

UNDERTAKING
TO THE
AUSTRALIAN COMPETITION
AND CONSUMER COMMISSION

Given under Section 87B of the
Trade Practices Act 1974

by

TIMBERMATE PRODUCTS PTY LTD
(ACN 006 779 479)

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

BY

TIMBERMATE PRODUCTS PTY LTD

(ACN 006 779 479)

PERSONS GIVING THIS UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission ("the ACCC") by Timbermate Products Pty Ltd (ACN: 006 779 479) ("Timbermate") of 8 Thornton Crescent, Mitcham, Victoria under section 87B of the *Trade Practices Act 1974* (**the Act**).

BACKGROUND

2. Timbermate is incorporated in Victoria and trades under its own name. It carries on business as a manufacturer, importer and distributor of hardware products and supplies. Including Directors, Timbermate employs 15 full-time and 1 part-time employees. Timbermate supplies hardware products and accessories to wholesalers, paint and plumbing suppliers and retailers across Australia. In particular Timbermate imports and distributes the "Quickties" brand of moulded rubber tie down straps.
3. Between mid 2005 and September 2008 Timbermate supplied the Quicktie with the paper based warning label to a range of hardware and other retailers.
4. The prescribed consumer product safety standard for elastic luggage straps requires that, from 1 December 2004, elastic luggage straps must be labelled in accordance with the requirements specified in Regulation 11C of the Trade Practices (Consumer Product Safety) Regulations 1979 ("the mandatory standard"). The mandatory standard states, inter alia, that elastic luggage straps must have a label that is permanently attached to the strap, clearly displayed and bearing the following warning in black writing of a specified size on a yellow background.

"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. Section 65C of the *Trade Practices Act 1974* prohibits a corporation, in trade or commerce, supplying consumer goods of a kind in respect of which there is a prescribed consumer product safety standard and the goods do not comply with that standard.
6. In July and August 2008 the staff of ACCC purchased samples of the Quickties from various hardware retailers. The examination of the Warning Labels attached to the Quickties revealed that they were made of a paper based material that could easily tear away if forced and could perish on use and exposure to the elements and as such are not "permanently attached".
7. The ACCC formed the view that the Quickties supplied by Timbermate between mid 2005 and September 2008 did not comply with the mandatory standard because the warning label was made of a paper based material and was not permanently attached to the luggage strap.

8. Timbermate admits that the safety warning labels attached to Quickties are not "permanently attached" and that as a consequence, Timbermate's conduct may constitute a breach of s65 C (1)(a) of the *Trade Practices Act 1974* and Regulation 11C of the *Trade Practices (Consumer Product Safety Standards) Regulations 1979*.
9. The ACCC acknowledges that Timbermate has cooperated in taking steps to resolve this matter and Timbermate has taken the following steps to address the ACCC's concerns by:
 - a. Re-labelling all current stock of Quickties on hand at its premises with a plastic based warning label that complies with the mandated standard;
 - b. Requesting advice from all wholesaler and retailer customers it has supplied with Quickties regarding the number of Quickties each has on hand and passing that information on to the ACCC;
 - c. Timbermate undertaking that, upon a direction being given by a particular wholesaler or retailer, either to:
 - i. arrange for Timbermate's staff and/or contractors to attend the business premises of each retailer or wholesaler and attach a warning label made from a plastic based material, which complies with the mandatory standard, to each Quicktie held by that retailer or wholesaler; or
 - ii. arrange for all Quickties held by that particular retailer or wholesaler to be returned to Timbermate premises and for Timbermate's staff and/or contractors to attach a warning label made from a plastic based material, and which complies with the mandatory standard, to the Quickties and to then return those Quickties to that particular retailer or wholesaler;
 - d. Undertaking to publish a public warning notice in major daily newspapers to warn consumers of non-compliance of the Quicktie labelling, the potential risk to consumers and to advise of the action it is taking to ensure that all stock complies with the mandated standard.
10. In settlement of this matter, Timbermate has offered this undertaking to the ACCC, and the ACCC has agreed to accept this undertaking, pursuant to section 87B of the *Trade Practices Act 1974*.

COMMENCEMENT

11. This Undertaking comes into effect when:
 - a. The Undertaking is executed by Timbermate; and
 - b. The ACCC accepts the Undertaking so executed.
12. Upon commencement of this Undertaking Timbermate undertakes to assume the obligations set out below.

UNDERTAKINGS

13. Timbermate undertakes, for the purposes of section 87B of the Act, that it will:
 - a. Refrain from supplying, or offering to supply, elastic luggage straps to which the mandatory standard applies and where the luggage straps do not comply with the mandatory standard;

