medalist partnership supplies that do not comply with prescribed consumer product safety standards under the Act to be efficiently and effectively withdrawn from the market and returned to the Medalist partnership.
6. Mark Hawkins, Merin Hawkins and Medalist (Victoria) will ensure that the Compliance Officer reports to Mark Hawkins, Merin Hawkins and to the directors of Medalist (Victoria) every 6 months on the continuing effectiveness of the Compliance Program.
7. **Review** – Mark Hawkins, Merin Hawkins and Medalist (Victoria) shall, at their own expense, cause an annual review of the Compliance Program elements (**the Review**) to be carried out in accordance with each of the following requirements:
 - 7.1. **Scope of the Review** – Mark Hawkins, Merin Hawkins and Medalist (Victoria) shall ensure that the Review is broad and rigorous enough to:
 - 7.1.1. provide them and the Commission with supportable verification they have in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of the Medalist partnership's business;
 - 7.1.2. provide the Review Report and opinions detailed at paragraph 8 below; and
 - 7.1.3. provide Mark Hawkins, Merin Hawkins and Medalist (Victoria) and the Commission with a supportable verification that Mark Hawkins, Merin Hawkins and Medalist (Victoria) have in place a product safety compliance program that complies with the requirements of the Undertaking and is suitable for the size and structure of the Medalist partnership's business.

7.2. Independence of Reviewer – Mark Hawkins, Merin Hawkins and Medalist (Victoria) shall ensure that the Review is 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:

7.2.1. did not design or implement the Compliance Program;

7.2.2. is not a present or past partner of the Medalist partnership or an officer or significant shareholder of Medalist (Victoria) or a staff member of the Medalist partnership;

7.2.3. has not acted and does not act for the Medalist partnership or its partners including in the case of Medalist (Victoria) an officer or significant shareholder of Medalist (Victoria), in any trade practices related matters;

7.2.4. has not and does not act for or consult to the Medalist partnership or its partners including in the case of Medalist (Victoria) an officer or significant shareholder of Medalist (Victoria), or provide other services on trade practices related matters other than Compliance Program reviewing; and

7.2.5. has no financial or other significant interest in the Medalist partnership.

7.3. Evidence - Mark Hawkins, Merin Hawkins and Medalist (Victoria) shall use their best endeavors to ensure that the Review is able to be conducted on the basis that the Reviewer has access to all relevant sources of information in their possession or control, including without limitation:

7.3.1. enquiries of any employees, representatives, agents and stakeholders of the Medalist partnership;

7.3.2. documents created by Mark Hawkins, Merin Hawkins and Medalist (Victoria) and the Medalist partnership's consultants, legal practitioners and accountants for use in the Compliance Program; and

7.3.3. all documents required to assess Mark Hawkins, Merin Hawkins and Medalist (Victoria)'s compliance with the relevant consumer product safety standards under the Act.

7.4. Mark Cameron Hawkins, Merin Susanne Hawkins and Medalist (Victoria) Pty 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.

8. Reporting

- 8.1. Mark Hawkins, Merin Hawkins and Medalist (Victoria) shall use their best endeavours to ensure that the Reviewer sets out the findings of the Review in a Trade Practices Compliance Program Review Report, which will provide particular and specific information regarding the scope of the Review and the effectiveness of the Trade Practices Compliance Program including:
 - 8.1.1. details of the evidence gathered and examined during the Review;
 - 8.1.2. the name and relevant experience of the person appointed as the Compliance Officer;
 - 8.1.3. the Reviewer's opinion on whether Mark Hawkins, Merin Hawkins and Medalist (Victoria) have in place effective staff training and complaints handling programs that comply with the requirements of the Undertaking; and
 - 8.1.4. actions recommended by the Reviewer to ensure the continuing effectiveness of the Compliance Program.
- 8.2. Mark Hawkins, Merin Hawkins and Medalist (Victoria) shall ensure that each Trade Practices Compliance Program Review Report is completed and provided to them within one month of completion of the Review.
- 8.3. Mark Hawkins, Merin Hawkins and Medalist (Victoria) will cause the Trade Practices Compliance Program Review Report to be provided to the Commission within 14 days of its receipt from the Reviewer.
- 8.4. Mark Hawkins, Merin Hawkins and Medalist (Victoria) shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the Commission that are reasonably necessary to ensure they maintain and continue to develop the Compliance Program elements in accordance with the requirements of this Undertaking.
9. If requested by the Commission, Mark Hawkins, Merin Hawkins and Medalist (Victoria) shall, at their own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
10. In the event the Commission has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Mark Hawkins, Merin Hawkins and Medalist (Victoria) shall, at their own expense and if requested by the Commission, cause an interim or additional Review to be conducted and cause the resulting Trade Practices Compliance Program Review Report to be provided to the Commission.