- b. At its own expense and within 7 days of the date of this Undertaking coming into effect, (unless such contact has been made prior to the date of this Undertaking), contact all wholesale and retail customers who purchased Quickties from Timbermate and notify each such customer:
- i. of the results of the ACCC's concerns as outlined above;
 - ii. that Timbermate admits the warning labels may not comply with the mandatory standard;
 - iii. that those wholesaler and retailer customers should remove from sale all Quickties with labelling that does not comply with the mandatory standard; and
 - iv. Timbermate will, depending upon the direction given by the particular retailer or wholesaler, either:
 1. arrange for Timbermate's staff and/or contractors to attend the business premises of each retailer or wholesaler and attach a warning label made from a plastic based material, and which complies with the mandatory standard, to each Quicktie held by that retailer or wholesaler; or
 2. arrange for all Quickties held by that particular retailer or wholesaler to be returned to Timbermate premises and for Timbermate's staff and/or contractors to attach a warning label made from a plastic based material, and which complies with the mandatory standard, to the Quickties and to then return those Quickties to that particular retailer or wholesaler.
- c. within 30 days of the date of this Undertaking provide the ACCC, (unless such a schedule has been provided prior to the date of this Undertaking), with a schedule in writing which lists the names and contact details of each wholesale and retail customer to whom Quickties have been supplied and which have been contacted by Timbermate.
14. Timbermate will, within two weeks from the end of the six month period starting from the date of this Undertaking coming into effect, provide the ACCC with a report giving details of:
- a. the total quantities of Quickties supplied by Timbermate to wholesalers and retailers during the six month period starting from the date of this Undertaking; and
 - b. the total number of Quickties to which Timbermate have arranged for warning labels, which comply with the mandatory standard, to be attached, during the six month period starting from the date of this Undertaking.

COMPLIANCE PROGRAM

15. Timbermate Products Pty Ltd (Timbermate) undertake to the Australian Competition and Consumer Commission ("the Commission") for the purposes of section 87B of the *Trade Practices Act 1974 (the Act)* that it will:
- a. establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in "**Annexure A**" for the employees or other persons involved in Timbermate's business, being a program designed to minimise

Timbermate's risk of future breaches of section 65C of the Act and to ensure awareness of its responsibilities and obligations in relation to the requirements of section 65C, within 3 months of the date of this Undertaking coming into effect; and

- b. 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.
- c. provide, at its own expense, a copy of any documents required by the Commission in accordance with Annexure A.

Acknowledgments

- 16. Timbermate acknowledges that the ACCC will make this undertaking available for public inspection.
- 17. Timbermate further acknowledges that the ACCC will from time to time publicly refer to this undertaking.
- 18. Timbermate further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- 19. Timbermate further acknowledges that 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.

EXECUTION CLAUSES

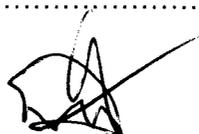
EXECUTED by TIMBERMATE PRODUCTS PTY LTD (ACN 006 779 479)
pursuant to Section 127(1) of the Corporations Act 2001

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Director



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Print name

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Director

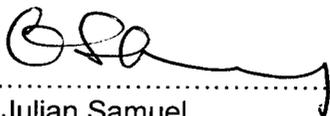


ARON SUNIUP
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Print name

This 30th day of JANUARY 2008

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

.....
Graeme Julian Samuel
Chairperson



This 24th day of FEBRUARY 2008

Annexure A**TRADE PRACTICES COMPLIANCE PROGRAM**

Timbermate Products Pty Ltd (Timbermate) 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 Timbermate will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the compliance program (**the Compliance Officer**).

2. Compliance Officer Training

- 2.1. Timbermate 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. Timbermate shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law;
- 2.3. Timbermate 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 2.1 and 2.2 above.

3. Staff Training

- 3.1. Timbermate will cause all employees of Timbermate whose duties could result in them being concerned with conduct that may contravene section 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 section 65C of the Act.

4. Complaints handling – Timbermate 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 – Timbermate will:

- 5.1. 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 Timbermate supplies.
- 5.2. 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.
- 5.3. design, implement and maintain public safety notice procedures that enable Timbermate to issue a public safety notice in situations where products supplied by Timbermate may not comply with prescribed safety and/or information standards under the Trade Practices Act and the Commission gives direction that a public safety notice be issued.

5.4. design, implement and maintain recall procedures that enable products supplied by Timbermate 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 Timbermate.

6. Timbermate will ensure that the Compliance Officer reports to their director(s) or governing body every 6 months on the continuing effectiveness of the Compliance Program.

7. Review

7.1. Timbermate shall ensure that the Compliance Officer causes an annual review of the Compliance Program (**the Review**) be carried out in accordance with each of the following requirements:

7.2. **Scope of the Review** – Timbermate shall ensure that the Review is broad and rigorous enough to:

7.2.1. provide Timbermate and the Commission with a supportable verification that Timbermate has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of Timbermate;

7.2.2. provide the Review Report and opinions detailed at point 8 below; and

7.2.3. provide Timbermate and the Commission with a supportable verification that Timbermate has in place a product safety compliance program that complies with the requirements of the Undertaking and is suitable for the size and structure of Timbermate.

7.3. Timbermate 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. Timbermate shall ensure that the findings of the Review are set out 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 Timbermate's Compliance Officer;

8.1.3. Timbermate has in place effective staff training, complaints handling programs that comply with the requirements of the Undertaking;

8.1.4. actions recommended to ensure the continuing effectiveness of Timbermate's Compliance Program.

8.2. Timbermate shall ensure that each Trade Practices Compliance Program Review Report is completed and provided to the Commission within one month of completion of the Review.

8.3. Timbermate shall implement promptly and with due diligence any recommendations made in the Review or required by the Commission that are reasonably necessary to ensure that

Timbermate maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.

9. If requested by the Commission Timbermate shall, at its 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, Timbermate shall, at its own expense and if requested by the Commission, cause an interim or additional Review to be conducted by an independent Reviewer and cause the resulting Trade Practices Compliance Program Review Report to be provided to the Commission.